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The Shadow of Innocence: Analyzing the Crisis of Pre-Trial Detention in the Indian Criminal Justice System

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ABSTRACT

The Indian criminal justice system is caught between the demand for public safety and the promise that each person's rights will be respected. The Constitution of India says that people are to be protected against unfair action by the state, but what happens inside prisons is different. The National Crime Records Bureau reported in Prison Statistics India 2024, released in 2026, that undertrials made up approximately 73% of the country's prison population: people who have not been found guilty are still being treated as though they were being punished. This article examines why an accused person must remain in prison for long periods before the trial that alone decides whether they are guilty. It considers how poverty, an insufficient number of judges and delay within the system combine to produce that result. It also asks whether technological reform, and in particular the Bharatiya Nagarik Suraksha Sanhita, 2023, which came into force on 1 July 2024, can repair problems that lie deeper in the system. Reading the case law from Hussainara Khatoon to Satender Kumar Antil against the United Nations Nelson Mandela Rules, the article argues that pre-trial detention is often used to marginalise people who are already struggling. It concludes that India should adopt alternatives to imprisonment and change the way bail works, so that liberty is secured for everyone and not only for the wealthy, and that these changes are needed both to safeguard the rights of undertrial prisoners and to improve the effectiveness of the criminal justice system as a whole.

Keywords: Human Rights, Prison Reforms, Bail Jurisprudence, Article 21, Undertrial Prisoners, Systemic Delay

I. INTRODUCTION: THE PARADOX OF THE PRESUMED INNOCENT

The saying "Justice delayed is justice denied" is often repeated in the Supreme Court. For the thousands of people held in Indian prisons it is not a saying but a daily reality. In a country committed to fairness, depriving a person of liberty is the gravest thing the state can do to that person,¹ and the state should therefore have good reasons for doing it. In India the position is

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¹ INDIA CONST. art. 21.

close to the opposite: the accused must show why they should be free, while the state may keep them in custody with little thought, simply by following a routine process. Justice is what these prisoners need, and delay is what they get. The problem of the undertrial is not merely a legal mistake; it is a human rights problem. When a person spends five years in custody awaiting trial for an offence that could result in a sentence of three years, the trial no longer matters. The punishment has already been inflicted, not by a judge but by a broken system. This is punishment by process.²

The crisis is deeply intersectional. The prison population is not a representative sample of the criminal element; it is a mirror of India's social inequalities. The labourer, the Dalit, the Adivasi and the illiterate are overrepresented in the undertrial wards. For these individuals the prison gate is not a deterrent but a trap, triggered by their inability to afford a surety or hire a competent lawyer. As India moves from the Code of Criminal Procedure to the Bharatiya Nagarik Suraksha Sanhita, 2023, which came into force on 1 July 2024, there is renewed talk of improvement. Computers and video calls are not the same as having judges, and people who care, in court when a person asks to be released on bail. This article examines what is going wrong, and why the law is not helping the people who need it most, including under the Bharatiya Nagarik Suraksha Sanhita.

II. THE CONSTITUTIONAL SHIELD: TEXT VERSUS CONTEXT

The Constitution of India guarantees extensive freedoms. There is, however, a distance between what the Constitution says and what happens inside a prison cell. The text is clear about liberty; the reality of custodial life is very different from what the text promises.

A. Article 14 and the Illusion of Equality

Article 14 provides that everyone is equal before the law.³ In principle the law does not care how much money a person has in the bank. In practice this is not true. A wealthy accused with a good lawyer has a better chance of release before trial: counsel can explain why the client is not a flight risk and why the evidence is weak, and the court is more likely to listen. A poor accused usually has a lawyer who is overburdened and poorly paid, and who cannot mount the same defence. Equality is therefore not merely absent; it is actively undermined. For the poor accused Article 14 does not deliver what it promises, as the Supreme Court itself recognised

² MALCOLM M. FEELEY, *THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT* (Russell Sage Found. 1979).

³ INDIA CONST. art. 14.

when it held that bail must be capable of being granted on a personal bond and in an amount that reflects the means of the accused.⁴

B. Article 21: The Heartbeat of Liberty

The right to a speedy trial forms part of Article 21,⁵ which provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The Supreme Court read the right to a speedy trial into that guarantee in *Hussainara Khatoon*,⁶ holding that keeping people in custody for long periods without trial is impermissible and offends human dignity. Many years later the speedy trial remains an aspiration rather than a fact of life for most undertrials.

C. Article 22 and the Mechanical Remand

Article 22 supplies the procedural protections: the right to be told the grounds of arrest, and the right to be produced before a Magistrate within twenty-four hours.⁷ These steps are usually performed as written, but the meaning of the safeguard is lost in the remand culture. Magistrates often authorise police or judicial custody without applying their mind,⁸ seldom asking the police why the accused cannot be questioned while on bail.

D. Article 39A: The Promise of Legal Aid

Article 39A directs the State to secure that the operation of the legal system promotes justice on the basis of equal opportunity.⁹ Legal aid matters because it allows a person to be heard in court whatever their means, and the National Legal Services Authority was constituted for that purpose.¹⁰ Legal aid is nevertheless often treated as a favour done to the accused rather than as a right belonging to them. A lawyer who does not even attempt to secure a client's release for months is not helping that client but making things worse. That is not what Article 39A and NALSA are for. Legal aid is an entitlement, and lawyers appointed under it should be securing justice rather than conferring favours.

⁴ *Moti Ram v. State of M.P.*, (1978) 4 SCC 47 (India).

⁵ INDIA CONST. art. 21.

⁶ *Hussainara Khatoon (I) v. Home Sec'y, State of Bihar*, (1980) 1 SCC 81, AIR 1979 SC 1360 (India).

⁷ INDIA CONST. art. 22, cls. (1)-(2).

⁸ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 (India).

⁹ INDIA CONST. art. 39A.

¹⁰ Legal Services Authorities Act, No. 39 of 1987, INDIA CODE (1987), § 3 (constitution of the National Legal Services Authority; the Act was brought into force on 9 Nov. 1995).

III. THE BNSS 2023: DIGITAL BAND-AIDS ON STRUCTURAL WOUNDS

The commencement of the Bharatiya Nagarik Suraksha Sanhita, 2023 is presented as a step towards a better system.¹¹ The question that must be asked is whether a court that works online can fix a problem that is really about people.

A. The Promise of Technology

The BNSS emphasises the use of technology, providing for trials and proceedings in electronic mode and for the audio-video recording of searches.¹² This could in theory reduce production delays, the days wasted transporting prisoners from jail to court. If a witness can testify by video link, the absence of the witness becomes a weaker excuse for an adjournment.

B. The Risk of Increased State Power

Critics argue that while the BNSS modernises the process, it also expands the power of the state by allowing police custody to be sought over a much longer window than before,¹³ and that in giving the authorities greater discretion it risks sweeping more people into the pre-trial detention system. Technology, in the hands of an unaccountable police force, can become a tool for surveillance rather than a tool for justice.

C. The Fallacy of Efficiency

Efficiency is not the same as justice. A system can be efficient at putting people in jail and inefficient at letting them out. The BNSS does not address the underlying problem, which is that there are not enough judges. A digital docket is still a docket, and it will sit untouched for months because no judge is available to hear the case.

IV. THE ANATOMY OF DELAY

The system does not stall for any single reason. It stalls because of systemic bottlenecks that arrive one after another.

A. The Judicial Vacuum

India does not have enough judges. On working strength the country has approximately fifteen judges per million population, according to the *India Justice Report 2025*, against the fifty per

¹¹ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, INDIA CODE (2023) (assented to 25 Dec. 2023, in force 1 July 2024).

¹² BNSS, No. 46 of 2023, § 530 (trial and proceedings to be held in electronic mode); *id.* § 105 (audio-video electronic recording of search and seizure).

¹³ BNSS, No. 46 of 2023, § 187(2)-(3) (aggregate police custody of fifteen days capable of being taken in parts across the first forty or sixty days of remand, according to the punishment prescribed for the offence).

million recommended by the Law Commission of India in its 120th Report in 1987.¹⁴ Judges consequently carry very heavy case loads. When a single judge must deal with hundreds of matters in a day a real hearing is not possible, and the court ends up postponing cases instead of deciding them.

B. The Forensic Bottleneck

The science of justice is falling behind. DNA tests, forensic reviews and handwriting comparisons often take years, because laboratories are underfunded and overloaded. A person may spend three years in custody waiting for a report that finally shows that they are not guilty. In April 2026 the Ministry of Home Affairs is reported to have directed the Chief Secretaries of all States and Union Territories to strengthen forensic science laboratories, fill vacancies and clear pending cases within three months.¹⁵ The state's failure to run its laboratories costs people their freedom.

C. The Adjournment Culture

The date, the *tareekh*, has become a symbol of the Indian legal system. Whether it is the unavailability of counsel, the absence of a witness or the transfer of the judge, the result is always the same: another date. For the undertrial, each adjournment is another month of losing their job, their family's standing and their mental health.

V. THE HUMAN COST: BEYOND THE STATISTICS

The National Crime Records Bureau reported in *Prison Statistics India 2024*, released in 2026, that undertrials made up approximately 73% of the prison population, and that prisons were running at a national occupancy rate of 112.7% against sanctioned capacity.¹⁶ Behind those percentages are broken lives.

A. The Psychology of the Cell

Overcrowding is not only a question of space; it is a question of hygiene and of mental health. Prisoners who have not been found guilty are often held alongside those who have been

¹⁴ LAW COMM'N OF INDIA, REPORT NO. 120: MANPOWER PLANNING IN JUDICIARY: A BLUEPRINT (1987) (recommending an increase from 10.5 to 50 judges per million); INDIA JUSTICE REPORT 2025 (approximately 15 judges per million on actual working strength). *See also* LAW COMM'N OF INDIA, REPORT NO. 245: ARREARS AND BACKLOG: CREATING ADDITIONAL JUDICIAL (WO)MANPOWER (2014).

¹⁵ Directives reported to have been issued in April 2026 by the MINISTRY OF HOME AFFAIRS to the Chief Secretaries of all States and Union Territories, requiring the strengthening of forensic science laboratories, the filling of vacancies and the clearance of pending cases within three months through the DIRECTORATE OF FORENSIC SCIENCE SERVICES. No official title, communication number or date of issuance for the directives is publicly traceable; they are relied on here only as reported.

¹⁶ NAT'L CRIME RECORDS BUREAU, MINISTRY OF HOME AFFAIRS, GOV'T OF INDIA, PRISON STATISTICS INDIA 2024 (2026), <https://www.ncrb.gov.in/en/prison-statistics-india>.

sentenced, which criminalises the innocent. The pain of confinement, the noise, the violence and the poor sanitation, leaves wounds that remain even after a person is acquitted.

B. The Social Ripple Effect

The prisoner is not the only person punished. When the earning member of a family is imprisoned, the whole household begins to struggle financially. The children leave school. The spouse takes work on poor terms. The state is in effect punishing the family when it refuses bail to a poor accused for an offence that has not been proved.

VI. THE JUDICIAL NORTH STAR: FROM KHATOON TO ANTIL

The courts have not stayed silent. The Supreme Court has spoken, and has repeatedly acted as a guide to the country on what fairness requires.

A. The Awakening: *Hussainara Khatoon* (1979)

This case was a turning point. It exposed how bad conditions were for prisoners who had been forgotten in custody, many of them detained for longer than the maximum sentence for the offence charged. The Court held that the right to a speedy trial is an essential part of Article 21, and ordered the release of the undertrials before it.¹⁷

B. The Modern Mandate: *Satender Kumar Antil* (2022)

In *Satender Kumar Antil v. Central Bureau of Investigation* the Court issued directions to the courts below.¹⁸ It restated that bail is the rule and jail the exception, categorised offences for the purpose of bail, and held that non-compliance with sections 41 and 41A of the Code of Criminal Procedure entitles the accused to bail. The accused should be at liberty unless the court has reason to believe that they will abscond or tamper with the evidence.

VII. INTERNATIONAL STANDARDS: THE GLOBAL MIRROR

India acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1979,¹⁹ and voted in favour of the Universal Declaration of Human Rights in 1948.²⁰ These instruments provide that detention before conviction should not be the general rule, and that a person charged with an offence is presumed innocent until proved guilty. The United Nations Standard Minimum Rules for the Treatment of Prisoners, the Nelson Mandela Rules, require untried

¹⁷ *Hussainara Khatoon (I)*, *supra* note 6.

¹⁸ *Satender Kumar Antil v. Cent. Bureau of Investigation*, (2022) 10 SCC 51 (India).

¹⁹ International Covenant on Civil and Political Rights art. 9(3), Dec. 16, 1966, 999 U.N.T.S. 171 (India acceded Apr. 10, 1979).

²⁰ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, arts. 9, 11(1), U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

prisoners to be kept separate from convicted prisoners and lay down a separate regime for them.²¹ Separation is mandated domestically as well.²² In practice it is imperfectly achieved, because the prisons are full: the National Crime Records Bureau recorded a national occupancy rate of 112.7% for 2024, and 194.6% in Delhi.²³ To that extent India falls short of the standards it has accepted.

VIII. A ROADMAP FOR REFORM: MOVING TOWARD LIBERATION

A system cannot be repaired by guidelines alone. What is needed is structural change.

A. Ending the Money-for-Freedom Model

Using money to decide who obtains bail is not fair, and it cuts against Article 14. India needs to change the way it does this. Two starting points suggest themselves.

- Personal recognizance bonds: the accused signs an undertaking to appear in court and is released on that undertaking, particularly where there is no previous record.
- Community surety: respected members of the community, or family members, undertake to secure the attendance of the accused.

B. Structural Judicial Overhaul

- Enforcement of section 479 of the BNSS: the right of an undertrial who has served one-half of the maximum sentence to be released on bail, and of a first-time offender to be released on bond after one-third, already exists in statute, and the Superintendent of the jail is under a duty to apply to the court once the threshold is crossed.²⁴ Dedicated undertrial benches should be charged with enforcing that right instead of waiting for applications to be made.
- Filling vacancies: treating the empty seats in the courts as a matter that needs immediate attention.

²¹ G.A. Res. 70/175, annex, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rr. 11(b), 111-120, U.N. Doc. A/RES/70/175 (Dec. 17, 2015).

²² MODEL PRISON MANUAL (2016); MODEL PRISONS AND CORRECTIONAL SERVICES ACT (2023) (model legislation circulated to the States by the MINISTRY OF HOME AFFAIRS), each of which requires undertrial prisoners to be kept separate from convicted prisoners.

²³ NAT'L CRIME RECORDS BUREAU, *supra* note 16 (national occupancy rate of 112.7%, down from 120.8% in 2023; Delhi highest at 194.6%).

²⁴ BNSS, No. 46 of 2023, § 479 (release on bail of an undertrial who has undergone one-half of the maximum period of imprisonment prescribed, and release on bond at one-third for a first-time offender, offences punishable with death or imprisonment for life excepted); *id.* § 479(3) (duty of the Superintendent of the jail to apply to the court once the threshold is crossed).

- Police accountability: there must be a legal penalty for malicious detention. If a person is acquitted after years of pre-trial detention caused by police negligence or fabricated evidence, the state should be required to pay compensation.

C. De-carceration and Alternatives

Not every offence requires a person to be locked up. India should consider the following options.

- Electronic monitoring: GPS anklets for those assessed as a risk, instead of a prison cell.
- Community service: allowing the accused to work for the community while waiting for trial.

IX. CONCLUSION: THE SOUL OF JUSTICE

Justice is not only what arrives at the end of a case. It is how people are treated while they are passing through the system. When an innocent person is finally set free after years in custody, the state usually apologises and closes the file. The years of a person's life cannot be given back. The Bharatiya Nagarik Suraksha Sanhita and new technology matter, but they are not the main issue. The real problem is that we care too little about the people who are struggling, and are too frightened to grant them their freedom. If India wants to be a country where everyone receives justice and is treated equally, it must stop using custody as a way of taking people off the street. A good legal system is measured not by how many people it can put in jail but by how well it protects those who have done nothing wrong. People should be free until they are proved guilty, and they should not have to pay money to be released. Liberty is something every person in India should have. It should not be something only the wealthy can afford.
