
JUSTICE DENIED? THE CASE FOR LEGAL AID IN PRE-TRIAL PROCEEDINGS

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ABSTRACT

Pre-trial detention in India reveals a stark contradiction: while the presumption of innocence should prevail, over 75% of prisoners remain undertrials due to systemic inefficiencies. This research critiques the current landscape, highlighting conflicts with constitutional rights and international standards, despite recent reforms like the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023. Inspired by global practices, such as Finland's supervised early release model, the paper advocates for structured reintegration programs to combat overcrowding and uphold public safety. It calls for comprehensive reforms, including clearer legislation, improved access to legal aid, and community-based initiatives to support marginalized groups. Ultimately, this study emphasizes that justice delayed is justice denied, urging India to overhaul its pre-trial detention system to ensure liberty, dignity, and equitable justice for all.

Keyword: Legal Aid, Trial, Criminal Law, Justice, Natural Justice

I. INTRODUCTION

Human rights are the sturdy branch of the societal tree which provides structure and support to it, while individual rights are unique leaves thriving together and rooted deeply in values of dignity, equality and freedom. Individual rights and societal entitlements are intertwined together and must go tandem but they are often found conflicting with each other.³

Though all human beings come into the world with the gift of liberty, they are often held captive by invisible chains of discrimination, social expectation and systematic injustice. Pretrial detention is a prominent example of such an injustice as it unfairly restricts individual liberty

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³ Anju Vali Tinkoo, *Mentally Ill Undertrial Prisoners: A Human Rights Perspective* (2022)

and freedom.⁴ As it is a well established principle under law that holding an individual without full-fledged proof of their guilt not only undermines justice but also violates the fundamental principles of due process.⁵ Such deprivation not only disrupts lives but also erodes trust in the legal system, perpetuating cycles of injustice. This article examines the shortcomings in India's pre-trial detention system, highlighting its impact on individual rights and judicial inefficiencies. It further explores recent legal reforms, international best practices and potential solutions to create a more fair and humane criminal justice system.

II. PRE-TRIAL DETENTION IN INDIAN SPHERE

Pre-trial detention refers to incarceration of an individual before their trial has commenced. It is a dire issue with the Indian criminal justice system. This practice of detaining individuals prior to their trial was typically a correctional facility intending to ensure accused appearance in the court but the loopholes in judicial apparatus have rendered it into punitive measures. The four walls of jail have now become a sight where human rights are blatantly disregarded, while the legal system remains a silent observer.. According to the 2023 report by the department related parliamentary committee on home affairs 'prison condition, infrastructure and reform' a staggering 77.1% of prison inmates were under trial.⁶ The statistics provided are ample enough to reflect on the stark reality as to how significantly [Article 21 of the Indian constitution](#)⁷ emphasizes personal life and liberty and honorable supreme court's pronouncement in [Sunil Batra v. Delhi Administration](#)⁸ stresses the physical and mental integrity of prisoners are being profoundly violated. The current situation asserts loudly that these practices still need a deep introspection and demand stringent enforcement of the criminal justice system to ensure that no innocent is being the prey to unjust law enforcement and wrongful punishment.

III. BAR, BENCH, AND JUSTICE DELAYED: INSIGHTS INTO BNSS NEXUS

In December 2023, the central government introduced three transformative laws which replaced formerly existing criminal justice legislation. This represents a significant shift of law makers towards people centric approach in India's criminal justice system as [Section 479 of](#)

⁴ V Kumar and M Tariq, 'Human Rights of Detainees and Undertrial Prisoners in India: A Public Interest Litigation Perspective' (n.d.) 4 *Indian Journal of Law & Legal Research* 1

⁵ Bhim Singh Yadav v. Union of India 2024 SCC OnLine SC 4511 (India)

⁶ Rajya Sabha Department-Related Parliamentary Standing Committee on Home Affairs, *245th Report on Prison Conditions, Infrastructure and Reforms* (2023)

⁷ Constitution of India, art 21

⁸ Sunil Batra v. Delhi Administration, (1978) 4 SCC 494 (India)

[Bhartiya Nagarik Suraksha Sanhita](#)⁹ places restriction on detention of under trial prisoners, excluding those charged with offences punishable by death or life imprisonment. Additionally, it provides lenient provisions especially for the first time offenders who can now secure release after serving just one-third of their maximum potential punishment. Further, the above-mentioned statute recognizes varying circumstances of individuals in custody and helps to decongest overcrowded prisons to prevent undue hardship of prolonged detention for those who do not pose a significant threat to society. While it is still early to fully assess the impact of this reform, this new statute marks a commendable legislative step towards a more just and humane legal environment.

However this positive development is somewhere overshadowed by [Section 187 of BNSS](#)¹⁰ which has blurred the distinction between the “judicial magistrate” and “magistrate”. As a judicial magistrate operates under the direct supervision of the judiciary and ensures due process, whereas a magistrate, in a broader sense, can also include executive magistrate who function under the executive branch. By failing to clarify this distinction, Section 187 is complicating the role within the sphere of the criminal judicial system which can also lead to inconsistency in ruling across different jurisdictions, making navigating the legal landscape unpredictable for lawyer and defendant.

It is therefore pertinent to note that the expression in the same provision mentions the phrase “magistrate thinks fit” in his decision making, which is subjective and grants wider discretion to judicial system regarding the type of custody, whether police or judicial, can lead to arbitrary measure and create opportunity for abuse of power, such ambiguity directly contradicting the intent of section 479 to guarantee equitable treatment for under trial prisoners. These conflicting elements underscore the essential for careful examination and refinement in implementation of these new laws to realize a truly balanced criminal justice system.

IV. REFORMING INDIAN CRIMINAL LAW THROUGH INTERNATIONAL PERSPECTIVES

The international framework for pre-trial detention elucidates liberty and presumption of innocence as fundamental human rights. These provisions serve as a benchmark for ensuring that pre-trial detention is used as an exception and not a norm.¹¹ The international covenant on civil and political rights articulates in its article 9(1) that “every person has the right to liberty

⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, s 479

¹⁰ Bharatiya Nagarik Suraksha Sanhita, 2023, s 187 (2)

¹¹ Skopje, Pre-Trial Detention: National Practice and International Standards (2008) 8–12

and security. No one shall be subjected to arbitrary arrest or detention except in cases prescribed by law.”¹²

It is an undeniable fact that Systematic inefficiency in the Indian criminal justice system has caused prolonged incarceration.¹³ According to National Crime Record Bureau (NCRB) statistics for 2022 prisoners across India housed 573,220 prisoners against an authorized capacity of 436,266 resulting in an average occupancy rate of approximately 130%. A staggering 75.8% (434,302) of the prison population comprises undertrial prisoners, highlighting significant procedure inefficiencies.¹⁴

To curb this grave issue, we can take Learning from the Finnish Early Release under supervision model with the help of which India can not only address its overcrowding issue but also align its criminal justice system with the international standard of fairness, efficiency, and humanity. This model offers a structured reintegration program with features like electronic monitoring, a six-month supervised release phase with activities like work, education and rehabilitation program, uninformed substance use test and home confinement.¹⁵ These practices can ease overcrowding by releasing eligible unsentenced inmates and not jeopardizing public safety. Finland's success in reducing reoffending by 34% through supervised early release could serve as an inspiration for India to adopt a similar mechanism.¹⁶

V. CONCLUSION AND ROADMAP FOR REFORMS

The pre-trial detention system in India is a crucial aspect of the country's quest for justice.¹⁷ India's progress towards a more humane and efficient pre-trial detention system is crucial for rebuilding faith in judiciary with over three-fourth of the prisoners' population comprising undertrial detainees.¹⁸ The principle of presumption of innocence often gets overshadowed by prolonged incarceration. Reforming this system is not only a constitutional duty but a moral imperative to uphold the value of liberty, dignity and justice as defined in both national and international laws.¹⁹

¹² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 9(1)

¹³ Einar H Dyvik, 'Countries with the largest share of pre-trial detainees as of October 2023' (Statista, July 2024)

¹⁴ M Rathore, 'Share of unsentenced prisoners India, 2015–2022' (Statista, July 2024)

¹⁵ Kaisa Tammi-Moilanen, 'Early Release Under Supervision – The Finnish Model: Probationary Liberty under Supervision' (Session V, n.d.)

¹⁶ J Clausnitzer, 'Number of prisoners in Finland 2023, by prisoner group' (Statista, October 2024)

¹⁷ PIB Delhi, 'Undertrial Prisoners' (Ministry of Home Affairs, February 2024)

¹⁸ Anil R Nair, 'Human Rights Violations of Under-Trial Prisoners: *Judicial Irresponsibility or Impunity*' in *Judicial Irresponsibility or Impunity*, NUALS Law Journal (Vol 1, 2007)

¹⁹ Dr SS. Dhaktode, *Human Rights and Indian Constitution* (P.B. Sawant ed., 2011).

An integrated approach is necessary to address the pressing challenges within the system. To tackle these issues a thorough and inclusive strategy is essential, one that combines legislative, institutional and community focus reform.

Firstly, legislative reform should aim to clarify ambiguities in laws, prevent discretionary misuse and establish procedural safeguards. Stronger statutory guidelines can ensure the pre-trial detention is used only as a last resort, with clear criteria for judicial discretion.

Secondly, institutional reform requires strengthening judicial infrastructure to expedite case resolution and reduce unnecessary detention. For the same, investment in technology-driven case management, increasing the number of fast-track courts and ensuring adequate staffing in judiciary are important steps that can be taken.

Lastly, community focused reform plays a crucial role in bridging accessibility gaps. Enhancing legal aid by expanding free legal services under the legal services authority act, 1987 and promoting community based legal aid models can bridge the gaps for marginalized communities. Public awareness campaigns can help establish legal aid as a fundamental right, thereby reducing stigma for individuals seeking assistance.

While justice delayed is indeed justice denied with focused reforms and commitment to dignity and fairness, India can restore trust in its judiciary and ensure justice for all.

