



# Impact Of The BNSS On Undertrial Prisoners: From Incarceration To Justice

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## Abstract

The concept of justice is inextricably linked to the timely administration of the law. An undertrial prisoner is an individual who is in custody while awaiting trial or the conclusion of legal proceedings against them. This category includes those who have not yet been convicted of a crime and are held in judicial custody during the legal process. However, for many undertrial prisoners, justice remains elusive as they face prolonged detention and limited access to a fair trial. Because different groups have objectively different social ideals and social behaviours, the poorest and least fortunate members of society typically pay a disproportionate part of the socioeconomic consequences of crime. Effective implementation will require strengthening judicial infrastructure, enhancing digital integration, and ensuring strict accountability among law enforcement agencies. This research paper delves into the multifaceted challenges encountered by undertrial prisoners and the new laws of the Bhartiya Nagarik Suraksha Sanhita 2023, which aimed at expediting justice, improving bail provisions, and ensuring fair treatment of undertrial prisoners. According to NCRB (National Crime Report Bureau), over the last 10 years, the number of undertrials in jails has risen constantly and peaked in 2021. Due to these undertried prisoners, it has created many concerns, such as resourceless prisoners, overcrowding, and violation of human rights.

**Key words**

Undertrial Prisoners, Overcrowding, Judicial Delay, Custodial Assault

**Introduction**

As rightly said in the case of *Satendra Kumar V CBI*<sup>1</sup> “*Bail is not Jail*”. Undertrial prisoners form the majority of the prison population in India. It has been observed that the majority of the undertrials who suffer from unnecessary detention are illiterate, poor, and belong to socio-economically backward sections of society. Unfortunately, there are still a lot of inmates awaiting trial in our Prisons. Many of them are law-abiding innocent people who are anxiously awaiting their trial date, and some of them are willing to confess to their crimes and take their punishment.

Around 2/3rd of prisoners languishing in Indian jails are undertrials<sup>2</sup>. According to the National Crime Records Bureau (NCRB)<sup>3</sup> Prison Statistics India 2022 report<sup>4</sup>, out of the 5,73,220 total incarcerated prisoners, 4,34,302 (75.8% of the total prison population) were undertrials. Out of the 23,772 women prisoners, 18,146 (76.33% of the total women prisoners) are undertrials. 8.6% of undertrials have been in prison for over three years (long-term undertrials). According to the third India Justice Report (IJR)<sup>5</sup>, released in 2021, three out of four of the total prison population in India were undertrials. This is a rise of eight percentage points since 2019, indicating a concerning trend. The occupancy rate in prisons across India also hit a decade-high, going up by 12 percentage points in 2021.

**BNSS Laws On Undertrial Prisoners**

The phrase "justice denied is justice delayed" reflects the most significant component of every legal system and law enforcement apparatus. This aspect has been considered in the new criminal statutes. This is demonstrated by the introduction of new timetables for the procedures to be followed in order to guarantee prompt justice and to enhance the accountability of those involved. The Criminal Procedure Code (CrPC) has been replaced by the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which also proposes modifications to criminal justice practices. In order to clarify the crucial distinctions between bail with and without surety, the Bharatiya Naya Suraksha Sanhita, or BNSS, made an attempt. In accordance with these revised interpretations, the chapter's following clauses have also undergone some changes. Even with the definition, there is still some confusion around the proper usage of the terms bail and surety because the code seems to have retained some of the wording from the previous CRPC. For instance, Section 482(2) distinguishes between "release on bail" and "release on bond without surety."

<sup>1</sup> M. M. Sundresh, *Satender Kumar Antil vs Central Bureau of Investigation*, 2022 INSC 690

<sup>2</sup> Ayushi Priyadarshini & Madhurika Durge, *UNDERTRIAL PRISONERS IN INDIA*, VI NLIU LAW REVIEW 281.

<sup>3</sup> National Crime Records Bureau, *Cyber Crime Awareness*, <https://cytrain.ncrb.gov.in/staticpage/r0.php> (last visited Nov. 24, 2024)

<sup>4</sup> National Crime Records Bureau, *Crime in India: Provisional Statistics, 2022*, <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyarwise2022/1701613297PSI2022ason01122023.pdf> (last visited Nov. 24, 2024).

<sup>5</sup> Tata Trusts, *India Justice Report 2022*, <https://indiajusticereport.org/view/justice-index/2022> (last visited Nov. 26, 2024).

Although bail has always been understood to refer to release with or without security, the terms bail and bond are nevertheless used in the text with considerable uncertainty in jurisprudence. A lot of CRPC laws define "bail" to mean both surety and non-surety terms, but other clauses make a distinction between release on surety bail and release on a personal bond without surety. This leads to confusion. In addition to showing a fair and compassionate legal system, Section 479 of the BNSS offers a potential solution to the jail overcrowding problem by allowing swift bail and accounting for first-time offenders.

The issue of convicts awaiting trial is covered under Section 479 of the BNSS. During an investigation, inquiry, or trial, this section applies to crimes under any law, with the exception of those carrying a life sentence or the death penalty. It is important to keep in mind that this clause differs from CRPC 436A, which only covers crimes for which the death penalty is applicable.

Those who have been held for up to half of the maximum sentence allowed for the offense may be released on bail. After considering the Public Prosecutor's arguments, the court has the power to determine whether to grant the defendant bail or to keep them in custody for longer than a half-year. The total amount of time the accused was held throughout the court proceedings, excluding any delays the accused may have created in determining the bail-out period.<sup>6</sup>

### **BNSS on Bail Provisions**

The BNSS has introduced significant changes to bail provisions, particularly with respect to first-time offenders and those facing non-capital offenses. In addition to showing a fair and compassionate legal system, Section 479<sup>7</sup> of the BNSS offers a potential solution to the jail overcrowding problem by allowing prompt bail and considering first-time offenders. Those who have never been convicted before, known as first-time offenders, are required to serve one-third of the maximum term before being released on bond. After completing half of the maximum term, undertrial defendants charged with non-capital offenses those not punishable by death or life in prison are eligible for bail. This clause applies to offenses under any law, with the exception of those that carry a death sentence or life in prison, while they are being investigated, investigated, or tried. The Supreme Court ruled that the relaxed bail provisions under BNSS would apply retrospectively to cases filed before its enactment.

Furthermore, according to the Section 482 it provides that if there is a reasonable suspicion that a person has committed a crime for which they could be imprisoned for life or executed, they will not be eligible for bail. This allows a court to consider the accused's primary case while deciding whether to grant bail, unlike Section 481. This defeats the purpose of this section, which was included to free undertrial defendants who had been held for long periods of time without being allowed to defend themselves and to prevent further abuses of their Article 21 rights, including the right to a speedy trial.<sup>8</sup>

<sup>6</sup> Bureau of Police Research and Development, Undertrial I. Applicability: In the Bharatiya Nagarik Suraksha Sanhita, 2023, Available at: [202401261019586284086Undertrial.pdf \(bprd.nic.in\)](https://www.bprd.nic.in/202401261019586284086Undertrial.pdf) (last visited on 04-05-2024)

<sup>7</sup> Bharatiya Nagarik Suraksha Sanhita, § 479(2023)

<sup>8</sup> Prepared By Bureau of Police Research and Development Ministry of Home Affairs Government of India New Delhi 2003 , MODEL PRISON MANUAL FOR THE SUPERINTENDENCE AND MANAGEMENT OF PRISONS IN

## BNSS on Plea bargaining

To reduce the delay in the disposal of criminal trials and appeals and also to alleviate the suffering of under-trial prisoners, the concept of Plea-bargaining is introduced in BNSS. As per the section 260 of BNSS<sup>9</sup> which provides that “A person accused of an offence may file an application for plea bargaining within a period of thirty days from the date of framing of charge in the Court in which such offence is pending for trial.”

When half or a third of the allotted time in jail has passed, the jail superintendent must promptly submit a written request to the court to proceed under section 479(1) for the release of the person on bail. It is crucial to remember that this clause is different from CrPC 436A<sup>10</sup>, which solely prohibits crimes carrying the death penalty. The application of this clause has been limited as a result, and it no longer covers those who have been detained for a number of crimes for which the maximum punishment is either life in prison or life in prison for the rest of one's natural life<sup>11</sup>. It reads, "Notwithstanding anything in Sub-Section (1), and subject to the third proviso thereof, a person shall not be released on bail by the court where an investigation, inquiry, or trial in more than one offense or multiple cases are pending against him<sup>12</sup>." First of all, the exact phraseology of the provision is extremely broad. Because it is not the same as "multiple cases," an investigation, inquiry, or trial concerning "more than one offense" may also include a situation where a person is prosecuted under multiple sections for a series of actions that make up a single transaction.

### Landmark Cases

According to Landmark judgment of Supreme court in Satender Kumar Antil v. Central Bureau of Investigation, it is stated that “The maximum amount of time an accused person may be detained in order to safeguard their right to a speedy trial is specified in Section 436A of the CRPC. Interestingly, despite the substantial body of precedent that has developed over time on bail being the rule and jail being the exception, the BNSS in many respects restricted bail rather than broadening its scope as a right”.<sup>13</sup>

In the case of Hussainara Khatoun & Ors vs Home Secretary, State of Bihar<sup>14</sup> The court has emphasised that the Constitution mandates the State to ensure a speedy trial, and it must do everything within its power to accomplish this and in addition to this Court is mandated by the Constitution to uphold the

INDIA, Available at: [https://www.mha.gov.in/sites/default/files/2022-12/ModelPrisonMan2003\\_14112022%5B1%5D.pdf](https://www.mha.gov.in/sites/default/files/2022-12/ModelPrisonMan2003_14112022%5B1%5D.pdf) (last visited on 19- 03-2025)

<sup>9</sup> Bharatiya Nagarik Suraksha Sanhita, § 260(2023)

<sup>10</sup> Bharatiya Nagarik Suraksha Sanhita, § 436A (2023)

<sup>11</sup> Bharatiya Nagarik Suraksha Sanhita, § 479(2) (2023)

<sup>12</sup> IBID

<sup>13</sup> Satender Kumar Antil v. Central Bureau of Investigation, 10 SCC 773(2021)

<sup>14</sup> Hussainara Khatoun & Ors vs Home Secretary, State of Bihar, 1979 AIR 1369, 1979 SCR (3) 532

accused's fundamental right to a speedy trial in its capacity as the custodian of the people's fundamental rights and a sentinel on the quivive. In order to achieve this, the State might need to take the necessary steps, such as strengthening and growing the investigative system, creating more courts, building new courthouses, hiring more judges, and doing other actions meant to ensure a rapid trial.

## Conclusion

An undertrial prisoner is an accused individual who is believed innocent until and unless proven guilty. His detention is only intended to ensure that he appears in court or is available to respond to questions during an inquiry. His detention has no other justification. While he is in the physical care of jail officials, the judiciary is always in charge of his legal and physical well-being. The role of his lawyer, if he has one, is to represent him in court and provide the strongest defense imaginable. That not, however, diminish the court's duty to provide for the inmate awaiting trial.

The old criminal code, known as the Code of Criminal Procedure, was a holdover from colonial times and only discriminated against India's rich class and economically disadvantaged people. In India, the criminal administration is in charge of managing prisons. It's crucial to keep in mind that social and economic circumstances may play a role in someone becoming a criminal. The administration of the jail must therefore provide adequate accommodation, food, and medical attention to the detainees. Since the main objective of incarceration is not punishment but rather the reform of offenders to enable their effective reintegration into society after serving their sentences, prisoners should be treated humanely.

The Code of Criminal Procedure, India's outdated criminal code, was a holdover from colonial times and only discriminated against the country's wealthy people and economically disadvantaged population. The criminal administration is in charge of managing prisons in India. It's critical to keep in mind that social and economic circumstances may have a role in an individual's decision to commit crimes. Therefore, the administration of the jail must provide adequate lodging, food, and medical care for the inmates. Inmates should be treated humanely because the main objective of incarceration is not punishment but rather the reformation of criminals to facilitate their effective reintegration into society after serving their sentences.

Similar to this, the Indian criminal system is founded on the reformatory concept; nevertheless, in spite of multiple reforms, the condition of prisoners in Indian jails is still terrible, requiring further advancement. The new Bharatiya Naya Suraksha Sanhita has emerged as a beacon of hope for the criminal justice system in India, guaranteeing the well-being of inmates under various conditions, with special cases being clarified by the country's correctional reforms.

Although there is no such thing as a perfect or faultless criminal justice system, a nation founded on the reformatory idea of punishment need to make sure that justice is served and that the innocent are not kept in the shadows of prisons that undoubtedly violate their human rights. Although there are regulations pertaining to the bail system, in practice, those prisoners are classified according to their financial limitations, which shouldn't be the basis for denying a human being justice or representation in court.