

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 3

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

Rethinking Undertrial Incarceration in India: A Comparative Analysis of Reformative Justice Models

AYUSHI SARKAR* AND DR. SHYAM LAL**

ABSTRACT

This research paper examines the escalating crisis of undertrial incarceration in India, where detainees awaiting trial now constitute approximately 75.5% of the total prison population. Despite the constitutional guarantee of personal liberty under Article 21, the Indian criminal justice system frequently subjects individuals to prolonged detention that often exceeds the maximum potential sentences for their alleged offences. Through a comparative and doctrinal analysis, this study evaluates the structural judicial deficiencies and procedural challenges within the current framework, particularly the implications of the newly enacted Bharatiya Nagarik Suraksha Sanhita, 2023. The analysis contrasts India's discretionary bail practices with the rights-based models of the United Kingdom and the presumption of release established in Canadian jurisprudence. Findings indicate that inconsistent judicial discretion and restrictive provisions in special statutes, such as the Unlawful Activities (Prevention) Act, have effectively inverted the presumption of innocence, transforming pre-trial detention into a form of "punishment before judgment". To mitigate these systemic inequities, the paper proposes a transition toward reformative justice models, advocating the institutionalisation of objective risk-assessment protocols such as the "tripod test" and the expansion of non-custodial alternatives such as community-based supervision and restorative justice. Ultimately, the study calls for a comprehensive legislative recalibration grounded in constitutional morality to ensure that incarceration serves the purpose of rehabilitation rather than institutional neglect. By integrating these structural reforms, the legal system can shift from a punitive-centric paradigm toward the established mandate that "bail is the rule and jail is the exception".

Keywords: Undertrial Detention; Reformative Justice; Bail Jurisprudence; Bharatiya Nagarik Suraksha Sanhita; Comparative Law.

* Author is a Research Scholar at School of Law and Jurisprudence, Shri Venkateshwara University, Gajraula, Amroha, Uttar Pradesh, India.

** Author is an Associate Professor at School of Law and Jurisprudence, Shri Venkateshwara University, Gajraula, Amroha, Uttar Pradesh, India.

I. INTRODUCTION

The Indian criminal justice system is currently grappling with a critical crisis characterised by an over-reliance on pre-trial detention, where undertrials constitute nearly three-quarters of the total prison population.¹ This pervasive reliance on incarceration frequently results in detention periods that surpass the maximum possible sentences for the alleged offences, highlighting a profound systemic failure to uphold the constitutional guarantee of a speedy trial.² As of 2022, this demographic imbalance had surged to 75.5% of all incarcerated individuals,³ exacerbating severe prison overcrowding and straining correctional infrastructure beyond functional capacity. This systemic instability is particularly acute in district-level facilities, where the concentration of detainees reflects entrenched socio-economic disparities and unequal access to effective legal representation.⁴ Furthermore, the disproportionate representation of marginalised groups such as Scheduled Castes, Scheduled Tribes, and religious minorities underscores the systemic nature of these inequities within a legal framework that frequently treats indigency as an insurmountable barrier to obtaining bail.⁵

This discrepancy raises fundamental questions about how a system rooted in the presumption of innocence can reconcile its equitable aspirations with the persistent denial of liberty to those lacking the financial capital to secure bail. This disparity between constitutional mandates and administrative reality highlights a pressing need to examine the mechanisms of bail jurisprudence, which often falter under the weight of judicial delays and the excessive use of executive discretion.⁶ The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023⁷ serves as a critical juncture for evaluating whether these statutory shifts genuinely advance the constitutional right to liberty or merely perpetuate the structural inequities inherent in current bail mechanisms.⁸ In this context, it becomes necessary to assess whether technological interventions, such as digital decision-support systems, can provide the empirical clarity required to mitigate the systemic delays and administrative inconsistencies currently hindering

¹ B.P. Mani, *Reforming Criminal Procedure in India: Balancing Speedy Trials with Fair Trial Guarantees* (2025); I.H.A. Wahab, *Flaws in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS): A Critical Study*, 6 INT'L J. FOR MULTIDISCIPLINARY RES., no. 5 (2024).

² Mani, *supra* note 1.

³ NATIONAL CRIME RECORDS BUREAU, PRISON STATISTICS INDIA 2022 (2023).

⁴ A. Sidique, *Silent Victims: Understanding the Correlation Between Undertrial Prisoners and Overcrowding: An Analysis of Prison Statistics Report 2022* (2024).

⁵ U. Yadav et al., *Voices Behind Bars: Reimagining India's Public Policy Agenda for Rehabilitation and Equity* (2025).

⁶ N. Sachdeva & A. Ahmad, *Bail Jurisprudence in India and a Comparative Analysis with UK and USA: Preserving the Balance of Justice* (2022).

⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).

⁸ S.A. Shrivastava & A. [Dr.], *Bail as a Human Right: A Critical Examination of Bail Reforms Under BNSS* (2026).

the judicial process.⁹ Such an assessment requires a nuanced examination of how judicial discretion interacts with socio-economic variables, where the gravity of the offence and the accused's background often override the principle that bail remains the rule rather than the exception.¹⁰ Furthermore, the current judicial reliance on the "seriousness of the offence" as a primary determinant for bail creates a standard that inadvertently compromises the presumption of innocence. This tension is further complicated by special legislation such as the NDPS Act and the UAPA, which impose stringent conditions that significantly constrain judicial discretion and raise the threshold for release.¹¹

II. THE UNDERTRIAL DETENTION CONTEXT

The existing framework for pre-trial detention is deeply influenced by a fragmented legal landscape in which statutory safeguards, such as the Legal Services Authorities Act, 1987,¹² often struggle to harmonise with the increasingly restrictive bail mandates imposed by special criminal statutes.¹³ In response, the Bharatiya Nagarik Suraksha Sanhita, 2023 seeks to modernise these procedures by integrating digital tools and time-bound mandates designed to streamline the bail process and address structural inefficiencies.¹⁴ By explicitly defining bail as the conditional release of an accused person upon the execution of a bond, the new code attempts to operationalise the fundamental right to liberty enshrined in Article 21, which serves as the "procedural magna carta" for protecting personal freedom.¹⁵ However, the implementation of Section 187 of the BNSS introduces an instalment-based police custody system that threatens to widen this period of vulnerability by delaying the crystallisation of the right to default bail.¹⁶ To address these systemic inconsistencies, researchers have proposed data-driven frameworks such as the Indian Bail Prediction System, which utilises large-scale

⁹ A. Jain, *Reforming Bail Law in India Under Bharatiya Nagarik Suraksha Sanhita (BNSS)*, 2023, J. HUM. RTS. L. & PRAC. (2025); S.T. Patil, *Bail Reckoner: A Digital Decision Support System for Bail Eligibility Assessment*, 14 INT'L J. FOR RES. IN APPLIED SCI. & ENG'G TECH. 3370 (2026).

¹⁰ N. Sudan & V. Dhabhai, *Liberty at Stake: An Empirical Assessment of Bail Decision-Making in Delhi Courts* (2026).

¹¹ The Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61, Acts of Parliament, 1985 (India); the Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India).

¹² The Legal Services Authorities Act, 1987, No. 39, Acts of Parliament, 1987 (India).

¹³ A. Swami & R. Bansal, *Comparative Analysis of Statutory Provisions vis-à-vis Judicial Pronouncements on the Right to Free Legal Aid for Under-Trial Prisoners in India*, 23 LEX LOCALIS 7789 (2025).

¹⁴ S. Sarraf & S. Mishra, *Objectives and Scope of Bail Under BNSS, 2023: An In-Depth Analysis*, INT'L J. OF RES. & INNOVATION IN APPLIED SCI. 640 (2025); R. Sharma, *Bharatiya Nagarik Suraksha Sanhita, 2023 & Reforms in Criminal Procedure: Towards Speedy Justice?* (2025).

¹⁵ INDIA CONST. art. 21.

¹⁶ S. Agrawal, *Police Custody in Installments and the 60-Day Rule: Examining the Impact of Section 187 BNSS on the Right to Default Bail* (2026).

judicial datasets to provide objective rationales for bail eligibility based on factual case attributes.¹⁷

A. Historical Legal Framework

The evolution of Indian bail jurisprudence is anchored in the foundational principle that pre-trial detention should function as a rare exception rather than a routine mechanism of law enforcement. This jurisprudential standard remains inextricably linked to the presumption of innocence, ensuring that detention is justified only by clear necessity rather than as a tool for punitive control.¹⁸ However, this traditional doctrinal equilibrium faces substantial strain when confronted with contemporary challenges, such as the rise of transnational economic offences and the exigencies of national security.¹⁹ Consequently, the judicial system must balance these multifaceted interests by evaluating diverse modalities such as regular, interim, and anticipatory bail to safeguard the integrity of criminal proceedings while preventing arbitrary deprivations of liberty.²⁰

This tension is further intensified by the legislative expansion of police custody under the Bharatiya Nagarik Suraksha Sanhita, which aims to facilitate investigations into complex crimes but risks infringing upon the due-process safeguards established in landmark precedents such as *D.K. Basu v. State of West Bengal*²¹ and *Joginder Kumar v. State of U.P.*²², both of which emphasise that custodial detention must be strictly circumscribed to prevent the erosion of constitutional human rights.²³ Specifically, the shift in Section 187 of the BNSS, which permits the allocation of fifteen days of police custody in fragments across a forty- or sixty-day investigation window, creates an extended “shadow” period that complicates the statutory deadline for default bail.²⁴

B. Current Procedural Challenges

The prevalence of these systemic gaps is further compounded by inconsistent bail determinations resulting from massive judicial backlogs, which leave undertrials in a state of

¹⁷ P.K. Srivastava et al., *IBPS: Indian Bail Prediction System*, ARXIV (2025).

¹⁸ S. S., *UAPA and Its Impact on Bail Jurisprudence* (2026).

¹⁹ A.K. Bansal & D. Plaha, *Presumption of Innocence in Bail Jurisprudence: Erosion or Evolution?*, 3 INT’L J. JUD. L., no. 4, 38 (2024).

²⁰ M.A. Mir & D. Bhateri, *The Judicial Analysis of Bail Relating to Special Offences*, 4 INDIAN J.L., no. 1, 1 (2026).

²¹ *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India).

²² *Joginder Kumar v. State of U.P.*, (1994) 4 S.C.C. 260 (India).

²³ D. Jacob, *Expansion of Police Custody Under the Bharatiya Nagarik Suraksha Sanhita: Constitutional Implications for Personal Liberty and Due Process* (2025).

²⁴ Agrawal, *supra* note 16.

prolonged legal limbo.²⁵ Empirical evidence indicates that this ambiguity is exacerbated by a lack of specialised processes, as trial courts often fail to align their adjudications with the fundamentally preventive purpose of bail, instead importing extraneous factors into their determinations.²⁶ Such over-cautious judicial attitudes at the magistracy level, frequently amplified by aggressive prosecutorial resistance, systematically favour detention over liberty and disproportionately marginalise defendants lacking the resources to navigate complex legal hurdles.²⁷ Moreover, the habitual abuse of investigative summons under Section 41A of the CrPC frequently facilitates this cycle of incarceration, as police often issue notices beyond jurisdictional limits to intimidate defendants before formal charges are even filed.²⁸ These procedural asymmetries are exacerbated by the financial barriers inherent in the bond system, where the insistence on solvent sureties frequently results in the continued detention of indigent accused persons despite their eligibility for release.²⁹ Addressing these fiscal inequities, contemporary reformative models emphasise the adoption of personal bonds and non-monetary conditions to mitigate the disproportionate impact of poverty on pre-trial liberty. This persistent reliance on punitive frameworks highlights a broader crisis of institutional inertia, where the lack of forensic capacity and inefficient case-management systems continue to stifle the realisation of fair-trial standards.³⁰

III. COMPARATIVE JUSTICE MODELS

To evaluate the efficacy of these reforms effectively, it is essential to contrast the Indian experience with the UK and US jurisdictions, which similarly navigate the complexities of common-law traditions while balancing individual liberties against state-security imperatives.³¹ While all three systems trace their heritage to British common law, they have diverged significantly in their procedural efficiency and the consistency with which they uphold constitutional protections against prolonged detention. Specifically, while the UK and the USA have developed swifter mechanisms to minimise the duration of pre-trial custody, India's system

²⁵ M.M. Gaurang et al., *AI-Powered Bail Reckoner: A Smart System for Fair and Efficient Bail Decisions*, INT'L J. OF ADVANCED RES. IN SCI. COMMUN & TECH. 648 (2025).

²⁶ A. Surendranath & G. Andrew, *Confused Purposes and Inconsistent Adjudication: An Assessment of Bail Decisions in Delhi's Courts*, 19 ASIAN J. COMP. L., no. 2, 294 (2024).

²⁷ J.D. Joya & K.A. Mannan, *Comparative Analysis of the Criminal Procedure Codes in South Asia: Lessons for Reforming the Code of Criminal Procedure, 1898 in Bangladesh*, RES. SQUARE (2025); J.D. Joya & K.A. Mannan, *Revisiting Colonial Legacies: A Critical Appraisal of the Code of Criminal Procedure, 1898, in the Context of Modern Bangladesh*, RES. SQUARE (2025).

²⁸ The Code of Criminal Procedure, 1973, § 41A, No. 2, Acts of Parliament, 1974 (India).

²⁹ A. Saifi, *Demystifying Bail: Bail Types and Considerations in Legal Practice* (2026).

³⁰ Joya & Mannan, *supra* note 27.

³¹ Sachdeva & Ahmad, *supra* note 6.

continues to grapple with excessive judicial discretion and structural delays that compromise the underlying objective of these protections.³²

A. International Reformatory Approaches

Comparative analysis suggests that transitioning from a security-centric framework to one grounded in human rights, similar to the evolution observed in other Commonwealth jurisdictions, requires a reassessment of legislative provisions that allow for excessive judicial discretion.³³ In particular, incorporating standardised, evidence-based risk-assessment tools could replace subjective judicial scepticism, thereby aligning domestic bail practice with international standards that prioritise the presumption of innocence.³⁴ Furthermore, the Canadian experience illustrates that anchoring pre-trial release in constitutional mandates, specifically by treating the presumption of release as the default position, significantly curtails the unnecessary detention of individuals.³⁵

B. Comparative Jurisdictional Analysis

This analysis reveals that, while the United Kingdom employs a rights-based framework under the Human Rights Act 1998³⁶ to prioritise rehabilitation and transparency, the United States continues to confront profound challenges involving systemic racial disparities and the proliferation of private-prison interests.³⁷ In contrast, India's constitutional jurisprudence, constructed through an expansive interpretation of Articles 14, 20, and 21,³⁸ requires a deliberate shift toward substantive due process to prevent the procedural dilution of these fundamental protections.³⁹ Beyond these structural differences, the divergence between India and countries such as Pakistan underscores how post-colonial states struggle to reconcile inherited legislative mandates with evolving socio-political pressures.⁴⁰ For instance, while Pakistani courts struggle to standardise bail criteria amid a lack of explicit legal rules, the Indian judicial approach increasingly encounters friction when applying special statutes such as the

³² Sachdeva & Ahmad, *supra* note 6.

³³ M.R. Tahir et al., *Reforming Post-Arrest Bail in Pakistan: Lessons from a Comparative Study with India*, 7 REV. EDUC. ADMIN. & L., no. 4, 235 (2024).

³⁴ J.K. Arora et al., *A Comprehensive Review of Innovations Improving Legal Procedures and Rehabilitation for Undertrial Prisoners in India* (2024).

³⁵ O.E. Eni, *A Review of Bail and Pretrial Detention: U.S. vs. Canadian Approaches to Fairness* (2026).

³⁶ Human Rights Act 1998, c. 42 (U.K.).

³⁷ S. Kumar, *Reforming Incarceration: A Comparative Legal Analysis of Prison Reform in India, the United Kingdom, and the United States in the 21st Century*, 4 INT'L SCI. J. OF ENG'G & MGMT., no. 6, 1 (2025).

³⁸ INDIA CONST. arts. 14, 20, 21.

³⁹ Ruthramoorthy & Abraham, *Right to Fair Trial: A Comparative Study of India and the United Kingdom* (2026).

⁴⁰ Tahir et al., *supra* note 33.

UAPA, where the burden of proof under restrictive “prima facie” standards risks effectively reversing the presumption of innocence.⁴¹

IV. STRUCTURAL JUDICIAL DEFICIENCIES

The current judicial architecture remains heavily influenced by a legacy of broad discretionary powers, which creates significant discrepancies in how magistrates interpret bail criteria across similar fact patterns.⁴² Such variability mirrors findings in European jurisdictions, where the lack of structured decision-making protocols enables subjective “heuristic” strategies that frequently mask the true rationale for detention.⁴³ This necessitates a deeper exploration of the ‘thick’ conception of the presumption of innocence, which should ideally operate as a robust shield throughout the criminal process rather than being limited to the mere distribution of evidentiary burdens during the trial stage.⁴⁴ Instead of relying on the perceived seriousness of the offence as an automatic ground for rejection, Indian jurisprudence must shift toward a “tripod test” that objectively evaluates flight risk, evidence tampering, and community danger.⁴⁵ This transition would align Indian practice with the Nelson Mandela Rules, which emphasise that the denial of liberty should be a measure of last resort rather than a default response to prosecutorial pressure.^{46,47}

A. Bail Adjudication Practices

Current judicial practices often struggle with the inconsistent application of bail criteria, reflecting a tension between traditional discretionary authority and the mandates established by recent Supreme Court precedents.⁴⁸ These precedents emphasise that the court’s role extends beyond the mere arbitration of state claims, asserting that a citizen’s right to dissent cannot be curtailed through the weaponisation of judicial custody.⁴⁹ This is particularly critical in cases involving special statutes such as the UAPA, where reliance on expansive definitions of

⁴¹ Y.R. Bakhsh & S.M. Zarkoon, *Unlocking Liberty: An Analytical Exploration of Bail Through Judicial Perspective in Criminal Law* (2025); P. Jangra, *Bail, Not Jail or Jail, Not Bail: The Bail Dilemma Under the UAPA, 1967: Umar Khalid v. State of National Capital Territory of Delhi*, 5 INDIAN J. MASS COMM’N & JOURNALISM, no. 3, 36 (2026).

⁴² Bakhsh & Zarkoon, *supra* note 41.

⁴³ A. Martufi & C. Peristeridou, *Towards an Evidence-Based Approach to Pre-trial Detention in Europe*, 28 EUR. J. ON CRIM. POL’Y & RES., no. 3, 357 (2022).

⁴⁴ R. Chitkara, *The Trials of Bail: Pre-Trial Presumption of Innocence Under the Unlawful Activities (Prevention) Act, 1967 and General Criminal Laws*, 35 NAT’L L. SCH. INDIA REV., no. 1, 139 (2024).

⁴⁵ C. Balyan & A. Shelke, *Pre-trial Detention in India: The Need for Introduction of Objective Criterion* (2024).

⁴⁶ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175 (Dec. 17, 2015).

⁴⁷ R. Kaur, *Prisoners’ Rights in India: A Human Rights Perspective*, 14 CHRIST UNIV. L.J., no. 1, 105 (2025).

⁴⁸ B. Dhoundiyal & A.K. Chawla, *From Loopholes to Legal Safeguards: Transforming Judicial Conduct in Bail Proceedings Through Satender Kumar Antil v. CBI*, 3 LAWFOYER INT’L J. DOCTRINAL LEGAL RES., no. 4, 421 (2025).

⁴⁹ S. Tiwary, *India Badly Needs a Uniform Law on Bail* (2021).

conspiracy and prosecutorial narratives has institutionalised a state of “perpetual” detention for political dissidents.⁵⁰ Furthermore, the recent codification of bail provisions under the Bharatiya Nagarik Suraksha Sanhita, 2023, while attempting to modernise procedural terminology, does little to mitigate the fundamental systemic reliance on pre-trial incarceration for individuals unable to meet rigorous bond requirements. Empirical inquiries into local trial courts indicate that bail decisions remain heavily dictated by an accused’s socio-economic status, as the prohibitive nature of sureties often converts the theoretical possibility of release into an unattainable privilege.⁵¹ To address this, recent legal developments have begun to prioritise personal bonds without sureties, allowing courts to factor in the financial condition of the accused expressly so that liberty is not contingent upon material wealth.⁵²

B. Resource Allocation Constraints

The pervasive lack of adequate budgetary support for legal aid and judicial infrastructure exacerbates the existing systemic failures, as courts frequently cite the absence of monitoring facilities to deny release. This chronic underinvestment perpetuates a cycle in which overcrowded facilities become the primary venue for housing detainees who, lacking both legal counsel and financial resources, remain indefinitely within the carceral system.⁵³ This economic marginalisation is further compounded by a reliance on complex documentation requirements, which prevents impoverished individuals from securing local sureties and effectively transforms the bail process into an exclusionary barrier.⁵⁴ Consequently, the restrictive bail provisions embedded in legislation such as the UAPA, which effectively normalise detention over liberty, exacerbate these socio-economic disparities by prioritising state-security narratives over the constitutional presumption of innocence.⁵⁵

V. REFORMATIVE POLICY PROPOSALS

To address these systemic vulnerabilities, legislative efforts must prioritise the narrowing of counter-terrorism definitions to prevent their misuse against legitimate political dissent. Furthermore, policymakers should implement objective, evidence-based standards for bail adjudication to replace the current reliance on subjective judicial discretion, which frequently

⁵⁰ R. Khan, *Recipe for the Making of a Perpetual Accused: Exceptional Law and Normalised Incarceration*, 61 ECON. & POL. WKLY., no. 6 (2026).

⁵¹ Sudan & Dhabhai, *supra* note 10.

⁵² Saifi, *supra* note 29.

⁵³ N. Anand, *Undertrial Prisoner Condition Due to Overcrowding in Jails in India*, 9 INT’L J. SCI. RES. IN ENG’G & MGMT., no. 6, 1 (2025).

⁵⁴ A. Singh, *Victims of Prolonged Incarceration: Undertrial Prisoners in India* 103 (2024).

⁵⁵ D. Jain, *Criminalising Dissent: Critical Analysis of the UAPA’s Bail Regime and Its Impact on Civil Liberties*, 6 INDIAN J. LEGAL REV., no. 2, 539 (2026).

fails to account for the structural inequities faced by the accused.⁵⁶ Such reforms should integrate socio-legal impact assessments to dismantle the socio-economic barriers that disproportionately correlate pre-trial detention with marginalised demographics.⁵⁷ By formalising a mandatory review mechanism for cases involving prolonged incarceration, the judiciary can effectively challenge the procedural asymmetries that sustain these deep-seated inequities.⁵⁸ Moreover, aligning statutory frameworks with the constitutional mandate that bail remains the rule and incarceration the exception serves as a vital safeguard against the normalisation of pre-trial detention as a form of punishment.⁵⁹

A. Legislative Reform Strategies

Reforming these frameworks necessitates a fundamental decoupling of detention duration from the severity of the alleged offence, moving instead toward a system where pre-trial restraint is strictly tethered to concrete risks of flight or witness intimidation. Such a pivot would require amending statutes such as the UAPA to remove restrictive bail provisions that currently invert the burden of proof, effectively preventing the state from using extended pre-trial detention as a mechanism for anticipatory criminalisation.⁶⁰ Simultaneously, legislative bodies should introduce sunset clauses or mandatory judicial-review periods for all special statutes to ensure that extraordinary powers do not become permanent fixtures of the legal landscape. This approach ensures that the exercise of state authority remains subject to periodic constitutional scrutiny, thereby mitigating the risk of long-term procedural stagnation.⁶¹ Furthermore, a comprehensive legislative overhaul must prioritise the rationalisation of investigative powers, specifically curtailing the National Investigation Agency's unchecked authority to facilitate indefinite detention through the broad interpretation of terrorist acts.⁶²

B. Alternative Sentencing Frameworks

Moving beyond traditional punitive incarceration requires the integration of community-based supervision programmes that focus on restorative interventions rather than physical confinement. These initiatives should emphasise the expansion of jurisdictional authority for magistrates to expedite case resolution, thereby addressing the profound backlogs that force

⁵⁶ Wahab, *supra* note 1.

⁵⁷ E.J.O.O. Otieno, *Cash Bail and Systemic Inequity*, 3 NAT'L SEC. J. (NAT'L DEF. UNIV.-KENYA), no. 1, 87 (2025).

⁵⁸ A. Garg, *Reforming Criminal Justice: An Analysis of Bail System Inequities and Proposals for Change*, 2 INDIAN J.L., no. 1, 7 (2024).

⁵⁹ S, *supra* note 18.

⁶⁰ Khan, *supra* note 50; N.O. Philip, *Jail Before Judgment* (2026).

⁶¹ S.R. Basunia, *The Unwritten Sunset Clause of Personal Liberty in UAPA: Analysing Romila Thapar v. Union of India*, 2 J. CRIM. & L. STUD., no. 3, 173 (2025).

⁶² S. Ganesh, *Analysis of the Unlawful Activities (Prevention) Act, 1967* (2026).

vulnerable populations into prolonged custodial environments.⁶³ Additionally, transitioning toward a system of robust pre-trial release centres would alleviate the strain on existing prison infrastructure, which currently struggles as detainees awaiting the conclusion of judicial proceedings constitute roughly 70% of the prison population.⁶⁴ Furthermore, reducing jail populations necessitates the implementation of local custodial alternatives and community-treatment models for non-convicted individuals to minimise reliance on short-term confinement.⁶⁵ These systemic shifts could be further bolstered by diversifying diversionary tactics, such as the use of warnings, mediation, and mandated treatment programmes for minor offences, thereby diverting vulnerable populations away from the criminal-justice pipeline entirely.⁶⁶ To cater effectively to the diverse needs of detainees, state authorities must also amend the Model Prisons and Correctional Services Act, 2023 to align fully with the UN Convention on the Rights of Persons with Disabilities.⁶⁷

VI. CONCLUSION

The trajectory of Indian criminal jurisprudence must shift from an archaic reliance on mass detention toward a model that upholds the dignity and constitutional rights of the accused through targeted legal support and the expansion of community-based restorative programmes.⁶⁸ By disaggregating inmate data according to specific disability classifications, the National Crime Records Bureau can finally provide the granular transparency necessary to address the intersectional discrimination faced by vulnerable detainees. Furthermore, addressing the unique challenges faced by women within the carceral system requires a gender-sensitive approach that prioritises comprehensive healthcare and rehabilitation pathways, ensuring that their specific socio-economic circumstances are accounted for in future judicial policies.⁶⁹ Ultimately, ratifying the Convention against Torture and its optional protocol remains

⁶³ Z. Mbandlwa, *Correctional Facilities in Uganda: Policies, Practices, and Challenges*, in INTECHOPEN EBOOKS (2024).

⁶⁴ C. Balyan & A. Shelke, *The Retributive Turn: How Indian Courts Transform Pre-trial Detention into Punishment*, 61 ECON. & POL. WKLY., no. 1 (2026).

⁶⁵ A. Shukla et al., *Critical Analysis of Prison Reforms in India*, 6 INDIAN J. LEGAL REV., no. 2, 205 (2026).

⁶⁶ J. Pont et al., *COVID-19: The Case for Rethinking Health and Human Rights in Prisons* (2021).

⁶⁷ The Model Prisons and Correctional Services Act, 2023; Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.

⁶⁸ A. Aslam, *Bars and Boundaries: A Critical Assessment of Indian Prisoners' Rights in Light of Global Legal Frameworks*, 2 LAWFOYER INT'L J. DOCTRINAL LEGAL RES., no. 3, 664 (2024).

⁶⁹ P. Bijjargi, *Women Prisoners in India: Legal Framework, Challenges and Reform Pathways* (2025).

an imperative step toward standardising the treatment of all inmates and aligning national practices with international human-rights standards.⁷⁰

Establishing these norms requires a sustained commitment to judicial oversight and policy accountability to transform the prison system from a space of exclusionary neglect into a functional institution for equity.⁷² This transformation hinges upon moving beyond superficial adherence to constitutional mandates and actively addressing the systemic failures, such as administrative apathy and the lack of robust legal representation, that exacerbate the plight of the nearly 75% of the prison population currently classified as undertrials.⁷³ Moreover, integrating intersectional safeguards, such as institutionalising rights for transgender individuals currently subjected to rigid, binary carceral structures, is essential to ensuring that reforms do not merely replicate existing patterns of legal erasure and bias.⁷⁴ To bridge these institutional gaps, India must adopt the UN Bangkok Rules to establish gender-responsive protocols that protect female detainees from the cycle of social exclusion and custodial neglect.⁷⁵

⁷⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁷¹ S. Tripathi et al., *Prison Systems Must Embrace Disability Rights as a Human Rights Imperative*, 9 INDIAN J. MED. ETHICS, no. 4, 301 (2024).

⁷² Bijjargi, *supra* note 69; Yadav et al., *supra* note 5.

⁷³ V. Attri & M. Yadav, *The Constitutional Promise and the Prison Reality: A Critical Appraisal of Human Rights Protection in Indian Prisons* (2025); S. Varma, *Justice Delayed, Justice Denied: The Intersection of Pre-Trial Detention and Its Impact on Undertrials*, 3 LAWFOYER INT'L J. DOCTRINAL LEGAL RES., no. 1, 78 (2025).

⁷⁴ S.B. Priyanka, *Transgender Realities in Prisons in India: A Legal and Policy-Centric Call for Structural Change*, 5 J. INFORMATICS EDUC. & RES., no. 2 (2025).

⁷⁵ United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), G.A. Res. 65/229 (Dec. 21, 2010).

VII. REFERENCES

Cases

- D.K. Basu v. State of West Bengal, (1997) 1 S.C.C. 416 (India).
- Joginder Kumar v. State of U.P., (1994) 4 S.C.C. 260 (India).

Statutes and International Instruments

- The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).
- The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
- INDIA CONST. arts. 14, 20, 21.
- The Legal Services Authorities Act, 1987, No. 39, Acts of Parliament, 1987 (India).
- The Model Prisons and Correctional Services Act, 2023 (India).
- The Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61, Acts of Parliament, 1985 (India).
- The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India).
- Human Rights Act 1998, c. 42 (U.K.).
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.
- Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.
- United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), G.A. Res. 65/229 (Dec. 21, 2010).
- United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175 (Dec. 17, 2015).

Secondary Sources

- N. Anand, *Undertrial Prisoner Condition Due to Overcrowding in Jails in India*, 9 INT'L J. SCI. RES. IN ENG'G & MGMT., no. 6, 1 (2025).
- S. Agrawal, *Police Custody in Installments and the 60-Day Rule: Examining the Impact of Section 187 BNSS on the Right to Default Bail* (2026).
- J.K. Arora, A. Pandit & S.K. Tripathi, *A Comprehensive Review of Innovations Improving Legal Procedures and Rehabilitation for Undertrial Prisoners in India* (2024).

- Aslam, *Bars and Boundaries: A Critical Assessment of Indian Prisoners' Rights in Light of Global Legal Frameworks*, 2 LAWFOYER INT'L J. DOCTRINAL LEGAL RES., no. 3, 664 (2024).
- V. Attri & M. Yadav, *The Constitutional Promise and the Prison Reality: A Critical Appraisal of Human Rights Protection in Indian Prisons* (2025).
- Y.R. Bakhsh & S.M. Zarkoon, *Unlocking Liberty: An Analytical Exploration of Bail Through Judicial Perspective in Criminal Law* (2025).
- Balyan & A. Shelke, *Pre-trial Detention in India: The Need for Introduction of Objective Criterion* (2024).
- Balyan & A. Shelke, *The Retributive Turn: How Indian Courts Transform Pre-trial Detention into Punishment*, 61 ECON. & POL. WKLY., no. 1 (2026).
- A.K. Bansal & D. Plaha, *Presumption of Innocence in Bail Jurisprudence: Erosion or Evolution?*, 3 INT'L J. JUD. L., no. 4, 38 (2024).
- S.R. Basunia, *The Unwritten Sunset Clause of Personal Liberty in UAPA: Analysing Romila Thapar v. Union of India*, 2 J. CRIM. & L. STUD., no. 3, 173 (2025).
- P. Bijjargi, *Women Prisoners in India: Legal Framework, Challenges and Reform Pathways* (2025).
- A.M. Chavan, *Redefining Custody and Bail: The Supreme Court's Landmark Judgment in Satender Kumar Antil Case* (2025).
- R. Chitkara, *The Trials of Bail: Pre-Trial Presumption of Innocence Under the Unlawful Activities (Prevention) Act, 1967 and General Criminal Laws*, 35 NAT'L L. SCH. INDIA REV., no. 1, 139 (2024).
- Dhoundiyal & A.K. Chawla, *From Loopholes to Legal Safeguards: Transforming Judicial Conduct in Bail Proceedings Through Satender Kumar Antil v. CBI*, 3 LAWFOYER INT'L J. DOCTRINAL LEGAL RES., no. 4, 421 (2025).
- O.E. Eni, *A Review of Bail and Pretrial Detention: U.S. vs. Canadian Approaches to Fairness* (2026).
- S. Ganesh, *Analysis of the Unlawful Activities (Prevention) Act, 1967* (2026).
- Garg, *Reforming Criminal Justice: An Analysis of Bail System Inequities and Proposals for Change*, 2 INDIAN J.L., no. 1, 7 (2024).
- M.M. Gaurang et al., *AI-Powered Bail Reckoner: A Smart System for Fair and Efficient Bail Decisions*, INT'L J. OF ADVANCED RES. IN SCI. COMMC'N & TECH. 648 (2025).
- Jacob, *Expansion of Police Custody Under the Bharatiya Nagarik Suraksha Sanhita*:

Constitutional Implications for Personal Liberty and Due Process (2025).

- Jain, *Reforming Bail Law in India Under Bharatiya Nagarik Suraksha Sanhita (BNSS)*, 2023, J. HUM. RTS. L. & PRAC. (2025).
- Jain, *Criminalising Dissent: Critical Analysis of the UAPA's Bail Regime and Its Impact on Civil Liberties*, 6 INDIAN J. LEGAL REV., no. 2, 539 (2026).
- P. Jangra, *Bail, Not Jail or Jail, Not Bail: The Bail Dilemma Under the UAPA, 1967: Umar Khalid v. State of National Capital Territory of Delhi*, 5 INDIAN J. MASS COMMUN & JOURNALISM, no. 3, 36 (2026).
- J.D. Joya & K.A. Mannan, *Comparative Analysis of the Criminal Procedure Codes in South Asia: Lessons for Reforming the Code of Criminal Procedure, 1898 in Bangladesh*, RES. SQUARE (2025).
- J.D. Joya & K.A. Mannan, *Revisiting Colonial Legacies: A Critical Appraisal of the Code of Criminal Procedure, 1898, in the Context of Modern Bangladesh*, RES. SQUARE (2025).
- R. Kaur, *Prisoners' Rights in India: A Human Rights Perspective*, 14 CHRIST UNIV. L.J., no. 1, 105 (2025).
- R. Khan, *Recipe for the Making of a Perpetual Accused: Exceptional Law and Normalised Incarceration*, 61 ECON. & POL. WKLY., no. 6 (2026).
- S. Kumar, *Reforming Incarceration: A Comparative Legal Analysis of Prison Reform in India, the United Kingdom, and the United States in the 21st Century*, 4 INT'L SCI. J. OF ENG'G & MGMT., no. 6, 1 (2025).
- B.P. Mani, *Reforming Criminal Procedure in India: Balancing Speedy Trials with Fair Trial Guarantees* (2025).
- Martufi & C. Peristeridou, *Towards an Evidence-Based Approach to Pre-trial Detention in Europe*, 28 EUR. J. ON CRIM. POL'Y & RES., no. 3, 357 (2022).
- Z. Mbandlwa, *Correctional Facilities in Uganda: Policies, Practices, and Challenges*, in INTECHOPEN EBOOKS (2024).
- M.A. Mir & D. Bhateri, *The Judicial Analysis of Bail Relating to Special Offences*, 4 INDIAN J.L., no. 1, 1 (2026).
- E.J.O.O. Otieno, *Cash Bail and Systemic Inequity*, 3 NAT'L SEC. J. (NAT'L DEF. UNIV.-KENYA), no. 1, 87 (2025).
- S.T. Patil, *Bail Reckoner: A Digital Decision Support System for Bail Eligibility Assessment*, 14 INT'L J. FOR RES. IN APPLIED SCI. & ENG'G TECH., no. 3, 3370 (2026).

- N.O. Philip, *Jail Before Judgment* (2026).
- J. Pont et al., *COVID-19: The Case for Rethinking Health and Human Rights in Prisons* (2021).
- S.B. Priyanka, *Transgender Realities in Prisons in India: A Legal and Policy-Centric Call for Structural Change*, 5 J. INFORMATICS EDUC. & RES., no. 2 (2025).
- Ruthramoorthy & Abraham, *Right to Fair Trial: A Comparative Study of India and the United Kingdom* (2026).
- N. Sachdeva & A. Ahmad, *Bail Jurisprudence in India and a Comparative Analysis with UK and USA: Preserving the Balance of Justice* (2022).
- Saifi, *Demystifying Bail: Bail Types and Considerations in Legal Practice* (2026).
- S. Sarraf & S. Mishra, *Objectives and Scope of Bail Under BNSS, 2023: An In-Depth Analysis*, INT'L J. OF RES. & INNOVATION IN APPLIED SCI. 640 (2025).
- R. Sharma, *Bharatiya Nagarik Suraksha Sanhita, 2023 & Reforms in Criminal Procedure: Towards Speedy Justice?* (2025).
- S.A. Shrivastava, *Bail as a Human Right: A Critical Examination of Bail Reforms Under BNSS* (2026).
- Shukla, A. Raj & S.K. Mahunta, *Critical Analysis of Prison Reforms in India*, 6 INDIAN J. LEGAL REV., no. 2, 205 (2026).
- Sidique, *Silent Victims: Understanding the Correlation Between Undertrial Prisoners and Overcrowding: An Analysis of Prison Statistics Report 2022* (2024).
- Singh, *Victims of Prolonged Incarceration: Undertrial Prisoners in India* 103 (2024).
- P.K. Srivastava et al., *IBPS: Indian Bail Prediction System*, ARXIV (2025).
- S. S, *UAPA and Its Impact on Bail Jurisprudence* (2026).
- N. Sudan & V. Dhabhai, *Liberty at Stake: An Empirical Assessment of Bail Decision-Making in Delhi Courts* (2026).
- Surendranath & G. Andrew, *Confused Purposes and Inconsistent Adjudication: An Assessment of Bail Decisions in Delhi's Courts*, 19 ASIAN J. COMP. L., no. 2, 294 (2024).
- Swami & R. Bansal, *Comparative Analysis of Statutory Provisions vis-à-vis Judicial Pronouncements on the Right to Free Legal Aid for Under-Trial Prisoners in India*, 23 LEX LOCALIS 7789 (2025).
- M.R. Tahir, H.M. Azeem & Z. Iqbal, *Reforming Post-Arrest Bail in Pakistan: Lessons from a Comparative Study with India*, 7 REV. EDUC. ADMIN. & L., no. 4, 235 (2024).
- S. Tiwary, *India Badly Needs a Uniform Law on Bail* (2021).

- S. Tripathi, S. Tripathi & S. Singh, *Prison Systems Must Embrace Disability Rights as a Human Rights Imperative*, 9 INDIAN J. MED. ETHICS, no. 4, 301 (2024).
- S. Varma, *Justice Delayed, Justice Denied: The Intersection of Pre-Trial Detention and Its Impact on Undertrials*, 3 LAWFOYER INT'L J. DOCTRINAL LEGAL RES., no. 1, 78 (2025).
- I.H.A. Wahab, *Flaws in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS): A Critical Study*, 6 INT'L J. FOR MULTIDISCIPLINARY RES., no. 5 (2024).
- I.-Md. I. Wahab, *Advocating Grant of Parole to Undertrial Prisoners through Legal Reforms: Protecting Human Rights and Alleviating Prison Overcrowding* (2024).
- U. Yadav et al., *Voices Behind Bars: Reimagining India's Public Policy Agenda for Rehabilitation and Equity* (2025).
