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Bail and Undertrial Inmates: Unveiling the Crisis within the Criminal Justice System

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ABSTRACT

The principle of innocent until proven guilty is the bedrock of criminal jurisprudence so that no innocent person suffers at the hands of the criminal justice system. Therefore, the mechanism of bail is a very significant tool in criminal law. Except in the case of non-bailable offences, everyone has a right to be released on bail. In the case of non-bailable offences, it is the discretion of the court whether to grant bail or not. Despite sounding fair, the bail provisions and their implementation severely discriminate against the poor because of their inability to furnish bail bonds whereas rich people who are otherwise in a similar situation can secure their freedom by furnishing bail. The vast majority of people who end up before the courts in criminal matters are so impoverished that they cannot afford to pay the bail bond, even for a nominal amount, which results in pre-trial incarceration leading to an increase in the number of undertrial prisoners. The equity and equality-related principles seem to be limited to the paper only, because ground reality speaks differently. Despite numerous schemes and promises by the executive & Judiciary to improve the situation, thousands of people remain awaiting trials and languishing in jails. The time has come to address the issues that lead to such protracted detention without a trial. What could be the reasons for the increase in the undertrial population in the jails? What can be done for reducing the undertrial population in jails? These are some crucial questions of law that will be answered in this paper.

Keywords: Undertrial, Bail, Offences.

I. INTRODUCTION

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”

- Nelson Mandela

(A) State of Undertrials: Ground Reality & Statistics

The National Crime Records Bureau (hereinafter NCRB) stats on the inmate population in India paint a bleak picture. The number of prisoners admitted nationwide throughout 2021

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totalled 18,06,823, a 10.8% rise can be seen over the number admitted during the same period in 2020 (16,31,110 prisoners).² At the end of 2021, there were reported to be 1,22,852, 4,27,165, 3,470, and 547 respectively for Convicts, Undertrial Inmates, Detenues, and Other Prisoners. A Convict is a “person found guilty of a crime and sentenced by a court of law and a person serving a sentence in prison.”³ An Undertrial is a person who is currently on trial in a court of law.⁴ The 78th Law Commission of India report on Congestion of Undertrial Prisoners in Jails defines ‘undertrial’ “as a person who is in judicial custody or remand during an investigation.”⁵ A Detenue is any person held lawfully in custody.⁶ However, the ‘Other’ category refers to any person other than the above-mentioned categories”.⁷

Year	No. of Convicts	No. of Undertrial Prisoners	No. of <u>Detenues</u>	No. of Other Inmates	Total No. of Prisoners
2019	1,44,567	3,32,916	3,223	681	4,81,387
2020	1,12,589	3,71,848	3,590	484	4,88,511
2021	1,22,852	4,27,165	3,470	547	5,54,034

Table 1: Prison Statistics India-2021 by NCRB (As on 31st December 2021)⁸

The analysis of data stated in the above table suggests that there is an increment of 14.9 % in undertrial prisoners during the period of 2020 to 2021. It also indicates that the number of Convicts, Undertrial inmates, Detenues & Other prisoners account for 22.2%, 77.1%, 0.6%, and 0.1% respectively at the end of 2021. (**Refer Chart 1**) 77.1% of prisoners are still awaiting trial which means that the vast majority of people incarcerated are still awaiting trial.

The 4,27,165 people who are now incarcerated and awaiting trial are all considered innocent in the eyes of the law. Statistical data provided by the NCRB makes us question the operations of the bail system in India. How can a criminal justice system that claims to be equitable and fair justifiably deny freedom to 4,27,165 “innocent” people?

² National Crime Records Bureau, *Prison Statistics India* (2021) Executive Summary (NCRB Report)

³ NCRB Report, ch 2

⁴ NCRB Report, ch 2

⁵ Law Commission of India, *Congestion of Undertrial Prisoners in Jails* (Report No 78, 1979)

⁶ NCRB Report, ch 2

⁷ NCRB Report, ch 2

⁸ NCRB Report, Executive Summary

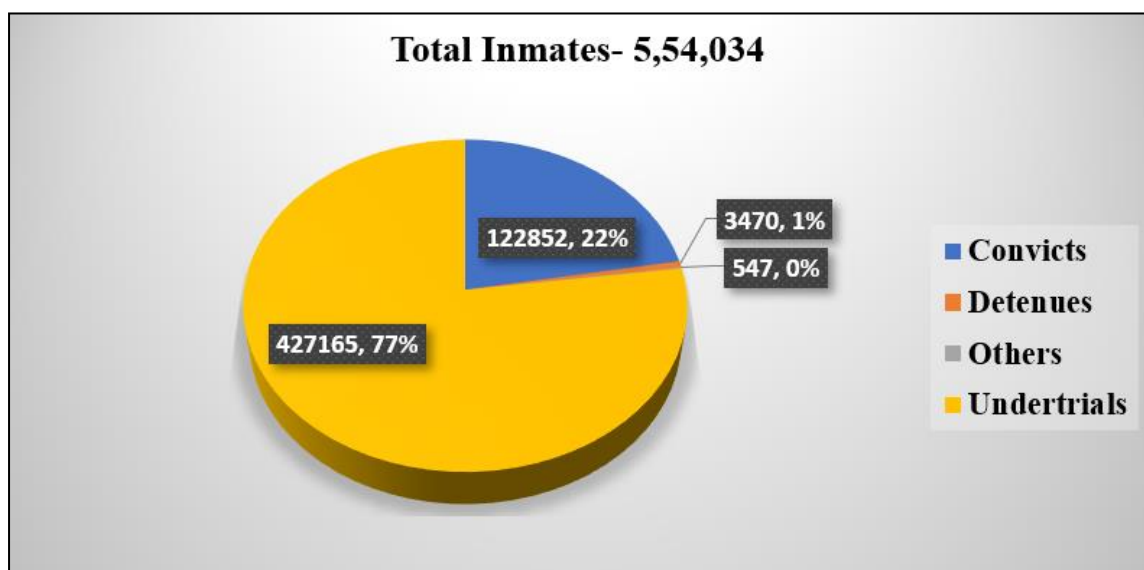


Chart 1: Share of Different Types of Prisoners (As on 31st December 2021)

As per the latest NCRB data available, a total of 3,24,499 undertrial prisoners from different States and UTs were detained in jails for committing offences under the IPC out of the 4,27,165 undertrial prisoners.⁹ (Refer Chart 2)

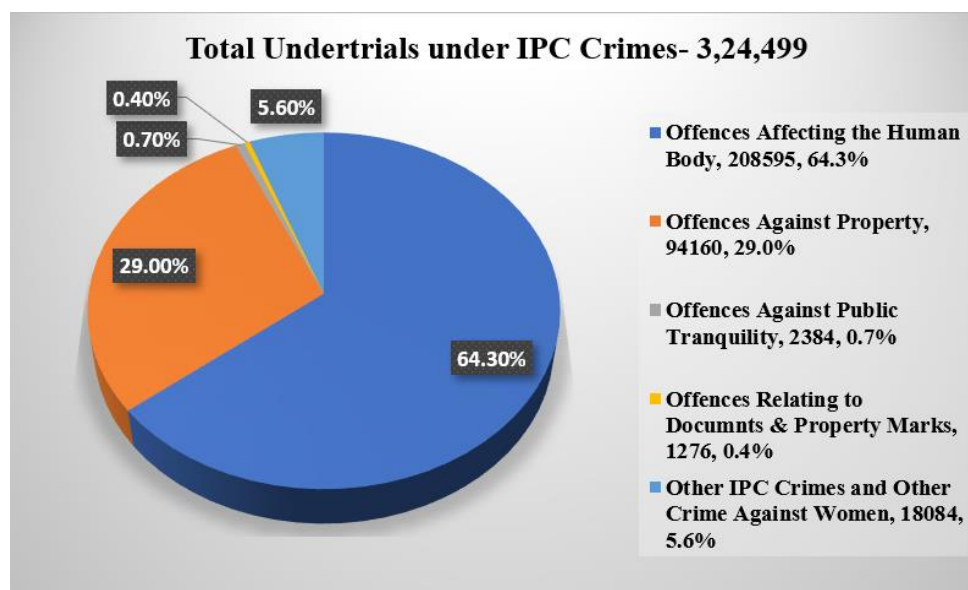


Chart 2: Share of Undertrial Prisoners under the IPC Crimes (As on 31st December 2021)

As per the latest NCRB data available, 1,02,613 undertrial prisoners from different States and UTs were detained in jails for committing offences under Special & Local Laws out of the total 4,27,165 undertrial prisoners.¹⁰ (Refer Chart 3) Out of the total 1,02,613 undertrial prisoners, 65.2% are detained for offences under liquor & narcotics drugs-related Acts which depicts the

⁹ NCRB Report, ch 5

¹⁰ NCRB Report, ch 5

mass incarceration which is taking place under the NDPS Act because the law tilts towards forbidding the courts from giving bail to an offender but does not specify any time limit for completion of the trial which leads to increase in the number of undertrial prisoners under the Act.

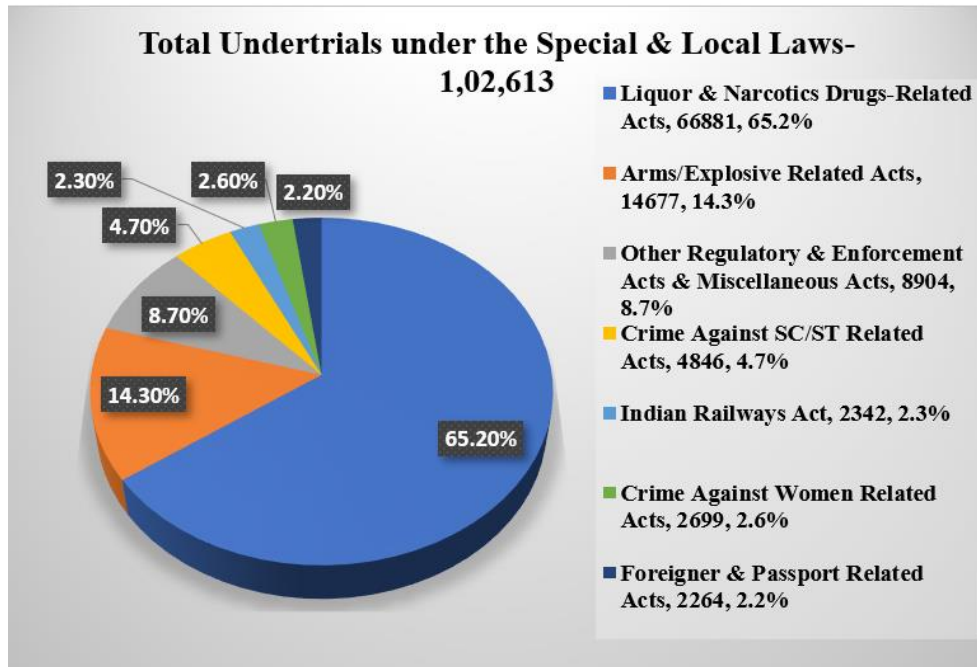


Chart 3: Share of Undertrial Prisoners under the Special & Local Laws (As on 31st December 2021)

As per the latest NCRB data available, it can be seen that around 70.9% of prisoners were confined for periods upto one year. (Refer Chart 4)

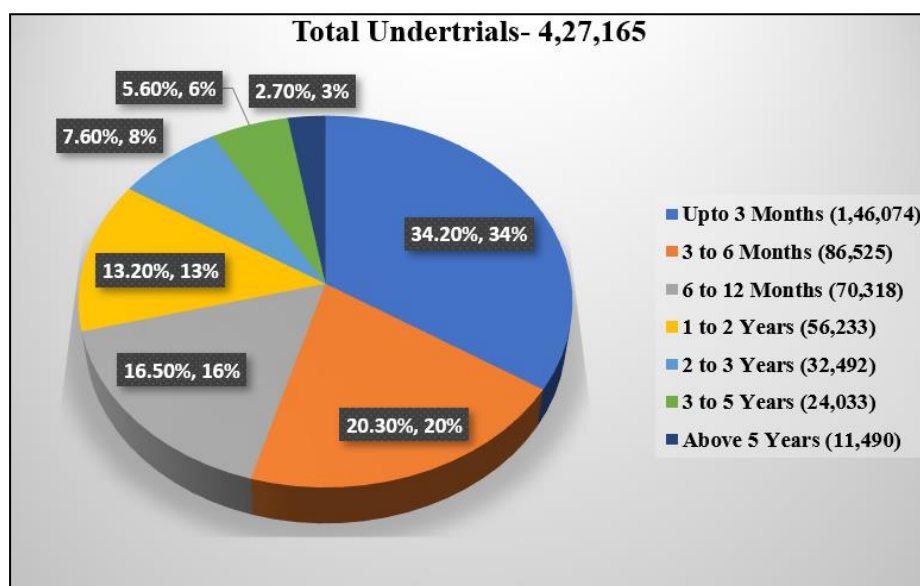


Chart 4: Distribution of Undertrials undergoing various Periods of Sentences (As on 31st December 2021)

II. REASONS FOR THE INCREASE IN THE UNDERTRIAL POPULATION IN THE JAILS

As per the established principle of criminal law jurisprudence, undertrials are presumed innocent until proven guilty, however, alarming growth in the undertrial population in jail suggests that this principle holds little value in application. There are various reasons which have led to growth in undertrial prisoners and some of them are discussed below:

(A) Detention in Bailable Offences Owing to Poverty or Inability to Pay for Bail Bond

Due to their inability to provide surety and security, many indigent persons who are accused of committing crimes for which bail is available as a matter of right are languishing in jails. This points towards the crisis faced by the present criminal justice system, where the fundamental right to liberty is being violated on the ground of the economic status of individuals. The discriminatory nature of bail bonds was highlighted by the Hon'ble SC in the case of *Moti Ram v. State of Madhya Pradesh*.¹¹ In this case, the magistrate while granting bail ordered that a surety of Rs. 10,000 be produced by the accused mason who had filed the bail application. He could not afford to procure that huge sum and his bail was rejected. When the case came to the SC, the infamous judgment was pronounced by the crusader of human rights, Hon'ble Mr. Justice V R Krishnaiyer. While granting bail to the accused, he observed that:

“the defendant with means can afford to pay bail. He can afford to buy his freedom. But the poorer defendant cannot pay the price He languishes in jail for weeks, months, and perhaps even years before trial. He does not stay in jail because he is guilty. He does not stay in jail because any sentence has been passed. He does not stay in jail because he is more likely to flee before trial. He stays in jail for one reason only because he is poor. We leave it to Parliament to consider whether in our socialist republic, with social justice as its hallmark, monetary superstition, not other relevant considerations like family ties, roots in the community, and membership of stable organizations, should prevail for bail bonds to ensure that the ‘bailee’ does not flee justice. The best guarantee of presence in court is the reach of the law, not the money tag.”

To promote the right of individual freedom and liberty and to reassert the principle of “innocent until proven guilty”, Act 25 of 2005¹² incorporated the provision of bail on personal bond in favour of indigent persons. The law now requires the court to release a person on his personal recognizance bond i.e., a written promise signed by the accused person promising that they will show up for future court appearances and not engage in any illegal activity while out on bail,

¹¹ *Moti Ram v. State of Madhya Pradesh*, AIR 1978 SC 1594

¹² The Code of Criminal Procedure (Amendment) Act, 2005

without any monetary bond if he is unable to give bail within a week of the date of his arrest.¹³ However, the practical reality remains the same. Even after 45 years of this landmark judgment, people languish in jail despite getting bail for lack of money to furnish the bail amount or arrange sureties. Recently, the National Legal Services Authority informed the Supreme Court that only about 1,417 of the approximately 5,000 undertrial convicts who had been granted bail have been released.¹⁴

a. Non-Compliance of Section 41A in Case of Cognizable Offences

Police have a very broad range of authority when it comes to making arrests, and they can do so even when the accused person cooperates with the investigation and is unlikely to flee justice. This leads to needless detentions. To limit the powers of arrest, sec 41A was inserted in the CrPC in 2009.¹⁵ It declares that a police officer should issue a notice of appearance to a person instead of arresting him and an arrest should be made only if it is necessary u/s 41.¹⁶ The authority of police officers to make arbitrary arrests is constrained by Section 41.¹⁷ A person cannot be detained solely because a complaint has been made against him. A police officer is not supposed to arrest a suspect for a crime that carries a maximum sentence of seven years of imprisonment unless there is a “reason to believe” that the suspect really committed the crime. The police should have some information & material to support their suspicions that the accused has committed the crime before making an arrest. In addition, the police officer must be convinced that the arrest is required for at least one of the purposes listed in subclauses (a) to (e) of clause (1) of Section 41 of the Criminal Procedure Code. The officer who makes the arrest must put his justifications in writing. When the required circumstances are not met, the police officer shall serve a notice of appearance to the suspect rather than making an arrest.¹⁸ This calls for the accused to comply with the police officer’s investigation of the offence and to appear in front of the officer when requested.

The Court in *Arnesh Kumar v. State of Bihar*¹⁹ stated that:

“In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after

¹³ CrPC, s 436 exp

¹⁴ ‘5,000 undertrial prisoners were in jails despite being granted bail, 1,417 released: NALSA to SC’ (*ThePrint*, 31 January 2023) <<https://theprint.in/india/5000-undertrial-prisoners-were-in-jails-despite-being-granted-bail-1417-released-nalsa-to-sc/1345726/>> accessed 10 April 2023

¹⁵ The Code of Criminal Procedure (Amendment) Act, 2008

¹⁶ CrPC, s 41A

¹⁷ CrPC, s 41

¹⁸ CrPC, s 41A

¹⁹ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273

these questions are addressed and one or the other conditions as enumerated above are satisfied, the power of arrest needs to be exercised. Before arrest first, the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of CrPC.”

In *Satender Kumar Antil v. Central Bureau of Investigation*,²⁰ the Supreme Court addressed the issue of the illegal and arbitrary arrest of persons by police officers without complying with the mandate of sec 41A and as a result, people were languishing in jail. The court ruled that the investigating agencies and their officers had a responsibility to follow the directives made by the SC in *Arnesh Kumar* as well as the requirements of Sections 41 and 41A of the Code. Any neglect on their part must be brought to the attention of the higher authorities by the court, who must then take the necessary action. It also held that the courts must determine whether Sections 41 and 41A of the Code are being followed and any failure to comply would entitle the accused to be released on bail without going into the merits of the case.

The ‘check-list’ imposed by the Supreme Court in the historic case of *Arnesh Kumar* is routinely violated by arrests, which puts a huge burden on the constitutional courts of our country. Particularly in cases covered under the guidelines in *Arnesh Kumar*, the mentality of “first make an arrest, then investigate” needs to alter.

(B) Inordinate Delay in Trial & Low Conviction Rates

Many prisoners are charged with non-bailable offences which are not very serious and can be tried by a Magistrate. Due to the delay in the trial, they stay behind bars for extended periods and even when the trial is completed, the accused person is not convicted in most of the cases which can be seen by the low rate of conviction.²¹ (**Refer Chart 5**) The overall number of undertrials is increasing, but the proportion of undertrials who serve less than one year in jail is decreasing, suggesting that more undertrials are being held beyond the one year as a result of prolonged trials.²² All inmates who are awaiting trial have the right to trial within a reasonable time or release. Their right to liberty and a fair trial are violated by prolonged pretrial imprisonment, which also negatively affects their quality of life. A person’s right to be presumed innocent until proven guilty is mocked by the overuse of undertrial detention, which essentially leads to punishment before conviction. The possibility of torture or other cruel

²⁰ *Satender Kumar Antil v. Central Bureau of Investigation*, 2022 SCC OnLine SC 825

²¹ NCRB Report, ch 5

²² NCRB Report, ch 6

treatment is further increased by protracted pretrial confinement.

*Hussainara Khatoon v. State of Bihar*²³ focused on the suffering of numerous pre-trial inmates who were languishing in prison without having their trials started. The Court made interim directions in the months that followed the writ petition ordering the immediate release of pre-trial inmates on personal bond and the provision of free legal aid to all the accused. In addition to imposing an affirmative duty on magistrates to inform pre-trial detainees of their right to bail and free legal representation, the Court held that speedy trial was a constitutionally guaranteed right under Article 21 of the Constitution. Unfortunately, all of the prisoners who are awaiting trial can only dream of such a quick trial. The legal maxim, “Justice delayed is justice denied” fits perfectly, in case of an undertrial.

Justice Bhagwati linked a speedy trial to human rights, stating that:

*“Expeditious trial and freedom from detention are part of human rights and basic freedoms and that a judicial system which allows incarceration of men and women for long periods of time without trial must be held to be denying human rights to such undertrials.”*²⁴

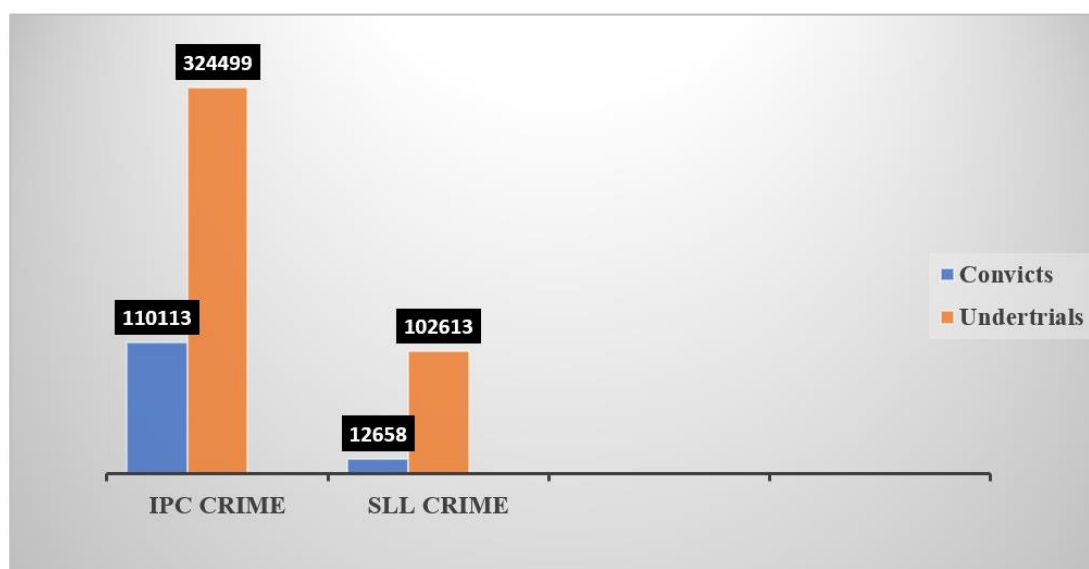


Chart 5: Total Convicts and Undertrials Inmates under the IPC as well as Special & Local Laws (As on 31st December 2021)

(C)Lack of Quality Legal Aid Services for Undertrial Prisoners

The Indian Constitution’s Article 39A mandates the provision of free legal aid to ensure that no one is denied access to justice due to a lack of resources or other disabilities.²⁵ In several

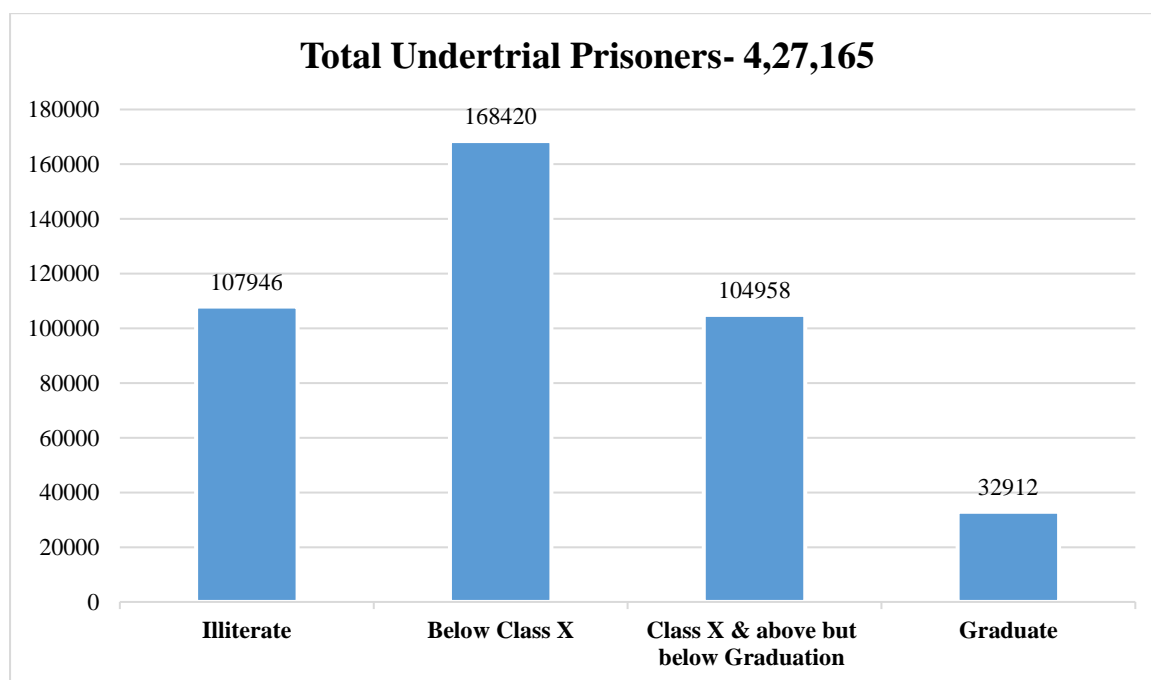
²³ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360

²⁴ *Abdul Rehman Antulay v. R.S. Nayak*, (1992) 1 SCC 225

²⁵ COI, art 39A

judgments, the Supreme Court of India has ruled that Article 21 of the Constitution includes the right to free legal representation.²⁶ It is an unalienable component of “*just, fair, and reasonable procedure*” under Article 21. Many low-income undertrials do not apply for bail because they are illiterate and unaware of the free legal aid system²⁷ (**Refer Chart 6**) and they do not have sufficient means to engage an advocate which leads to their continued detention. Legal aid must be made available as per the law, but in reality, this doesn’t happen until the chargesheet has been submitted.²⁸

Legal assistance is restricted to the trial stage. Therefore, those who cannot afford a lawyer are unable to take bail. Even the designated legal aid counsels seldom effectively represent their clients because the state is more inclined to provide an advocate with lower skill, creating an uneven playing field.²⁹ Too many complaints have been made about these attorneys’ inconsistent court appearances, poor client contact regarding the progress of their cases, and, most crucially, their inadequate defence during the bail and trial stages.³⁰ The primary cause of these concerns is the appalling honorarium given to legal aid attorneys.³¹



²⁶ Hussainara Khatoun v. State of Bihar, AIR 1979 SC 1360

²⁷ Suk Das v. Union Territory of Arunachal Pradesh, AIR 1986 SC 991

²⁸ Law Commission of India, *Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail* (Report No 268, 2017)

²⁹ Ayushi Priyadarshini & Madhurika Durge, ‘Undertrial Prisoners in India’ 6 (2) The National Law Institute University Law Review <<https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-VI-Issue-II-133-162.pdf>> accessed 15 April 2023

³⁰ Vijay Raghavan, ‘Undertrial Prisoners in India: Long Wait for Justice’ (2016) 51(4) Economic & Political Weekly <https://www.epw.in/journal/2016/4/commentary/undertrial-prisoners-india.html?0=ip_login_no_cache%3D072428c251fa31e514e828edc7990d96> accessed 15 April 2023

³¹ *ibid*

Chart 6: Educational Profile of Undertrial Prisoners (As on 31st December 2021)**(D) Poor Judge-Population Ratio**

Based on the country's population as calculated in the 2011 Census, which was 1210.19 million, and the sanctioned strength of judges in the Supreme Court, High Courts, District, and Subordinate Courts as of 2023, the ratio of judges to people equals about 21 judges per million people,³² which is very less. This, along with a lack of infrastructure, leads to a high number of pending cases, over 4 crore cases are currently pending.³³ This is directly proportional to the number of undertrials, the more the number of cases pending, the more will the number of undertrials. With a backlog of litigations stretching over 4 crores, pre-trial incarceration is being used as a punitive measure, resulting in the denial of bail.

(E) Prolonged Detention Due to Lack of Easy Bail in India

Many undertrials awaiting trial are kept in jails for protracted periods of time, sometimes longer than the maximum sentence stipulated for the crime they are accused of. This is because courts frequently refuse bail when a person is charged with a non-bailable offence, set the bail amount high, and require sureties instead of releasing people on personal bonds, which results in lengthy prison terms for those who are impoverished and charged with minor crimes.

Section 436A³⁴ was added in the Criminal Procedure Code to enable the under-trial prisoners, who were awaiting their trial to get completed and consequently for acquittal, but in the meantime, they had spent one-half or more of the maximum period of imprisonment provided for that offence to be released on bail from the competent court unless the public prosecutor applies for continued detention. Despite being in place for nearly 18 years, section 436A has not yet had the desired effect. The number of under-trial inmates who remain behind bars despite being eligible for release under section 436A of the CrPC has not significantly changed even after the guidelines issued by the Court in the case of *Bhim Singh v. UOI*.³⁵ It is evident from the fact that, according to the NCRB's 2021 report, only 591 (584 Males and 7 Females) of the 1,491 (1,472 Males and 19 Females) undertrial inmates who were eligible for release under u/s

³² Press Trust of India 'India has about 21 Judges Per Million Population: Govt' *The Economic Times* (2 February 2023)

<<https://economictimes.indiatimes.com/news/india/india-has-21-judges-per-million-population-govt/articleshow/97559581.cms?from=mdr>> accessed 15 April 2023

³³ Press Trust of India, 'Nearly 5 Crore Pending Cases in Courts, Over 69,000 in Supreme Court' (NDTV, 9 February 2023)

<<https://www.ndtv.com/india-news/nearly-5-crore-pending-cases-in-courts-over-69-000-in-supreme-court-3768720>> accessed 15 April 2023

³⁴ CrPC, s 436A

³⁵ *Bhim Singh v. Union of India*, (2015) 13 SCC 605

436A were released in 2021.³⁶

III. POSSIBLE SOLUTIONS FOR REDUCING THE UNDERTRIAL POPULATION IN JAILS

Even though there are laws to prevent needless detention of inmates, they are not implemented, leading to a sizable population of prisoners who are awaiting trial. Some possible solutions for reducing the increasing population of undertrial prisoners are discussed below.

(A) Compliance of Section 41A in Case of Cognizable Offences

The way that law enforcement officers use their authority to make arrests needs to be reoriented. If correctly implemented, this provision will result in a significant decrease in the number of individuals detained for crimes carrying a maximum sentence of seven years while their case was being investigated, inquired, or tried. The ‘check-list’ imposed by the Supreme Court in the historic case of *Armesh Kumar* is routinely violated by arrests. Furthermore, the purpose of the law is defeated when a notice of appearance is issued under Section 41A of the CrPC and an immediate arrest follows, regardless of whether the accused complies with the notice. Instead of restricting the accused’s freedom in the initial hearing, the emphasis should be on using other tools such as summons, warrants, and notice under section 41A to ensure the accused’s appearance. Strict adherence to the Supreme Court’s directives in the *Armesh Kumar* case is required, and any arrests made must be supported by compelling evidence. A uniform proforma for Section 41A notice can also serve as a strong procedural restraint on arbitrary arrests.

(B) Reforms in Bail Laws

Bail, the statutory remedy intended to ensure release, is rendered ineffective in many cases. People who have been granted bail often remain incarcerated because they cannot afford to furnish the bail amount or arrange sureties. The Supreme Court took note of the issue in *Sonadhar v. The State of Chhattisgarh*³⁷ and directed the jail administration to disclose the identities of all undertrial inmates who have been granted bail but are still being detained in custody. The aforementioned data would be useful to the National Legal Services Authority of India in formulating a strategy to help these prisoners.

A substitute for monetary bail, which in a way penalises poverty, needs to be added to the statutes as soon as possible. Even though section 440 clearly mentions that the amount of bond should not be excessive,³⁸ judges have been traditionally imposing money and other financial conditions without taking into consideration the economic status of the accused person. Now,

³⁶ NCRB Report, ch 7

³⁷ *Sonadhar v. The State of Chhattisgarh*, SLP (Crl.) No. 529 of 2021

³⁸ CrPC, s 440

it has become the accepted legal norm to impose exemplary monetary bond in almost all cases. The SC suggested that in case a person is not able to furnish monetary bond within 30 days in a non-bailable offence and bail has already been granted by the Court concerned then the Court should suo moto take up the case for relaxing bail conditions,³⁹ one of which can be considering him as indigent and granting him bail on personal recognizance. The system of bail should be revised to incorporate this as well.

(C) Strengthening the Implementation of Legal Aid Services for Undertrial Prisoners

The majority of the time, following an arrest, the accused and their families are unable to access the benefits of legal services. Therefore, it is necessary to try to create awareness of the legal aid services at police stations, court complexes, and prisons. It also becomes crucial that the legal assistance attorneys who are defending the accused be dedicated to the performance of their duties and possess the necessary expertise and competence. In order to ensure accountability of work performed, a legal aid lawyer should be answerable to an independent organisation established to examine the administration of legal aid professionals.⁴⁰ This will guarantee that certain minimum requirements are met in order to offset the disparity.

Another statutory remedy that seems underused is Section 436A of CrPC.⁴¹ The inability to get access to legal advice restricts the accused from moving bail applications seeking entitlement under Section 436A. If the implementation of legal aid services is strengthened then prisoners eligible for release under sec 436A can be released on bail.

(D) Use of Section 437(6) of the CrPC

It provides that in case of non-bailable offences, if the trial is not concluded within 60 days, the accused must be released on bail unless otherwise directed by the magistrate i.e., the magistrate can still refuse to grant bail but only after recording reasons. If this provision is effectively used and bail is granted, it will also help in reducing the undertrial population.

(E) Sensitization of Lower Judiciary

The Magistrate Court or the Court of Sessions is the venue for the initial hearing in criminal matters, making it the first institution where an accused goes in order to get bail. Only those

³⁹ Anurag Tiwary, 'If Bail Bonds Not Furnished Within One Month, Trial Court May Consider Suo Motu Relaxing Conditions: Supreme Court' (*Live Law*, 2 February 2023) <https://www.livelaw.in/top-stories/if-bail-bonds-not-furnished-within-one-month-trial-courts-may-consider-suo-motu-relaxing-conditions-supreme-court-220536?infinite_scroll=1> accessed 10 April 2023

⁴⁰ Madhurima Dhanuka, 'Undertrial Prisoners and the Criminal Justice System' (2010) 2 Supreme Court Cases <<https://www.humanrightsinitiative.org/download/1457162682Undertrial%20Prisoners%20and%20the%20Criminal%20Justice%20System.pdf>> accessed 20 April 2023

⁴¹ CrPC, s 436A

who feel wronged by these institutions' decisions file an appeal in the High Court and thereafter the Supreme Court. But we must keep in mind that, every individual can't approach the higher courts and those who cannot afford the costs of the appellate courts languish in jail. Therefore, it is important to sensitize the District Judiciary where justice can be accessed by everyone regarding how important individual liberty is. The Supreme Court of India's landmark decisions which contain the guiding principles regarding bail must be highlighted in periodic refresher courses that the judicial academies offer for them.

(F) Improving the judge-population ratio

The final, and most important step is to elevate the judge-to-population ratio. The bigger issue of undertrials can be resolved by reducing the pendency of cases in the courts which can be done by the recruitment of more judges in the lower judiciary. Vacancies in the lower judiciary should be timely filled by conducting judicial services examinations.

Apart from the above-mentioned reasons for an increasing number of undertrial prisoners, there is an issue of failing jail infrastructure which is adding to the woes of these undertrial prisoners. This has been highlighted by the law commission of India,⁴² where they have emphasized the urgent need to enhance prison infrastructure due to the overwhelming burden and overcrowding faced by Indian prisons, which currently accommodate 5.54 lakh detainees and under-trials across 1,319 different jails.

As per the data available,⁴³ Indian jails hold one of the highest numbers of prisoners in the world. Monitoring the increasing trend in crime rates, it can be safely said that the frail jail infrastructure is progressing toward an inevitable crumble. This emphasises the need to undertake immediate reformatory steps for jail infrastructure. To address this issue, the Indian law commission⁴⁴ has proposed that one potential solution for reducing the number of under-trials in jails can be through the granting of bail, taking into account various factors such as the specific circumstances of the case, stage of the trial, investigation report, socio-economic conditions of the accused, and their ability to secure bail. The jail infrastructure requires sustainable reforms, which shall be not only futuristic but also uphold basic principles of the criminal justice system.

IV. CONCLUSION

⁴² Law Commission of India, *Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail* (Report No 268, 2017)

⁴³ NCRB Report, Executive Summary

⁴⁴ Law Commission of India, *Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail* (Report No 268, 2017)

It can be concluded from the discussion in the above paper that, the criminal justice system in India is grappling with a crisis that stems from the discrimination faced by the poor, who are unable to furnish bail bonds, as opposed to the wealthy. This discrimination has also been acknowledged by the Hon'ble Supreme Court, emphasizing the severe consequences of pre-trial detention, such as psychological and physical hardships, loss of employment, and the burden that falls on innocent family members. There has been a dramatic increase in the number of people incarcerated while awaiting trial because most of those who end up in court for criminal charges are from low-income groups. Although they are guaranteed the right to liberty and a fair trial, these detainees often spend years in jail before their trials even begin, during which time they are at risk of being tortured or subjected to other forms of inhumane treatment. This paper has discussed reasons for the increase in the undertrial population in jails and the possible solutions for reducing the same. Reforms that can stand the test of time are necessary to ensure that the tenets of the criminal justice system are upheld. It's critical to reinforce provisions like Section 436A of the Criminal Procedure Code, strengthen legal aid services for undertrial prisoners, and institute an alternative to monetary bail that doesn't unfairly target the poor. To further reduce the undertrial population in jails, Section 437(6) of the Criminal Procedure Code can be used. Adopting these measures and working towards comprehensive reform can help India move closer to a criminal justice system that protects the rights and liberties of all citizens.
