

Prisoners' Rights in India: A Human Rights Perspective

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Abstract

The most significant document pertaining to prisoners' rights are the Standard Minimum Rules for the Treatment of Prisoners (presently titled as Nelson Mandela Rules). As far as prisoners' rights in India are concerned, the Constitution does not explicitly mention about their rights, but the judiciary has been instrumental in protecting the rights of prisoners by giving a liberal interpretation to Article 21 of the Constitution to include their rights within the ambit of the provision. The Model Prison Manual, 2016 and Model Prisons and Correctional Services Act, 2023 have been drafted by the government to give impetus to prison reforms and effectively implement the Nelson Mandela Rules in India. Despite the dominance of India in the economic and democratic front globally, it is fraught with an ineffective adjudication process in its criminal justice system resulting in denial of rights to the accused. The paper delves into the legal framework that governs human rights of prisoner vis-à-vis under trial prisoners in jails along with the predicaments of undertrials. It analyses the secondary data sources that include Prison Statistics Report- 2022, newspaper reports as well as information from digital platforms like the National Judicial Data Grid (NJDG) and National Prison Portal (NPP) to augment the study. Furthermore, from data collected through the Right to Information Act, 2005 it seeks to provide an insight into the lacunae in the Indian criminal justice system as it fails to provide respite to under trials, with respect to grant of bail sans conviction by a court of law.

Keywords: Article 21 of Constitution, National Crime Records Bureau, Under trials, Universal Declaration of Human Rights, 1948, UN Minimum Standard Rules for Treatment of Prisoners

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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 Rolihlahla Mandela¹

1. Introduction

The principle of Human Rights was first given prominence in the Universal Declaration of Human Rights, 1948 (UDHR) which is regarded as the magna carta of human rights. Article 3 of UDHR guarantees to every individual the right to life, liberty and security.² This principle has been recapitulated in several international conventions and resolutions. Article 10(1) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) requires that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”³ To pursue the objectives enshrined in the UDHR and ICCPR, the founding fathers of the Indian Constitution made sure that the principles embodied therein formed an indispensable part of our Constitution. Despite the same, the Constitution of India is bereft of provisions on the subject of prisoner’s rights. It only embodies certain safeguards outlining rights of arrested and detained persons under Article 20 and 22 of the Constitution. India complies and follows the United Nations Standard Minimum Rules for the Treatment of Prisoners; known as ‘The Nelson Mandela Rules’, which represent the minimum standards for prison administration focusing on human rights aspect of prisoners.⁴ The Ministry of Home Affairs was instrumental in circulating the Nelson Mandela Rules to all States and UTs advising them to ensure that the rules are translated in local language and the prison officials are conversant

¹ United Nations Organization, https://www.un.org/en/events/mandeladay/mandela_rules.shtml (last visited Mar.10, 2023).

² United Nations, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited on May 16, 2025)

³ UN General Assembly, International Covenant on Civil and Political Rights, GA Res 2200A (XXI) of 16 December 1966.

⁴ The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Rules), A/RES/70/175, General Assembly, United Nations, adopted on 17 December 2015.

with the guidance contained therein to ensure that officials follow them while dealing with prison inmates.⁵ The subject of 'Prisons' and 'persons detained therein' are State subjects outlined in Entry 4 of List II of Seventh Schedule to the Constitution of India. Therefore, the state governments have been conferred with the responsibility of administration and management of their respective prisons.

Furthermore, the judiciary has been instrumental in providing wide interpretation to Article 21 of the Constitution to guarantee a number of rights to the prisoners, which include right to speedy trial, right to legal aid and right to fair trial. The subject of prisoner's rights and their treatment has been encompassed in the Prison's Act, 1894⁶ and the Prison Manuals drafted by various state governments in India. The 1894 Act encompasses provisions for the management of prisons with respect to food, accommodation, health, employment, welfare, discipline and segregation of prisoners. Nevertheless, it failed to address the grave problems underlying prisons in the present context. The prisons in India were regulated by colonial-era policies that delineate prisoners on the basis of social status and delegate prison work considering their caste identities. It lacked any provision on reformation or rehabilitation of prisoners. Therefore, to address the lacuna, the government constituted various committees to study the problems underlying prisons in India. One of most prominent Committee set up was the All-India Jail Committee or Mulla Committee in 1980.⁷ The Committee made several recommendations, including improving prison conditions and administration, separation of juvenile from adult offenders, speedy disposal of criminal cases among others, which were revolutionary in character that provided an impetus to drafting of various Prison

⁵ Government of India Ministry of Home Affairs Rajya Sabha Unstarred Question No. 3257, <https://sansad.in/getFile/annex/253/AU3257.pdf?source=pqars#:~:text=The%20Ministry%20of%20Home%20Affairs%20had%20circulated%20the%20Nelson%20Mandela,officials%20concerned%20in%20dealing%20with> (last visited on Apr.11, 2025)

⁶ The Prison's Act, 1894, Act No. IX of 1894.

⁷ Ministry of Home Affairs, Government of India, https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/PRV1_1TO40.pdf (last visited Feb.10, 2023).

Manuals in India.⁸ The government prepared the Model Prison Manual 2003 (MPM) and thereafter Model Prison Manual 2016 for better management of prison administration in India.⁹ This Prison Manual is a significant document pertaining to a gamut of issues including management of prisons, health and welfare of prisoners, education and vocational training of prisoners. Quite recently, the Ministry of Home Affairs with the objective of shifting the focus from deterrence to reform and rehabilitation of prisoners within the ambit of prison law concluded the preparation of Model Prisons and Correctional Services Act, 2023¹⁰, repealing the previous 1894 Prison's Act. The 2023 Act intends to plug the loopholes present in the existing prison laws by bringing in the usage of technology in management of prisons. It makes provisions for grant of parole, furlough, and remission and introduces special provisions for women and transgender inmates.¹¹ It lays emphasis on reducing the high number of undertrials through better implementation of bail provisions.

The above legislative provisions on Prison reforms have been drafted to comply with the pre-requisites of the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 (Standard Minimum Rules).¹² The Standard Minimum Rules are significant as they focus on promoting humane conditions of imprisonment and acknowledge that the prisoner must be treated with respect just like other human beings.¹³ Pertinently, the Rules do not constitute a binding treaty but they represent basic standards to

⁸ Ministry of Home Affairs, <https://www.mha.gov.in/sites/default/files/Mulla%20Committee%20implementation%20of%20recommendations%20-Vol%20I.pdf> (last visited Mar. 15, 2025)

⁹ Model Prison Manual for the Superintendence and Management of Prisons in India, prepared by Bureau of Police Research and Development, Ministry of Affairs, Government of India, New Delhi 2003, *available at* www.mha.gov.in (last visited on Jul.15, 2023)

¹⁰ Khadija Khan, "What is the Model Prisons Act announced by the MHA", The Indian Express, (Jul.17, 2023, New Delhi) *available at*: <https://indianexpress.com/article/explained/explained-law/model-prisons-act-mha-8630225/>

¹¹ *Id.*

¹² UN Economic and Social Council, *Standard Minimum Rules for Treatment of Prisoners*, ECOSOC Res. 2076 (LXII) (May 13, 1977).

¹³ United Nations Organization, <http://www.un.org> (last visited on Jun. 30, 2023).

be observed by nations in pursuing prison administration. India has been instrumental in following the Nelson Mandela Rules and the government has demonstrated its eagerness by incorporating the same in the Model Prison Manuals 2016 and Model Prison Act, 2023. Regulation of prison conditions and administration is within the dominion of domestic laws, because local customs and cultural traditions play a predominant role in determining what acts are permissible in a particular society and what acts are not. However, there are certain issues that are devoid of any interpretation, and it is against this lack of restraint and excesses committed against individuals where international community has to step in; in particular which led to drafting of United Nations Standard Minimum Rules for the Treatment of Prisoners.¹⁴

In India, undertrials constitute a huge number of prison populations in jails, whose rights of liberty stand infringed due to the procedural impediments smothering the system. The police have the authority to keep an accused in custody for 24 hours and thereafter the judiciary must authorize any further detention.¹⁵ However, the accused are kept in custody for unreasonably long periods causing severe physical and psychological trauma. The reasons for such unnecessary detention of under trials include random and haphazard arrests by police, delay in commencement of trial, ignorance of legal rights, hesitation of the lower judiciary to grant bail and failure to provide surety by the accused. Such large population of undertrials has led to overcrowding in prisons that undermines the ability of prison administration in securing basic needs of healthcare, food, and accommodation to the prisoners,¹⁶ as well as hampers their basic right to adequate standards of living and highest attainable standards of physical and mental health.¹⁷ The newly introduced criminal laws comprising the 'Bhartiya Nyaya

¹⁴ Nigel S Rodley with Matt Polard, *"The Treatment of Prisoners under International Law"* 3 Oxford University Press, Oxford (2011)

¹⁵ The Constitution of India, 1950 Art. 22; The Code of Criminal Procedure, 1973 S.167.

¹⁶ Ministry Of Home Affairs, Government of India, https://www.mha.gov.in/sites/default/files/202209/OvercrowdingPrison09052011%5B1%5D_0.pdf (last visited on Sep.10, 2024)

¹⁷ *Id*

Sanhita 2023'(BNS), 'Bhartiya Nagarik Suraksha Sanhita', 2023 (BNSS) and 'Bharatiya Sakshya Adhiniyam, 2023'(BSA) became effective from July 1, 2024 with the objective of revamping the criminal justice system. According to the Ministry of Home Affairs, Government of India, the new criminal laws will provide an impetus in reducing overcrowding of prisons due to the implementation of Bhartiya Nagarik Suraksha Sanhita (BNSS), earlier referred to as Code of Criminal Procedure (CrPC).¹⁸

However, only time will tell whether enactment of the legislation will mitigate the rigors of incarceration that undertrials are subjected to. Moreover, it is crucial that besides legislation, the judiciary should play a pivotal role in ensuring that prisoners are not subjected to perils of a slow-paced trial administered by the Courts. The Mulla Committee constituted by the government of India to recommend jail reforms was of the opinion that prisons are the last link in the criminal justice administration. Unless the earlier three links i.e. the legislature, police and the judiciary are made to act in harmony with the last link, the complexion of jails will not change.¹⁹

2. Law and Policy Related to Prisoners

There are various international instruments that encompass provisions for the rights and treatment of prisoners. These include the Universal Declaration of Human Rights, 1948; the International Covenant on Civil and Political Rights, 1966; the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment²⁰ and the United Nations Basic

¹⁸ The Economic Times, *available at*: <https://economictimes.indiatimes.com/news/india/new-criminal-laws-may-help-reduce-jail-overcrowding/articleshow/111495882.cms?from=mdr> (last visited on Sept.12, 2024)

¹⁹ Government of India, "Report of the All-India Committee on Jail Reforms" (Ministry of Home Affairs, 1980-83), <https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/Mulla%20Committee%20implementation%20of%20recommendations%20-Vol%20I.pdf> (last visited on May. 20, 2023).

²⁰ The Convention was adopted by member states of Council of Europe on 26th November 1986 and came into force on 1st March 2002. The Convention establishes the European Committee, which is empowered to visit all places where persons are deprived of their liberty by a public authority.

Principles for the Treatment of Prisoners.²¹ These conventions articulate and emphasize upon the rights of prisoners guaranteed to them on account of their inherent dignity and value as human beings. Particularly, Article 5 of Universal Declaration of Human Rights, 1948 (UDHR) states, 'no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. This provision protects every individual including a prisoner from any form of brutal and harsh treatment. Further, Article 11 of UDHR, 1948 states, "Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence". This provision is significant in the context of under trial prisoners who ought to be presumed innocent until they are convicted by a court of law.

Article 9 of International Covenant on Civil and Political Rights, 1966 (ICCPR) states, 'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law'. This provision assumes importance in order to prevent illegal detention and further safeguards life and liberty of an individual. Article 9(3) of ICCPR states that, 'Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release'. Article 10 of International Covenant on Civil and Political Rights, 1966 states, 'Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons'. Article 10 thus explicitly states that under trial prisoners should be kept separate from convicted prisoners in jail. Significantly, the conventions assert that human rights of prisoners should be protected and cannot be denied merely due to the factum of incarceration. The provisions embodied in the ICCPR and ICESCR and its Optional Protocol are applicable to States who are a party to the Covenant and since India has ratified the Covenant in 1979, it is

²¹ UN General Assembly, Basic Principles for the Treatment of Prisoners, GA Res 45/111 GAOR, UN Doc A/Res/45/111 (March 28, 1991).

therefore incumbent upon it to incorporate these provisions into its domestic legal framework. Consequent to the ratification, it has framed legislations on the subject of rights of prisoners to meet the objectives outlined in the Conventions.

Prisons in India were regulated under the Prisons Act of 1894²², which is a colonial era law. Despite draconian provisions of the law, India was magnanimous in implementing human rights of prisoners. This can be attributed to the growing significance and articulation of human rights in the historic document of Universal Declaration of Human Rights in 1948 (UDHR). India incorporated various principles enunciated in the UDHR in its Constitution under the chapter of Fundamental Rights. These principles were further accentuated in the preamble to the Constitution, which seeks to affirm the dignity of an individual. The power to make laws on subject of Prison and Prison management has been endowed upon the state governments. In addition, the Ministry of Home Affairs (MHA) formulates advisories and guidelines to be complied with by the States and Union Territories on matters pertaining to prison management.²³ The MHA was instrumental in passing the Model Prisons and Correctional Services Act, 2023 with the objective of reforming and rehabilitating prisoners and amending the Prisons Act, 1894 with respect to management of prisons. Despite the existence of MPM, 2016 and the passage of the Model Prisons and Correctional Services Act, 2023, there is discrepancy and divergence in several aspects relating to prisoner's rights in various State Prison Manuals formulated by the state governments.

Under the Constitution, Article 21 forms the basis of right to personal freedom as it embodies a significant guarantee against deprivation of liberty except according to procedure established by law. Article 39A of the Constitution which forms a part of Directive Principle of State Policy directs the State to provide 'free legal aid and ensure that citizens get equal access to justice'. The Constitution of India lacks any particular provision on the subject of prisoner's

²² The Prison's Act 1894 is an antiquated pre-independence era law that seeks to govern the management and administration of prisons.

²³ Ministry of Home Affairs, Government of India, https://www.mha.gov.in/en/divisionofmha/Women_Safety_Division/prison-reforms (last visited on Aug. 15, 2023).

rights but the judiciary has been instrumental in liberal interpretation of provisions on Fundamental Rights to bring the rights of prisoners within its ambit.

3. Law and Policy Related to Undertrials

There was no defined law on protecting rights of undertrials in India until the enactment of the Code of Criminal Procedure (CrPC) in 1973, which contained provisions espousing the rights of undertrials. The CrPC comprised of Section 436, which outlined the maximum period of detention in police custody of an undertrial prisoner. It directed the police officer to release an indigent person on personal bond seeking surety.²⁴ It further stated that if a prisoner failed to secure bail within a stipulated period of seven days from the date of his arrest, the court shall presume such person as indigent and therefore provide relief.²⁵ Section 436A of the Criminal Procedure Code (CrPC) was monumental in giving effect to the rights of an undertrial prisoner in seeking bail by specifying the maximum detention period of an undertrial prisoner.²⁶ It provided that if an accused person during pendency of investigation, inquiry or trial (other than an accused charged with an offence punishable with death) has undergone detention for more than half the maximum period of imprisonment that was prescribed for that offence, then they acquire the right to be released on providing a personal bond.²⁷ With the coming into force of the new criminal laws on 1st July 2024, Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) constitutes a corresponding provision to Section 436A of Criminal Procedure Code, which thereby stands, replaced.

Section 479 (1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), provides that:

Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law

²⁴ The Code of Criminal Procedure, 1973 Explanation to the proviso to S.436.

²⁵ The Code of Criminal Procedure, 1973 Explanation to the proviso to S.436.

²⁶ Inserted w. e. f. June 23, 2005, by virtue of an Ordinance duly promulgated by the President of India.

²⁷ The Code of Criminal Procedure, 1973, S.436A, No.2, Acts of Parliament, 1973 (India)

(not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail. A Proviso has been added under Section 479 (1) of the BNSS, which states that 'Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law.

The new provision of Section 479 BNSS gives respite to first time offenders and also obligates the Superintendent of Prisons where the accused has been detained to make an application to the court for securing bail of such accused person.²⁸ The Supreme Court has clarified that this provision would be applicable retrospectively to undertrials across the country.²⁹ Undoubtedly, these provisions are a blessing for the undertrial prisoners languishing in jails since prolonged periods. Under Section 26 of Model Prisons and Correctional Services Act, 2003 the prisoners are required to be segregated under various heads i.e., civil and criminal prisoners; Convicted and undertrial prisoners; Detenues; Habitual Offenders etc. The prisoners thus classified as per these categories must be confined in separate cells so that they are kept separated from hardened criminals. This provision is imperative to prevent undertrials from coming in contact with heinous crime offenders and for ensuring their safety and security.

The 'India Justice Report 2025' that is prepared in collaboration with several civil society organizations among others is tasked with the responsibility of tracking the performance of various states in India on four domains: police, prisons, legal aid and judiciary. As per the data that has been examined till December 2022, the extent

²⁸The Bharatiya Nagarik Suraksha Sanhita, 2023 Section 479(3) BNSS, No. 46, Acts of Parliament, 2023 (India).

²⁹ Re-Inhuman Conditions In 1382 Prisons v. Director General of Prisons and Correctional Services and Ors.

of overcrowding in prisons rose to nearly 50% in the last decade. It highlighted that most prisons are functioning beyond their capacity and in dozen cases more than four times its capacity and the national average of overcrowding in prisons accounted to 131%.³⁰ Due to huge pendency of cases, a large number of undertrials continue to remain in prison. During their detention period, the undertrials come in contact with serious criminal offenders and thereby get influenced into the crime world.³¹ In addition, such prolonged detention infringes on their right to liberty and fair trial,³² which is a sine qua non of a democratic state. Unfortunately, the statutory provisions drafted to provide remedy to the aggrieved prisoners are not implemented in practice. There is a sense of anguish amongst the prisoners for being deprived of rights that are guaranteed to them under the laws. Certain rights that include being permitted to speak to the Magistrate when presented in the court are denied because they are kept behind the courtroom. Further, some of the prisoners are oblivious of their rights including the right to be represented by a lawyer.³³

As per a study conducted by Project-39A (National Law University, Delhi), Prayas-Tata Institute of Social Sciences and Azim Premji Foundation, less than 8% of undertrials have availed legal services that they were authorized between 2016-19.³⁴ The program was administered across eight prisons in the State of Maharashtra for the purposes of formulating a successful working model to give legal representation to the undertrials. The report is the outcome of a three-year program conducted by the National Law University and Tata Institute of Social Sciences supported by the Azim Premji

³⁰ India Justice Report, 2025, <https://indiajusticereport.org/> (last visited on 16 Apr., 2025)

³¹ Akshi Chawla, "The Burgeoning share of undertrial prisoners in India's jails", THE WIRE, Oct.5, 2022, <https://thewire.in/rights/indian-jails-undertrial-prisoners> (last visited on Aug. 28, 2023).

³² Eshabi Nadim Sayyed & Ansari Humaira Nisar Ahamed., "The Undertrial Prisoners in India", 6 IJLM 643-646 (2023)

³³ Sayyed, supra note 32, at 648

³⁴ Report on Legal Representation for Undertrials in Maharashtra, 2018-2021 <https://tiss.edu/view/7/projects/prayas/report-release-of-prayas-tiss-and-nlu-delhi-report/> ((last visited on Jul.19, 2023).

Foundation in collaboration with the Government of Maharashtra.³⁵ It was found that there were a number of challenges impeding legal representation and the most profound among them included lack of coordination among criminal justice institutions.³⁶ The report stated that there should be an extensive nationwide database for prisons, which can be accessed by various apparatus of justice delivery system including courts, prisons and legal service authorities. Such measures enable better discernment about the issues concerning undertrials as well as the status of their cases.³⁷

The Ministry of Home Affairs (MHA) recently launched a scheme titled 'Support to poor prisoners', for providing respite to poor prisoners; unable to pay the fine imposed on them and thereby incapable of securing bail due to financial issues.³⁸ Therefore, with the incentive of providing support to such prisoners, the Government vide its letter dated 19th June, 2023, communicated through its Home Secretary, the 'Guidelines and Standard Operating Procedure' of the Scheme to all the States in India.³⁹ Despite the promulgation of the scheme, the government in its Advisory No. 17013/20/2024-PR observed that many States/UTs have not availed the benefits earmarked under the scheme and expressed concern on the issue of overcrowding in prisons.⁴⁰

3.1 Problems Faced by Undertrials

3.1.1 Right to Bail

Power to grant bail is the discretion of the judge in a court of law. However, this power is not effectively exercised to meet the ends of justice. One of the cardinal reasons for keeping an accused behind bars is to ensure that he is present during trial and does not impede investigation. The higher courts are not stringent in granting the relief of bail to the accused but lower courts are apprehensive while

³⁵ *supra* note 34

³⁶ Report on Legal Representation for Undertrials in Maharashtra, 2018-2021

³⁷ Report on Legal Representation for Undertrials in Maharashtra, 2018-2021

³⁸ Ministry of Home Affairs, Government of India, https://www.mha.gov.in/sites/default/files/poorprisoners_20022024.pdf (last visited on Apr.14, 2025)

³⁹ *Id*

⁴⁰ *supra* note 38

granting bail. There are various reasons for the reluctance on the part of trial courts in granting bail. One reason why trial courts deny bail is that the investigation is still at a nascent stage. However, the higher courts have expressed their support in favor of granting bail with respect to offences that carry a punishment of less than seven years. Lower court judges apprehend that they may face grave repercussions for being too lenient while granting bail including impediments in their career or unpleasant remarks from higher courts.

The Chief Justice of India, D.Y. Chandrachud expressed grave concern on this issue and remarked that there is a feeling of apprehension and fear amongst district judges that is not discussed or talked about⁴¹. These judges are under the assumption that they would be targeted if they grant bail in heinous offences. Justice Chandrachud observed that this problem needs to be addressed else it would result in rendering trial courts toothless and higher courts dysfunctional because of a plethora of pending bail applications.⁴² The subordinate courts are under the control and supervision of High Court under Article 235 of the Constitution. As a consequence of this provision, the High Court has the authority to send a district judge on compulsory retirement or transfer them to another court. Therefore, a district judge granting bail may come under scrutiny of High Court and may attract adverse remarks from a High Court judge, which may be detrimental to his career. In India, the National Judicial Data Grid (NJDG) is a repository that serves as a tool to identify pendency of cases outlining the number of cases instituted, age wise pending and disposed cases in Supreme Court, High Courts and District Courts. It, however, fails to monitor and include data on grant and rejection of bail or remand.⁴³

Furthermore, even though bail is a matter of right mandated under the law, yet bail is not granted to a certain class of people

⁴¹ Umang Poddar, "Why are India's lower courts so reluctant to grant undertrials bail?" SCROLL IN, Dec. 25, 2022 <https://scroll.in/article/1038633/bail-is-the-rule-jail-an-exception-so-why-are-lower-courts-so-eager-to-lock-up-undertrials> ((last visited on Feb. 24, 2023)).

⁴² *Id.*

⁴³ NATIONAL JUDICIAL DATA GRID, <https://njdg.ecourts.gov.in/njdgnew/index.php?> (last visited on Jun. 30, 2024)

because they are poor and indigent persons. Aware of this lacuna in the law, Section 436 and Section 436A was inserted in the Code of Criminal Procedure. However, there was a callous implementation of this provision, which may be attributed to lack of awareness amongst the under-trial prisoners.⁴⁴ Furthermore, the trial court or State Legal Services Authority is not obligated under law to communicate to the undertrial about the rights that are bestowed upon him under this provision.⁴⁵ In the report by Centre for Research and Planning, Supreme Court of India, the number of accused persons as on 31 December 2023, who secured bail but still remain incarcerated stood at 24,879, because of their lack of ability to furnish bail bonds.⁴⁶ The report further highlights the measures necessary to address this predicament which includes modification or relaxation of bail conditions and avoiding of local surety and including measures to release accused persons on furnishing of cash surety or securing release after preparation of a socio-economic report of such prisoners.⁴⁷ To address this lacuna, MHA devised the 'Support for Poor Prisoners' scheme to provide financial assistance to those accused persons who remain behind bars despite the lapse of 7 days since the passage of the bail order or owing to their inability to pay fine⁴⁸. Several states have commenced the process of identifying prisoners that are entitled to avail the benefits outlined under the scheme.⁴⁹

Even though bail constitutes a discretionary power of the court and fixing bail bonds is individual court's volition, but it is important that trial courts avoid imposing bail conditions in a routine manner. Several factors like the socio-economic conditions

⁴⁴ Madhurima Dhanuka, "*Undertrial prisoners and the criminal justice system*", 2 Supreme Court Cases 25-32 (2010).

⁴⁵ *Id.*

⁴⁶ Report on Prisons in India, Mapping Prison Manuals and Measures for Reformation and Decongestion, Centre for Research & Planning, Supreme Court of India (2024)

⁴⁷ *Id.*

⁴⁸ Guidelines and Standard Operating Procedure for implementation of the Scheme for support to poor prisoners, https://www.mha.gov.in/sites/default/files/202412/GuidelinesSupportPoorPrisonersScheme_20122024.pdf (last visited on Apr.10, 2025)

⁴⁹ *Id.*

of the accused, gravity of the offence, chances of the accused fleeing or tampering evidence must be considered by the trial courts while deciding bail applications. Lately, Supreme Court has permitted grant of bail even under the draconian Narcotics Drugs and Psychotropic Substances (NDPS) Act, 1985⁵⁰ as well as under the Unlawful Activities (Prevention) Act, 1967⁵¹ if there was an undue delay in completion of trial. The judgments are significant because the court considered the time spent as an undertrial prisoner a crucial factor in grant of bail. These legislations contain stringent bail norms making it almost impossible to get bail, but the Apex court vehemently asserted that gross delay in trial violates right to life and liberty guaranteed under Article 21 of the Constitution, therefore necessitating grant of bail.⁵²

3.1.2 Overcrowding

Another issue plaguing the undertrials is overcrowded prisons, which can be attributed to the languid and lethargic justice delivery system and state apathy.⁵³ The concerned persons in jail are stigmatized with their voices often stifled and their entire lives being spent in dark prison cells. The Prison Statistics Reports of NCRB demonstrates the surge in undertrial prisoner population that stood at 68.5% in 2017 but rose to 75.8% in 2022.⁵⁴ To overcome the perils of overcrowding of prisons, the Supreme Court in *Re-Inhuman Conditions in 1382 Prisons*⁵⁵ directed the establishment of Under-trial Review Committee (UTRC) in 2015 instructing the collaboration of the National Legal Services Authority (NALSA) with the MHA to establish the UTRC that would be headed by the District & Sessions Judge in every district. As a result of the functioning of UTRC, there

⁵⁰ Mohd. Muslim v. State (NCT of Delhi), Special Leave Petition (Criminal) No. 915 of 2023.

⁵¹ K.A Najeeb v. Union of India [2021] 1 S.C.R. 443

⁵² *Id.*

⁵³ Sakib Lone, "The trials and tribulations of undertrial prisoners in India" (THE PROBE, Jul.15, 2022) <https://theprobe.in/investigations/the-trials-and-tribulations-of-undertrial-prisoners-in-india/> (last visited on Aug. 16, 2023).

⁵⁴ NATIONAL CRIME RECORDS BUREAU, <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiye-arwise2022/1701613297PSI2022ason01122023.pdf> (last visited on Apr. 2, 2024).

⁵⁵ Writ Petition (Civil) No. 406/2013, dated 24 April 2015, Supreme Court of India.

has been a steady decline in congestion in prisons with the rise in the number of release of undertrials.⁵⁶ The government also launched the Azadi Ka Amrit Mahotsav, a campaign titled Release@75 between 16 July to 13 August 2022 to address the problem of overcrowding in prisons and to give effect to the Supreme Court directions in *Re-Inhuman Conditions in 1382*.⁵⁷ There were 24,789 undertrial prisoners released out of 47,618 recommended names leading to a surge from 3% (12,478) in 2019 to 6.1% (35,480) in 2022 in the number of prisoners released.⁵⁸ The directions in *Re-Inhuman Conditions in 1382 Prisons*⁵⁹ to ensure that Section 436 of Code of Criminal Procedure⁶⁰ and 436A⁶¹ of Code of Criminal Procedure, 1973 are effectively implemented in the event of non release of prisoners unable to furnish bail bonds due to poverty, has been instrumental in augmenting the release of undertrials due to a rise in the number of UTRC meetings.

However, there remains a long way to go before we can rightfully assert that the issue of overcrowding has been effectively addressed. A recent RTI has revealed that against a total sanctioned strength of 10,026 prisoners in Tihar Jail, the number of prisoners lodged was at double capacity at 19,441 as on September 4, 2024.⁶² The RTI reply was made a part of Public Interest Litigation emphasizing on the lapses of the prison authorities.

3.1.3 Categorization of Prisoners

Another issue pertains to the classification of prisoners as prisons accommodate different categories of prisoners depending on the

⁵⁶ *supra* at 40

⁵⁷ A Campaign for the release of prisoners by the Under Trial Review Committees to commemorate the 75th Independence Day of India: A Report, NALSA available at: <<https://nalsa.gov.in/library/report-2/a-campaign-for-the-release-of-prisoners-by-the-under-trial-review-committees-to-commemorate-the-75th-independence-day-of-india-release-utrc-75>> (last visited Apr.24, 2024).

⁵⁸ *Id*

⁵⁹ *Re-Inhuman Conditions in 1382 Prisons* [2016] 1 S.C.R. 1090

⁶⁰ Corresponds to Bhartiya Nagarik Suraksha Sanhita, 2023, Section 478, No.46, Acts of Parliament, 2023 (India)

⁶¹ Corresponds to Bhartiya Nagarik Suraksha Sanhita, 2023, Section 479, No.46, Acts of Parliament, 2023 (India)

⁶² "Tihar Jails cramped at double capacity, reveals RTI", The Indian Express, May.14, 2025 New Delhi,

type of offence committed by them, which makes it imperative for categorizing prisoners. To give impetus to this provision and ensure they are placed in correct rehabilitation programs, Chapter XVI of the Model Prison Manual, 2016 provides that,

The starting point of all welfare programmes shall be the initial classification of the prisoner and the study of individual inmates. The welfare programme should include periodical review of progress and re-classification of prisoners, review of sentence and pre-mature release, planning for release, pre-release preparation and after-care...

The Nelson Mandela Rules under Rule 93 direct classification of prisoners on the basis of gender of the accused persons and provides for segregation of undertrial and convicted prisoners as well as civil prisoners and criminal offenders.

To bring about better administration of prisons, it is imperative that there is separation of various categories of prisoners. They should be segregated in the following categories: (i) under trials (ii) convicts (iii) women (iv) young offenders (v) detainee (vi) high security prisoners.⁶³ The under-trial persons ought to be kept separate from the convicts as the circumstances surrounding the arrest of both these categories of prisoners are different and keeping them in the same prison is likely to have an adverse effect on the mental wellbeing of the under trial who pending investigation may be innocent of the crime. In addition, the Model Prison Manual 2016 prohibits the classification on the basis of social status, caste and class. Despite the same, while analyzing the state prison legislations of various States in India, the influence of colonial provisions is conspicuous wherein the caste of the prisoner determines the nature of work allocated to him especially when it pertains to sanitary and conservancy work.⁶⁴ The same can be illustrated by looking at examples of States like Uttarakhand, Goa, Delhi, and Haryana that do not embody any provision pertaining to classification of prisoners on the basis of social status in their respective prison

⁶³ Bureau of Police Research and Development,
<https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf> (last visited on Apr. 4, 2023).

⁶⁴ *supra* note at 38

manuals, but there are certain other states that consider social status as a yardstick to classify prisoners resulting in certain prisoners enjoying more privileges in comparison to other prisoners. These include Andhra Pradesh Prison Rules, 1979 that classifies prisoners as Special and ordinary Under Trial Prisoner under its Rule 730⁶⁵; Uttar Pradesh Jail Manual, 2022 that classifies prisoners as superior and ordinary convicted criminal prisoner under its Rule 256⁶⁶. In a significant judgment titled *Sukanya Shantha v. Union of India*⁶⁷, the Supreme Court declared that, caste classification as mentioned in state prison manuals does not have a rational nexus with the object sought to be achieved by the classification i.e. running of prisons and reforming of inmates and caste-based prejudices are contrary to the principles enshrined in the Constitution.⁶⁸

In light of perpetuation of the caste based prejudices in prison, the MHA, Government of India issued an advisory No. V-17014/1/2024-PR addressed to the all the Principal Secretary (Home/Jail) of all States and UTs stating that some State Jail Manuals postulate caste based segregation of prisoners and use it as a parameter for assigning duties in the prison.⁶⁹ The Advisory stated that the Model Prison Manual 2016 strictly prohibits caste and class based discrimination and directed the states to abstain from such discriminatory provisions.⁷⁰

3.2 Statistical data on Undertrials

3.2.1. National Crime Records Bureau Data

The Prison Statistics in India, 2022 prepared by the National Crime Records Bureau outlines Statistical analysis on convicts & under-trial

⁶⁵ The Andhra Pradesh Prison Rules, 1979, Rule 730

⁶⁶ Uttar Pradesh Jail Manual, 2022, Rule 256

⁶⁷ *Sukanya Shantha v. Union of India*, 2024 INSC 753

⁶⁸ *supra* note 67

⁶⁹ Ministry of Home Affairs, https://www.mha.gov.in/sites/default/files/2024-09/AdvisoryDiscriminationPrisoners_05092024.pdf (last visited on 10th Apr. 2025)

⁷⁰ *Id*

prisoners kept in jails for various crimes under the Penal Code.⁷¹ The Statistics contain a comprehensive compilation of data on prisons and prisoners.

3.2.2. Overview of Prison Population

The Prison Statistics, 2022 state that as on 31st December 2022, out of the total 5,73,220 prisoners confined in various jails in the country, the number of convicted prisoners stand at 1,33,415.⁷² The undertrial inmates constitute a larger number at 4,34,302 and the detenues are 4,324. The number of under trial prisoners at the end of the year 2022 constituted roughly 75.8% of total prison population confined in various jails.⁷³ Also, the number of undertrial prisoners surged from 4,27,165 in 2021 to 4,34,302 in 2022, which is an increase by 1.7% during this period.

3.2.3. Distribution of Jail Type

The data highlights that as on 31st December 2022, district jails contained the maximum number of undertrial prisoners which stood at 2,26,386, followed by Central Jails that comprised of 1,55,528 undertrials and Sub Jails comprising of 42,652 undertrials.⁷⁴

3.2.4. State-Wise Undertrial Data

The State of Uttar Pradesh reported the highest number of undertrials that stood at (94,131) in its jails and Bihar and Maharashtra accounted for (57,537) and (32,883) undertrial prisoners respectively. These States hold 21.7%, 13.2% and 7.6% of total number of undertrials inmates in jails.⁷⁵ The above report is illustrative of the plight of under trials, which constitute a huge proportion in number vis-à-vis convicts lodged in various jails across the country.

⁷¹ National Crime Records Bureau,
<https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/1701613297PSI2022ason01122023.pdf> (last visited on Apr. 2, 2024).

⁷² *Id.*

⁷³ *supra* note 71

⁷⁴ National Crime Records Bureau,
<https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/1701613297PSI2022ason01122023.pdf> (last visited on Apr. 2, 2024).

⁷⁵ *Supra* note 74

3.2.5. Right to Information Data

In a bid to acquire further knowledge on the plight of undertrials, the author filed an RTI under Right to Information Act, 2005 (RTI) seeking information regarding the status of the number of undertrial prisoners / accused who are not convicted from Central Jail/District Jail at Tihar Jail, New Delhi which falls under the supervision of the Office of the Director General of Prisons. The details of the data are as mentioned on the next page in Figure 1.1:

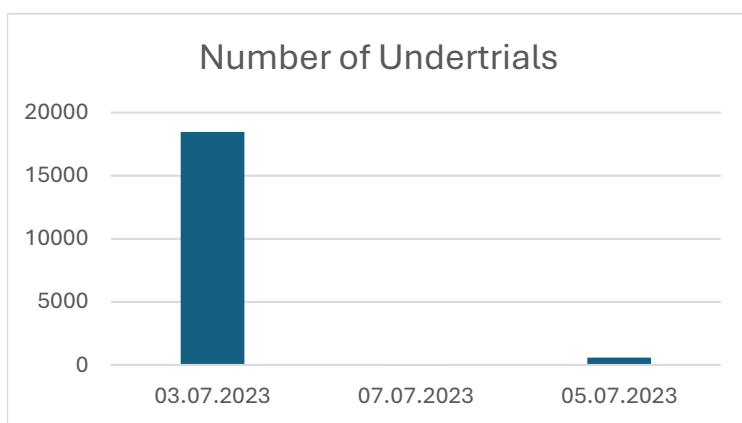


Figure 1.1

The Public Information Officer (PIO) replied to the RTI stating that as on 03.07.2023, there was total number of 18475 under trial prisoners lodged in various prisons in Delhi.⁷⁶ Further, there were 584 Undertrial prisoners (UTP) lodged in Central Jail No.7 of Tihar Jail, New Delhi as on 05.07.2023,⁷⁷ and 73 Undertrial prisoners (UTP) lodged in Central Jail No.2 of Tihar Jail, New Delhi.⁷⁸ These figures demonstrate a deplorable state with respect to the population of undertrials lodged in prisons in New Delhi and reflect laxity on behalf of the criminal administration in releasing undertrials on bail.

⁷⁶ The PIO replied vide letter no: F.10 (3476489)/ID-10884-F/CJ/Legal/2023/42771 dated 05.07.2023

⁷⁷ The Office of Superintendent of Prisons, Central Jail No.7: Tihar, New Delhi replied vide letter No. SCJ-7/AS (RTI) /2023/3077 dated 05.07.2023 to RTI application dated 23.06.2023 filed by author.

⁷⁸ The Office of Superintendent of Prisons, Central Jail No.2: Tihar, New Delhi replied vide letter No. F.2/ID-5264/AS (RTI) /CJ-2/2023/157 dated 07.07.2023.

It further highlights the issue of overcrowding in prisons with undertrials constituting a large number thereby raising concerns on right to liberty of individuals who have not been pronounced guilty by a court of law.

The author further sought information under RTI Act, 2005 from the Delhi State Legal Services Authority (DLSA) regarding the status of Undertrial Review Committees constituted as per the directive of Supreme Court in 2015. The PIO replied stating that as per the Supreme Court direction in the matter titled *Re-Inhuman Conditions in 1382 Prisons*,⁷⁹ the Undertrial Review Committee has been constituted in all eleven Districts of Delhi State Legal Services Authority.⁸⁰ The Under Trial Review Committee is active and Delhi Legal Services Authority, Central District, is conducting it every week till date.⁸¹ There were 16 meetings of Undertrial Review Committee (UTRC) held between January to July, 2023 and 63 number of prisoners released as per the information given by the Central District Legal Services authority to the Right to Information filed by the author.⁸²

In a move to decongest prisons, the Government of India decided to float a special scheme titled 'Support for Poor Prisoners'.⁸³ The scheme seeks to offer financial help to indigent persons who continue to be in jails as they are incapable of furnishing the bail amount due to poverty. The scheme further envisages technology driven solutions in order to guarantee that poor prisoners avail the benefits endowed upon them. The measures include strengthening

⁷⁹ *Re-Inhuman Conditions in 1382 Prisons*, WP © No. 406/2013

⁸⁰ The Delhi State Legal Services Authority replied to RTI application dated 10.07.2023 vide letter no: F.No.51/DLSA/Estt. /RTI (10.07.2023) /23-24/7139 dated 17.07.2023.

⁸¹ Reply by Central District Legal Services Authority, New Delhi in Ref. No. CDLSA/RTI/18/2023/1116 dated 24.08.2023 to RTI application filed by author.

⁸² Reply by Central District Legal Services Authority, New Delhi in Ref. No. CDLSA/RTI/18/2023/1116 dated 24.08.2023 to RTI application filed by author

⁸³ Govt to launch special scheme to provide financial support to poor prisoners: *MHA* " DECCAN HERALD, April 7, 2023, <https://www.deccanherald.com/national/govt-to-launch-special-scheme-to-provide-financial-support-to-poor-prisoners-mha-1207580.html> (last visited on Apr.15, 2023).

the e-prisons platform and District Legal Services Authority to facilitate availability of quality legal aid to the poor prisoners.⁸⁴

4. Role of Courts

The judiciary has tried to fill the lacuna brought about by the legislature in espousing the cause of prisoner's rights. The Supreme Court has played a pivotal role in preserving and protecting the dignity of prisoners in India, by widely interpreting Article 21 of the Constitution. The judgments pronounced by the court in protecting the dignity of prisoners paved the way for amending the existing laws on prison administration and gave inputs to various committees to make recommendations on the subject of human rights of prisoners. The judgment of the Supreme Court in *Sunil Batra v. Delhi Administration*⁸⁵ is of great relevance in this regard because the court was instrumental in affirming the fundamental rights of prisoners including right to life and personal liberty guaranteed under Article 21 of the Constitution and asserting that mere conviction does not reduce the status of a prisoner from a human being to that of a non-person bereft of rights. It further sought for prison reforms and provision of legal aid for inmates.⁸⁶ The Court further set the precedent of treating letters by prisoners as writ petitions to enable the inmates to get broader access to justice. The judgment of Supreme Court in *Hussainaara Khatoon vs. State of Bihar*⁸⁷ by Justice P.N Bhagwati who was considered a crusader for rights of undertrials laid the foundation for right to speedy trial. This ruling expanded the scope of Article 21 to include the indispensable right to speedy trial within its ambit with the suggestions for revamping of treatment of prisoners. It directed the release of undertrial prisoners who were kept detained due to lack of available legal services. Pertinently, in the judgment of *T.V. Vatheeswaran v. State of Tamil Nadu*,⁸⁸ the Court declared in explicit terms that Fundamental Rights embodied in Articles 14, 19 and 21 are available to all persons residing in India including the prisoners as well as

⁸⁴ *Id*

⁸⁵ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 409

⁸⁶ *Id*

⁸⁷ *Hussainaara Khatoon vs. State of Bihar*, 1979 AIR 1369

⁸⁸ *T.V. Vatheeswaran v. State of Tamil Nadu*, 1983 SCC (2) 68

freemen and they remain intact even in prison walls.⁸⁹ The Supreme Court contributed positively to improve the plight of undertrial prisoners in the judgment of *Bhim Singh v. Union of India*,⁹⁰. It directed state authorities to aid the release of undertrial prisoners who have served half of their sentence. Further, it imposed a deadline of two months directing district judges and prison officials to supervise the process.

The problem of large number of under trial population in jails has been a subject of discourse, which has intrigued the courts and garnered their attention for a long time. Recently, in furtherance of Supreme Court directive in *Re-Inhuman Conditions in 1382 Prisons*,⁹¹ Undertrial Review Committees (URC) were directed to be constituted in every district in India to review the cases of under trial prisoners in order to avert unnecessary lengthy detention. These Committees were directed to probe into factors hindering implementation of Section 436⁹² and Section 436A⁹³ of the Criminal Procedure Code with reference to delay in release of undertrials. The amendment to Section 436 of Cr.P.C. was made so that those who are unable to furnish bail bonds due to poverty are not subject to incarceration only because they are poor. Recently, in *Re Policy Strategy for Grant of Bail Suo Motu Writ Petition (Crl.) No. 4/2021 Bail bond* ⁹⁴ - The Supreme Court issued several directions to prevent delay in the release of prisoners once bail is granted. These are as stated below:

It is incumbent upon the court granting bail to furnish a soft copy of the bail order to the prisoner. It should be done through the Jail Superintendent. Thereafter, the Jail Superintendent is obligated to incorporate the date when bail is granted in the e-prisons software. In case of non-release of the accused within 7 days from the date of grant of bail, it is

⁸⁹ *Id*

⁹⁰ *Bhim Singh v. Union of India*, [W.P. (Criminal.) No. 310/2005]

⁹¹ *Re-Inhuman Conditions in 1382 Prisons*, Writ Petition (CIVIL) NO.406/2013

⁹² Criminal Procedure Code, 1973, Section 436, No.2, Acts of Parliament, 1973 (India)

⁹³ Criminal Procedure Code, 1973, Section 436A, No.2, Acts of Parliament, 1973 (India)

⁹⁴ *Re Policy Strategy for Grant of Bail, Suto Moto Writ Petition (Crl.) No. 4/2021*.

obligatory upon the Superintendent of Jail to inform the Secretary, District Legal Service Authority who may assign an advocate to assist the prisoner in securing his release. In certain situations, the Court may consider granting temporary bail for a defined period if the undertrial is inclined towards giving bail bond or surety on being released. The court is empowered to take suo motu cognizance in cases where bail bonds have not been furnished within one month from the date of grant of bail. It may make modifications or amendments with respect to bail conditions. The court suggested that there could be waiver of the necessity of local surety if there is a delay in releasing the accused due to failure in furnishing local surety⁹⁵.

*Ramamurthy v. State of Karnataka*⁹⁶ is a landmark judgment of Supreme Court on the subject of prisoner's rights. The court emphasized upon the imperative of formulating an All-India Jail Manual for ensuring homogeneity in prison regulations and highlighted the importance of rehabilitation over punishment. The judgment provided impetus to the passage of Model Prison Manual (MPM), 2003. However, in 2015 the Supreme Court directed the Ministry of Home Affairs to assess and review the MPM 2003 in view of the changed circumstances and advancement in technology.⁹⁷ This led to the passage of MPM, 2016, which included chapters on the 'Repatriation of Prisoners', 'Legal-aid' as well as 'Parole and Furlough' giving credence to prisoner's rights. The Supreme Court in suo motu case titled, *In Re: Policy Strategy for Grant of Bail vs Hameed*⁹⁸, affirmed that convicts when they become eligible must be considered for premature release by the appropriate governments and should not waste time in waiting for the convicts or their relatives to seek remission of sentence. The court further held,

Where there is a policy of the appropriate government laying down guidelines for consideration of the grant of premature release under Section 432 (suspension or remission of prison

⁹⁵ *Id.*

⁹⁶ *Ramamurthy v. State of Karnataka*, 1997 (1) SCALE 95

⁹⁷ *Re-Inhuman Conditions in 1382 Prisons*, Writ Petition (C) No. 406/2013, Order dated 24 April 2015

⁹⁸ *In Re: Policy Strategy for Grant of Bail vs Hameed*, Special Leave Petition (Crl.) No. 529 of 2021

sentence) of the Criminal Procedure Code or [the corresponding provision of] Section 473 of the Bharatiya Nagarik Suraksha Sanhita 2023,] it is the obligation of the appropriate government to consider cases of all convicts for grant of premature release as and when they become eligible for consideration in terms of the policy.⁹⁹

In addition, In Re: Application of Section 479 BNSS¹⁰⁰, the court vehemently applied Section 479 of BNSS to all undertrials retrospectively and permitted grant of bail to first time offenders who had served one-third of the maximum sentence. Section 479 BNSS is a respite for first time offenders who have served the prescribed detention period irrespective of whether their case was registered before 1st July, 2024 before BNSS came into force. Further, the Supreme Court addressed caste-based discrimination plaguing the prisons in India in the judgment of *Sukanya Shantha vs Union of India*¹⁰¹. It declared that provisions embodied in State Prison Manuals, which perpetuate caste-based segregations for labour assignments are violative of provisions of the Constitution and directed the States to amend their prison manuals to prohibit such discriminatory practices.

5. Measures to Secure Prisoners' Rights

The prisoners, like all human beings deserve to be treated with dignity, as mere incarceration should not be a ground for deprivation of their basic human rights. The State should further endeavor to protect and rehabilitate the prisoners in order to harmonize and integrate them into the mainstream society. These measures for reducing prisoner woes are imperative to strengthen the nature of India's democratic state.

The problem of increase in population of undertrials has been persisting in most states in India. Even though there have been certain amendments in the criminal laws to avert unnecessary detention of prisoners, yet most of these provisions are not

⁹⁹ In Re: Policy Strategy for Grant of Bail vs Hameed, Special Leave Petition (Crl.) No. 529 of 2021

¹⁰⁰ In Re: Inhuman Conditions in 1382 Prisons (Order dated Aug.23, 2024)

¹⁰¹ Sukanya Shantha v. Union of India, [2024] 10 S.C.R. 493

implemented in practice resulting in large number of under trials languishing in jails. The entire justice delivery apparatus needs an overhaul including prosecution, police, prison administration and courts. At the outset, three important issues need to be addressed. Firstly, lack of quality legal aid services provided to the undertrial prisoner needs to be reviewed. Most of the lawyers provided through these legal aid services by the state are whimsical while handling the cases at the bail or trial stage.¹⁰² They fail to appear before the court on the date of hearing or avoid communicating properly with their client. Such laxity can be attributed to the low honorarium paid to the lawyers by the state. Secondly, the courts have failed to implement the provisions under criminal laws that governs grant of bail to undertrials. Despite the existence of these provisions, the lower courts are reluctant to grant relief depriving the under-trial prisoners of their basic fundamental right to freedom. Thirdly, the courts take a long time to complete the trial process because of paucity of judges resulting in large number of prisoners remaining behind bars for interminable periods. If we want to reduce pendency of cases, we have to increase the judge population and improve the court infrastructure. These measures have to be accompanied by decriminalizing minor offences to avoid jails being filled with offenders of minor crime who are unable to furnish bail bond or surety. The condition of prisoners is such that they are unable to furnish surety as prescribed by the courts, as a result of which they remain incarcerated for a period longer than the period of punishment prescribed for the offence. To ensure justice and well being for under-trial prisoners, it is necessary to effectively implement various prison laws drafted for the welfare of the prisoners. The effective implementation of any law depends on the efficient discharge of duties by, and coordination amongst all stakeholders including the police, the judiciary, the NGO's and the government. Efforts must be made to eradicate corruption that permeates all levels of the criminal process. It is vital to ensure segregation of convicted criminals from the unconvicted prisoners. Further, the process of admission of an under trial in jail should not be similar/ same to the one outlined for a convicted prisoner as both

¹⁰² Vijay Raghavan, "Undertrial Prisoners in India: Long Wait for Justice", 51 Economic and Political Weekly, 17-19 (2016)

categories of prisoners cannot be treated on the same footing. Provision of temporary bail must be introduced to release accused persons on medical grounds or for attending a family function.¹⁰³ The privilege of temporary bail provides the UTPs and convicts who are released temporarily with the opportunity to arrange sureties and thereby fulfill the bail conditions.¹⁰⁴

One of the primary reasons that prisoners are unable to get access to justice is their lack of knowledge of the case status in which they have been convicted or accused. Technology has been pivotal in facilitating access to justice for prisoners due to introduction of facilities like e-filing and video conferencing. In addition, installation of touchscreen kiosks inside the premises of the prison assists the prisoners by entering unique identification number through which they can get access to information like case details, next date of hearing, period of custody, grant of remission etc and similar other information deemed necessary by the prison administration. Several states have taken steps to include touchscreen kiosks by making the necessary changes in the prison statutes.¹⁰⁵ The Model Prison Act, 2023 introduced the provision of electronic monitoring technology that includes tracking location of the prisoner in case of prison leaves. Pursuant to this legislation, in August 2023, in a move to reduce overcrowding in prisons, the State of Odisha proposed to the Government the inclusion of measures that involve usage of tamper proof electronic tracker to be used on undertrials who are offenders of non-heinous crimes.¹⁰⁶ However, the utility of location tracking technology in India is still at an elementary stage in India. Furthermore, introduction of e-Prisons module, an application developed by the National Informatics Centre (NIC) has been pivotal in digitalization of data on prisons in India and depicts the

¹⁰³ Union of India, C.B.N. v. Devram, M.Cr.C. No. 9664 of 2015, dated 30 October 2015, High Court of Madhya Pradesh

¹⁰⁴ In Re Policy Strategy for Grant of Bail, SMW (CrI.) No. 4 of 2021,

¹⁰⁵ Rule 1191, Odisha Model Jail Manual 2020, Rule 247, the Bihar Jail Manual, 2012.

¹⁰⁶ As per information received from Directorate of Prisons and Correctional Services, Odisha. See also Indian Express, 'Why Odisha wants to attach tracking devices on undertrial prisoners', dated 6 September, 2023 <https://indianexpress.com/article/explained/explained-law/odisha-tracking-undertrial-prisoners-8927148/?> (Accessed on 20 Jul, 2024).

State-wise number of prisoner's detained and provides details of the number of prisoners admitted and released from jail.¹⁰⁷

6. Conclusion

Prisons should not be considered as institutions that instill fear among its inmates, but a place where the prisoners are given an opportunity for reformation and correction. The transformation of modern penology advocating reformation rather than retribution has changed the manner in which prisoners are viewed, focusing more on basic human rights of prisoners spurring their rehabilitation and reintegration into the society. It has also brought the issue of congestion in prisons due to the large number of undertrials to the forefront.

State prison legislations that perpetuate caste-based prejudices by using terminologies that tend to lower the dignity of prisoners as human beings must be revised. The State should take steps to ensure adequate representation of prisoners belonging to marginalized groups by increasing the strength and representation of lawyers in the panel and revamping the legal aid institutions. District courts must be encouraged to use video conferencing and court technology to enable speedy trial.

In India, 75 percent of prison inmates are undertrials. They have not been convicted of the alleged crime that sent them to jail.¹⁰⁸ We have 3.5 crore pending criminal cases arising from the 5,333 crimes identified in our myriad laws.¹⁰⁹ It is common knowledge that a well functioning criminal justice system that caters to protecting the dignity of the prisons and prisoners is a *sine qua non* for the healthy functioning of a democracy. The Mandela Rules encompassing prisoner's rights is not a legally enforceable document, but they constitute an array of binding norms followed by United Nations member states. They underline minimum standards to be observed by nations for treatment of prisoners across the globe. India has more

¹⁰⁷ National Prison Information Portal, as on 21 October, 2024, <<https://eprisons.nic.in/NPIP/public/Home>> (accessed on 30th Oct. 2024).

¹⁰⁸ Rohini Nilekani & Manish Sabharwal, "Trust and Punishment" The Indian Express, March 19, 2025

¹⁰⁹ supra note 108

or less made efforts to incorporate these norms into its domestic laws in order to protect human rights that are vulnerable behind bars.

Furthermore, despite various measures taken by the executive and the judiciary, there has been no significant improvement in the condition of prisoners. There is rampant caste-based discrimination meted out in terms of work allocated in prisons under various State Prison Manuals. The undertrials continue to remain incarcerated for long periods without any respite from the concerned authorities. There has been a growing concern on the issue that if after spending so many years behind bars, the under trial is finally acquitted, then how will the State restore back the number of years spent by the under trial in custody. Such apathy on behalf of the State amounts to sheer violation of right to life and liberty guaranteed under the Constitution. It also erodes the confidence of the public in the criminal justice system and undermines their faith in the judiciary. There is a compelling need to review and revamp the entire criminal justice system, which can be achieved by way of continuous and effective co-ordination amongst the various agencies including the police and prosecution involved in the criminal justice dispensation system and increased funding for prison administration by the State. It is significant that States effectively implement the MHA scheme that is designed to help eligible poor prisoners unable to furnish bail bonds and the same could be achieved through digitization of the process, which will enable prevention of delay in communication.