



## “BEHIND BARS, AWAITING FOR JUSTICE”

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In India, there is a significant issue with the number of convicts awaiting trial and the pending cases. As of 2023, there are an estimated 4.1 million people in India who are undertrial, meaning that they are waiting for their trial for a long time. A lot of factors contributing to this are lack of resources for the judiciary, a complicated and ineffective legal system, judicial corruption, and a high crime rate. The issue of number of inmates who are awaiting trial is particularly alarming since it violates the fundamental human right to a prompt trial. Undertrial inmates are frequently detained in cramped, unhygienic settings and may not have access to legal representation or other fundamental rights. The issue of prisoners awaiting trial in India has been addressed many times for instance in a landmark decision of *Shri Rama Murthy v. State of Karnataka*<sup>1</sup>, the Supreme Court was very forthright in stating that justice would be served by simply releasing the state's 193,240 prisoners, of whom 137,838 were awaiting trial. The Supreme Court continued to emphasize the importance of safeguarding prisoners awaiting trial from the 2000s. This research will find best practices that can be useful in the Indian setting by contrasting worldwide experiences. In order to aid criminal justice reform in India, this paper provides politicians, attorneys, and civil society stakeholders with insights and recommendations. Besides all this, this paper provides a brief analysis on how the problem of pendency of cases and undertrial is tackled within other countries' judicial system.

**KEYWORDS-** Under trial prisoners (UTPs), the pendency of cases, Indian judiciary, Reforms, Justice report.

### INTRODUCTION

In India, a critical challenge plagues the justice system: the vast number of under trial prisoners (UTPs). These are individuals incarcerated while awaiting trial, often for extended periods. This research paper delves into the realities of UTPs in India, exploring the legal framework, statistics, concerns, and recommendations for reform.

#### Defining Under Trial Prisoners

<sup>1</sup> *Shri Rama Murthy v. State of Karnataka*, (1997) AIR SUPREME COURT 1739

UTPs are individuals who have been arrested and are in judicial custody, facing criminal charges. Their trials are ongoing, and they haven't received a final verdict – neither convicted nor acquitted. They are presumed innocent until proven guilty, yet their freedom is restricted while the legal process unfolds.

### Categories of Under Trial Prisoners

UTPs can be categorized based on the nature of the offense and their bail status:

- Non-bailable offenses: These offenses, deemed serious by law, have no automatic right to bail. Courts may grant bail based on specific criteria. If bail is denied, the UTP remains in custody.
- Non-bailable offenses with bail orders: The court grants bail, but the UTP may be unable to afford the surety money or guarantee needed.
- Bailable offenses: These offenses allow for bail, but the UTP might not be able to furnish the bail bond due to various reasons.

### **A STARTLING REALITY: STATISTICS ON UNDER TRIAL PRISONERS**

India grapples with a disproportionately high number of UTPs. Here's a breakdown of some statistics provided by (Undertrial Prisoners, n.d.) “Press Information Bureau (PIB) a nodal agency of the Government of India. The National Crime Records Bureau (NCRB) compiles prison statistics reported to it by the States and Union Territories (UTs) and publishes the same in its annual publication “Prison Statistics India”. The latest published report is for the year 2022. State/UT-wise number of undertrial prisoners who were confined for more than 1 year in the jails of the country as on 31.12.2022 are as follows<sup>2</sup>.”

- “In the state of Bihar, the number of UTPS behind the bar for 1-2 years are 6393, for 2-3 years are 2818, for 3-5 years are 1481 and for above 5 years are 402.
- In the state of Madhya Pradesh, the numbers of UTPS behind the bar for 1-2 years are 4274, for 2-3 years are 2105, for 3-5 years are 1675 and for above 5 years are 211.
- In the state of Maharashtra, the numbers of UTPS behind the bar for 1-2 year are 5759, for 2-3 years are 2822, for 3-5 years are 2261 and for above 5 years are 1850.
- In the state of Odisha, the numbers of UTPS behind the bar for 1-2 year are 2200, for 2-3 years are 1166, for 3-5 years are 1167 and for above 5 years are 480.
- In the state of Punjab, the numbers of UTPS behind the bar for 1-2 year are 4398, for 2-3 years are 1967, for 3-5 years are 716 and for above 5 years are 119.
- In the state of Rajasthan, the numbers of UTPS behind the bar for 1-2 year are 3005, for 2-3 years are 1974, for 3-5 years are 1621 and for above 5 years are 453.
- In the state of Uttar Pradesh, the numbers of UTPS behind the bar for 1-2 year are 13981, for 2-3 years are 9819, for 3-5 years are 8760 and for above 5 years are 4540.

<sup>2</sup> Undertrial Prisoners. (n.d.). Pib.gov.in. Retrieved May 28, 2024, from <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2003162>

- .In the states of West Bengal, the number of UTPS behind the bar for 1-2 year are 3464, for 2-3 years are 2305, for 3-5 years are 2187 and for above 5 years are 1379.
- In the state of Delhi, the numbers of UTPS behind the bar for 1-2 year are 2426, for 2-3 years are 1284, for 3-5 years are 982 and for above 5 years are 407.
- .In the states of Jammu & Kashmir, the number of UTPS behind the bar for 1-2 year are 823, for 2-3 years are 543, for 3-5 years are 480 and for above 5 years are 253.”

Above is the list of most number of states having high number of UTPs in their system. The situation of these UTPs is actually worse than we imagine. This translates to a concerning reality – a majority of individuals in Indian jails haven't been convicted of a crime. While awaiting trial, these UTPs retain fundamental rights enshrined in the Indian Constitution and legal framework. . Here's a look at the rights provided to Under Trial Prisoner.

### **RIGHTS OF UNDERTRIAL PRISONERS:**

1. **Presumption of Innocence:** UTPs are presumed innocent until proven guilty beyond a reasonable doubt. That is, both sides the prosecution and the defendant should be treated equally and thus have right to the fair trial as their most important right.. This presumption of Innocence is further backed by the principle of natural justice. Therefore every UTP is guaranteed to be treated fair and innocent until proven guilty.
2. **Right to a Speedy Trial:** A fair legal process necessitates a speedy trial to minimize pre-trial detention. The Supreme Court has emphasized this right. The right to a speedy trial is crucial for UTPs. Delays in the legal process can have a negative impact on their mental health and overall well-being. Courts have stressed the need to minimize such delays.
3. **Right to Legal Representation:** Our criminal aid system believes that our state will conduct investigations as well as engage qualified prosecutors to prosecute the accused and the evidence. As a result, both the Indian Constitution (Article 21<sup>3</sup>) and the Code of Criminal Procedure<sup>4</sup> (Section 303) guarantee the accused the right to counsel and representation by a lawyer of his choosing. If the person who is charged with is lacking the financial resources to afford a counsel, his right to be represented by a lawyer of his choice ends up being meaningless. Our justice system has made modest attempts to address the issue above. According to the law, if the defendant is not represented and the court determines that he does not have the money to hire an advocate, the court of hearings will appoint a plea advocate at the state's expense as per Section 304 of the Code of Criminal Procedure<sup>5</sup>.
4. **Bail for Inmates in Lower Courts:** According to Section 436A of the Code of Criminal Procedure<sup>6</sup>, the UTPs who have served half of the maximum sentence for offenses for which the death penalty is not an option will be released on bond while wearing their ties. In these situations, the court may

<sup>3</sup> India. (1950) The Constitution of India

<sup>4</sup> (1973). The Code of Criminal Procedure [Review of The Code of Criminal Procedure].

<sup>5</sup> (1973). CrPC [Review of CrPC].

<sup>6</sup> (1973). CrPC [Review of CrPC].

order them to remain in custody for longer than half of their maximum sentence after providing an explanation, although the public prosecutor's office must also be heard.

5. **Undertrial prisoners are also entitled to separate accommodations from convicts.**
6. **They have the right to access to lawyer, family in preparation of defense.** Under trial prisoners have the right to meet and communicate with their family members and friends. Restrictions may apply for security reasons
7. **They are entitled to their own clothing and food. If they cannot afford, they shall be provided the same. The clothing in such case is different from the convicted inmates<sup>7</sup>.**
8. **They can consult their own doctors provided there is no unauthorized communication with such person is being done.**
9. **Right to Information:** Under trial prisoners have the right to know the charges against them and the progress of their case. They can access legal documents related to their trial.

## CHALLENGES FOR THE LEGAL SYSTEM OF INDIA

However the above said rights may be difficult to obtain due to a variety of factors. Below are mentioned some of the significant reasons which act as a hindrance to our legal system of India to enforce aforementioned legal rights:

- **Overcrowding:** Prisons are often overcrowded, leading to cramped living spaces, inadequate sanitation, and increased tensions among prisoners.
- **Basic amenities:** Access to basic amenities such as clean water, nutritious food, and adequate sanitation may be limited due to budget constraints or mismanagement.
- **Medical care:** Timely medical care is essential but is not always readily available in all facilities and can put the UTP's health at risk.
- **Legal Representation:** Legal aid exists, but ensuring adequate access to lawyers and efficient legal services to UTPs remains a challenge.
- **Security and safety:** It serves as essential to protect UTPs from assault, abuse, and harassment in prison facilities by inmates and prison authorities. However most of times, humiliating treatment, inhumane conditions, and abusive interactions by fellow inmates and sometimes prison authorities which lead to serious trauma and harm UTPs efforts to thrive once they leave prison.
- **The poor continued to suffer in prisons because of the lack of cooperation b/w the Centre, Judiciary, and State Government, as well as short of guarantors and assets to utilize as bail bonds.** In certain situations, the bail sum is unreasonably large which further lead to incapacity of UTPs to get bail.
- **A long-term pre-trial detention can induce psychological stress and uncertainty.** According to reports, some UTPs wait years for trial, which has a negative influence on their mental health.

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<sup>7</sup> Rights of Prisoners (C) 2021, National Human Rights Commission, India,  
<https://nhrc.nic.in/sites/default/files/11%20Rights%20of%20Prisoners-compressed.pdf>

- Under Section 109 of the Criminal Procedure Code<sup>8</sup>, “A large number of people, including women and children, are jailed which lead to failure to provide adequate security for maintaining good behavior. The police frequently pick them up "because the number of cases had to be brought up to the specified figure". The authorities refuse to release them without bail, despite the standing legislation on Section 110 states that you cannot ask for bail from such people; just a history ticket is required.”

## SIGNIFICANT JUDGEMENTS ON UTPs

There has been evolution of cases over the time which has recognized the violation of rights of UTPs or has led to identification of rights needed for UTPs over the time. Some of the landmark cases and their judgment acknowledging the need of securing the implementation of those rights are given below:

- 1) **Suk Das & Anr Vs. Union Territory of Arunachal Pradesh**<sup>9</sup> “the prisoner in this case was neither informed by Additional deputy Commissioner that he was entitled to free legal assistance nor did he enquire from him whether he wanted a lawyer to be provided to him at State cost. The result was that the appellant was prisoned and remained unrepresented by a lawyer and the trial ultimately resulted in his conviction. This was clearly a violation of the fundamental right of prisoner under Article 21 and the trial was held to be defective and the conviction and sentence recorded against the prisoner was set aside.”
- 2) In case of **Prem Shanker Shukla Vs. Delhi Administration**<sup>10</sup>, “the petitioner was an undertrial prisoner in Tihar jail. He was required to be taken from jail to Magistrate’s Court and back periodically in connection with certain cases pending against him. The trial court has directed the concerned officer escorting him to the court and back that handcuffing should not be done unless it was so required. But handcuffing was still forced on him by escorts. He therefore sent a telegram to one of the judges of Supreme Court on the basis of which this case was admitted by the court. The Supreme Court held that handcuffing is inhumane and, therefore it is unreasonable and harsh. It is important to prevent the escape of an undertrial but to bind a man hand and foot, fetter his limb with hoops of steel, shuffle him along the streets and force him to stand in courts for hours is equivalent to torture and humiliation. Since there are either ways of ensuring safety, as a rule handcuffs or other fetters shall not be forced on the person of an under trial prisoner ordinarily.”
- 3) In one case of **Pramod Kumar Saxena vs. Union of India and Others**<sup>11</sup> “where the petitioner was an undertrial prisoner for more than 10 years against whom 48 criminal cases were filed, approached Supreme Court for enforcement of his fundamental rights. The Supreme Court held that he must be released on bail so that he can make arrangements for the repayment of amount and also defend cases registered against him.”
- 4) In the case of **Sunial Batra V. Delhi Administration**<sup>12</sup>, “a convict namely Sunil Batra who had been awarded death sentence, wrote a letter to one of the judges of the supreme court informing that a jail warden was torturing another prisoner ( Prem Chand ) in order to extract money from the victim through his visiting relations. The letter was taken notice by the Supreme court and proceeding was initiated upon the State and the concerned officials. The Supreme Court held that Prem chand the

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<sup>8</sup> (1973). CrPC [Review of CrPC].

<sup>9</sup> Suk Das & Anr Vs. Union Territory of Arunachal Pradesh AIR 1986 SC 991

<sup>10</sup> Prem Shanker Shukla Vs. Delhi Administration, (1980) 3SCC 526

<sup>11</sup> Pramod Kumar Saxena vs. Union of India and Others (2008)

<sup>12</sup> Sunial Batra V. Delhi Administration, AIR 1980 SC 1579,

prisoner, has been tortured illegally and the Superintendent cannot absolve himself of responsibility even though he may not be directly a party. Lack of vigilance is also guilt. The Superintendent was directed to ensure that no corporal punishment or personal violence on Prem Chand shall be inflicted. No irons shall be forced on the person in revengeful spirit.”

- 5) In the case of **Hussainara Khatoon v. State of Bihar**<sup>13</sup> “a shocking state of affairs in regard to justice came to light. An alarmingly large number of men and women, including children were behind prison bars for years waiting for their trial in the court of law. The crimes/ offences of some were trivial/ petty which even if proved would not deserve punishment for more than few months, or 1-2 years. But these UTPs were in jail for about 3-10 years. The Supreme Court expressed its concern about delay in trial and stated that the poor are denied justice because they are too poor to afford bail and courts have no time to try them. The Supreme Court further said procedure which keeps such large number of people behind the bars without trial so long cannot possibly be said to reasonable, fair with Article 21 of the Indian Constitution.”
- 6) In another shocking case of **Khatri v. State of Bihar**<sup>14</sup>, “the cops blinded 80 people by puncturing their eyes with needles and dousing them with acid. This shows that it is assumed that just because jail is provided for these UTPs, they will keep them in good condition. However all Indian prisons most of times having overcrowding, unsanitary condition and delayed medical attention but all this is ignored which leads to excessive neglect not criminalizing of the conduct of prison authorities.”

## RECOMMENDATION

- **Reform the Bail System:** Law Commission Recommendation: UTPs that are done with at least one-third of the maximum sentence for offenses up to seven years should be released on bail. For offenses which are punishable for imprisonment of more than 7 years, bail could be granted if they have completed at least one-half of their sentences.<sup>15</sup>
- **Judicial Scrutiny:** Courts should carefully consider the nature of the offense, the individual’s criminal record, and the likelihood of flight or tampering with evidence when deciding on bail.
- **Improve Quality of Life for Under trials:** Living Conditions: Ensure that under trial prisoners have access to basic amenities, including clean water, nutritious food, and proper sanitation.
- **Healthcare:** Prioritize medical care for under trials. Regular health check-ups and timely treatment are essential.
- **Legal Representation:** Provide adequate and efficient legal aid to ensure a fair trial. **Legal Awareness:** Educate undertrial prisoners about their rights and the legal process. Ensure they understand their options for seeking bail and legal representation
- **Increase Judge-Population Ratio:** The current shortage of judges contributes to delays in trials. Increasing the judge-population ratio will expedite legal proceedings and reduce undertrial detention periods. The number of judges and magistrates should be increased immediately in a proportion that is reasonable to the general public

<sup>13</sup> Hussainara Khatoon v. State of Bihar (1980) 1 SCC 81

<sup>14</sup> Khatri v. State of Bihar (1981) SCR (2) 408, 1981 SCC (1) 627

<sup>15</sup> The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023. (n.d.). PRS Legislative Research. <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-second-sanhita-2023>

- **Supreme Court Guidelines:** Jail superintendents should promptly provide undertrial prisoners with a copy of the bail order via email on the day of the judgment or the next day 2.
- **Efficient Court Processes:** Streamline court procedures to minimize delays and ensure a speedy trial.
- **Rehabilitation and Reintegration:** Focus on rehabilitating undertrial prisoners during their detention. Provide education, vocational training, and counseling to prepare them for life after release.
- As per Law Commission of India, 78th Report “The District Magistrate should form a high-level committee comprised of representatives from the local police, judiciary, prosecution, district administration, and prison department to visit the sub-jails under their jurisdiction at least once a month, review any delays in cases of prisoners, and implement appropriate measures.”<sup>16</sup>
- Adjournments for undertrial prisoners should be issued only when absolutely necessary.

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