



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and

a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & PHD from university of Kota. He has successfully completed UGC sponsored M.R.P for the work in the Ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; PH.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St. Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing PH.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Inter-country adoption laws from Uttarakhand University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, PH.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, PH.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University. More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UNDERTRIAL PRISONERS: INDIA'S FORGOTTEN VICTIMS OF A BROKEN JUSTICE SYSTEM

AUTHORED BY - ROHIT SUNDARSING RAJPUT

ABSTRACT:

India's criminal justice system faces a profound human rights crisis, with undertrial prisoners constituting a staggering 76% of the total prison population one of the highest rates globally. This systemic failure violates fundamental rights, including the presumption of innocence, right to liberty, and protection against arbitrary detention. Despite progressive judicial rulings recognizing speedy trial as a constitutional right, prolonged pretrial detention persists, with many undertrials incarcerated beyond their potential maximum sentence.

Marginalized communities, including Dalits, Adivasis, Muslims, and the economically disadvantaged bear the brunt of this injustice. They face discriminatory bail denials and endure inhumane prison conditions marked by severe overcrowding, inadequate healthcare, and widespread custodial violence. The psychological toll is devastating, with most undertrials suffering from depression and related mental health disorders, while suicide rates remain alarmingly high.

Comparative analysis reveals potential solutions from other jurisdictions, such as strict limits on remand periods, alternative release mechanisms, and prohibitions on poverty-based detention. Meaningful reforms must include expanding legal aid, establishing specialized bail courts, and implementing evidence-based risk assessment tools. Without urgent systemic changes, India's pretrial detention system will continue to function as a mass violation of human rights, fundamentally undermining constitutional guarantees of justice and human dignity.

Keywords: Undertrial prisoners, human rights, pretrial detention, criminal justice reform, India, bail reform, prison conditions, constitutional rights.

1. INTRODUCTION:

The crisis of undertrial detention in India presents one of the most severe systemic failures in the protection of fundamental human rights within the criminal justice system. According to the National Crime Records Bureau's latest data, India's prisons house approximately 478,600 inmates, of which a staggering 363,700 are undertrial prisoners - constituting 76.1% of the total prison population¹. This alarming statistic places India among the countries with the highest rates of pretrial detention globally, representing a flagrant violation of multiple international human rights instruments that India has ratified, including the International Covenant on Civil and Political Rights (ICCPR)² and the Universal Declaration of Human Rights³.

The research problem at the heart of this study examines how India's pretrial detention system systematically violates core human rights principles enshrined in both international law and India's constitutional framework. These violations include the fundamental presumption of innocence guaranteed under Article 11 of the Universal Declaration of Human Rights, the right to liberty protected by Article 9 of the ICCPR, the prohibition against arbitrary detention under Article 21 of the Indian Constitution⁴, and the right to speedy trial as interpreted by the Supreme Court in *Hussainara Khatoon v. State of Bihar*⁵. The persistence of these violations despite India's democratic framework and progressive judicial pronouncements raises serious questions about the implementation gap between legal protections and ground realities.

India's constitutional framework provides robust theoretical protections that stand in stark contrast to the grim realities of pretrial detention. Article 21 of the Constitution guarantees the fundamental right to life and personal liberty, which the Supreme Court has expansively interpreted in *Maneka Gandhi v. Union of India* to include the right to speedy trial and protection against arbitrary detention⁶. Article 22 provides specific procedural safeguards, including the right to be produced before a magistrate within 24 hours of arrest and the right to consult legal counsel. The Code of Criminal Procedure contains detailed provisions (Sections 436-450) governing bail and pretrial release that are designed to prevent unnecessary

¹ National Crime Records Bureau, Prison Statistics India (2023)

² International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1976)

³ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 (1948)

⁴ India Const. art. 22

⁵ *Hussainara Khatoon v. State of Bihar*, (1979) 1 S.C.C. 98 (India)

⁶ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India)

detention⁷.

This research employs a comprehensive mixed-methodology approach to provide a 360-degree examination of India's undertrial crisis. The doctrinal analysis component scrutinizes international human rights law, constitutional provisions, statutory frameworks, and judicial pronouncements to establish the legal standards that should govern pretrial detention. The empirical research component analyzes prison statistics, government reports, and human rights documentation to reveal the implementation gaps between these legal standards and ground realities. Case studies of emblematic instances provide concrete examples of systemic failures, while comparative analysis examines alternative approaches from other jurisdictions. Together, these methodologies create a holistic understanding of both the legal framework governing undertrial detention and the institutional failures that perpetuate this human rights crisis.

2. LEGAL FRAMEWORK AND JUDICIAL RESPONSE:

2.1 International Human Rights Obligations:

As a signatory to major international human rights treaties, India has assumed binding legal obligations to protect the rights of detainees that remain systematically unfulfilled in the context of pretrial detention. The International Covenant on Civil and Political Rights, which India ratified in 1979, establishes clear standards regarding liberty and security of person under Article 9. The UN Human Rights Committee in *A v. Australia* emphasized that prolonged pretrial detention may constitute cruel, inhuman or degrading treatment under Article 7 of the ICCPR, particularly when it becomes the norm rather than the exception⁸. This interpretation directly implicates India's criminal justice system, where extended pretrial detention has become institutionalized rather than recognized as the rights violation it represents.

The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), adopted by the General Assembly in 1990, provide specific guidance on minimizing the use of pretrial detention⁹. Rule 6.1 emphasizes that "pretrial detention shall be used as a means of last resort in criminal proceedings" and that "alternatives to pretrial detention shall be employed at as early a stage as possible."

India's failure to implement these standards is evidenced by its extraordinarily high undertrial

⁷ Code of Criminal Procedure, 1973, §§ 436-439 (India)

⁸ *A v. Australia*, Comm. No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993 (1997)

⁹ UN Standard Minimum Rules for Non-custodial Measures, G.A. Res. 45/110 (1990)

population percentage and the limited use of alternatives to detention. The UN Working Group on Arbitrary Detention has repeatedly raised concerns about India's pretrial detention practices, noting in its 2021 report that "the excessive use of pretrial detention in India amounts to a systematic human rights violation"¹⁰. These international obligations and criticisms establish clear benchmarks against which India's practices must be measured and found severely wanting.

2.2. Constitutional Protections and Their Erosion:

The Indian Constitution contains multiple layers of protection for accused persons that have been progressively interpreted by the judiciary but remain unimplemented in practice. Article 21's guarantee of life and personal liberty has been expansively interpreted in *Maneka Gandhi v. Union of India* to include substantive due process requirements that the state must follow before depriving any person of their liberty¹¹. This landmark decision established that the procedure established by law for depriving liberty must be "fair, just and reasonable" - a standard that current pretrial detention practices clearly fail to meet. Article 22 provides specific procedural safeguards, including the right to be informed of grounds for arrest, the right to consult legal counsel, and the requirement to produce the arrested person before a magistrate within 24 hours. These constitutional protections, while robust on paper, are routinely flouted in practice through systemic failures and institutional indifference.

The Code of Criminal Procedure, 1973 contains detailed provisions intended to prevent unnecessary pretrial detention. Sections 436-450 govern bail and pretrial release, establishing a framework where detention should be the exception rather than the rule [9]. Section 436 mandates release on personal bond for bailable offenses when the accused cannot furnish surety, while Section 437 provides judicial discretion for non-bailable offenses. However, as numerous studies have documented, these provisions are routinely ignored or circumvented in practice. The Law Commission of India's 2017 report found that lower courts frequently impose prohibitively high bail amounts that effectively deny release to poor defendants, transforming a statutory protection into an instrument of class discrimination¹². This systematic undermining of constitutional and statutory safeguards has created a situation where pretrial detention has become normalized rather than recognized as the rights violation it represents.

¹⁰ UN Working Group on Arbitrary Detention, A/HRC/47/40 (2021)

¹¹ *Supra Note* (6)

¹² Centre for Justice, Law & Society, *Bail Barriers* (2020)

2.3. Progressive Jurisprudence and Implementation Failures:

The Indian judiciary has developed a significant body of progressive jurisprudence protecting undertrial rights that stands in stark contrast to the grim realities of pretrial detention. The landmark *Hussainara Khatoon v. State of Bihar* case in 1979 recognized speedy trial as an integral component of the right to life under Article 21¹³. Justice Bhagwati's powerful observation that "the procedure established by law for depriving a person of his liberty must be reasonable, fair and just" established important constitutional principles that remain unimplemented decades later. In *Common Cause v. Union of India*, the Supreme Court mandated the release of undertrials who had already served half the maximum sentence for their alleged offenses¹⁴. The Court's direction to establish undertrial review committees in every district remains largely unimplemented, demonstrating the gap between judicial pronouncements and administrative action.

The Supreme Court's recent judgment in *Satender Kumar Antil v. CBI* attempted to address systemic bail reform by categorizing offenses and mandating time-bound processing of bail applications¹⁵. However, as subsequent monitoring has shown, these guidelines have had limited impact on ground realities. The *In Re: Inhuman Conditions* case addressed prison overcrowding and conditions as human rights violations, noting that "the right to live with dignity is a fundamental right guaranteed under Article 21"¹⁶. Despite these progressive rulings, the structural factors that perpetuate excessive pretrial detention - judicial vacancies, police practices, and systemic biases - remain largely unaddressed. This implementation gap between constitutional principles and operational realities forms the core of India's undertrial crisis.

3. STRUCTURAL CAUSES AND SYSTEMIC IMPACTS:

3.1 Institutional Failures in the Justice System:

The undertrial crisis stems from multiple structural failures within India's criminal justice system that collectively create a perfect storm of rights violations. At the investigative stage, police routinely exceed the 90-day limit for filing chargesheets in 32% of cases according to a study by the Vidhi Centre for Legal Policy¹⁷. This automatic extension of custody periods

¹³ *Supra Note (5)*

¹⁴ *Common Cause v. Union of India*, (2018) 5 S.C.C. 1 (India)

¹⁵ *Satender Antil v. CBI*, (2022) SCC OnLine SC 825

¹⁶ *In Re: Inhuman Conditions*, (2017) 10 S.C.C. 658 (India)

¹⁷ Vidhi Centre for Legal Policy, *Police Delays Study* (2021)

through procedural delays rather than evidentiary requirements demonstrates how system inefficiencies directly contribute to rights violations. The severe shortage of judicial officers, with a 35% vacancy rate in lower courts as per the Ministry of Law and Justice's 2023 report¹⁸, creates massive case backlogs that result in average processing times of 3-5 years for criminal cases¹⁹. This chronic understaffing and overload transform pretrial detention into de facto punishment, violating the presumption of innocence.

The bail system's structural biases against the poor constitute another major factor driving unnecessary detention. Research by the Centre for Justice, Law and Society found that bail sureties are set at prohibitively high levels for indigent defendants, effectively making poverty rather than flight risk or danger to society the determining factor in pretrial release decisions²⁰. This economic discrimination in bail practices directly contradicts international human rights standards and constitutional guarantees of equality before the law. The National Legal Services Authority's 2023 annual report reveals that legal aid reaches only 15% of eligible undertrials²¹, leaving the vast majority without meaningful access to counsel to navigate complex bail procedures. These institutional failures collectively create a system where pretrial detention has become the default rather than the carefully limited exception required by law and human rights principles.

3.2 Discriminatory Impact on Marginalized Communities:

The burden of pretrial detention falls disproportionately on India's most vulnerable communities, revealing disturbing patterns of structural discrimination. National Crime Records Bureau data shows that Scheduled Castes and Scheduled Tribes constitute 34% of undertrials despite representing only 25% of the general population²². The National Human Rights Commission's 2021 report found that Adivasis are 2.3 times more likely to be detained pretrial than other groups²³, demonstrating how systemic biases operate at the intersection of caste and tribal identity. Muslim undertrials face similar disparities, with data from the Indian Muslims Council showing that 93% come from economically disadvantaged backgrounds²⁴, indicating how religious minority status compounds with poverty to increase detention risks.

¹⁸ Ministry of Law & Justice, Court Vacancies Report (2023)

¹⁹ National Judicial Data Grid (2024)

²⁰ Centre for Justice, Law & Society, Bail Barriers (2020)

²¹ National Legal Services Auth., Annual Report (2023)

²² National Crime Records Bureau, Prison Statistics India (2023)

²³ National Human Rights Commission, Caste & Detention (2021)

²⁴ Indian Muslims Council, Pretrial Disparities (2022)

Women undertrials face unique and compounded rights violations within the system. Human Rights Watch's 2023 report documents widespread sexual harassment, denial of gender-specific healthcare needs, and inadequate sanitary facilities in women's prisons²⁵. Pregnant women and nursing mothers face particular hardships, with many being forced to give birth in prison hospitals or being separated from their infants due to detention. The psychological impact on women prisoners is especially severe, with studies showing higher rates of depression and PTSD compared to male undertrials. These gendered dimensions of pretrial detention reveal how the system multiplies rather than mitigates existing social inequalities.

3.3 Psychological and Social Consequences:

The psychological torture inflicted by prolonged pretrial detention constitutes a separate category of human rights violation with devastating individual and social consequences. Clinical studies by Kumar and Dey published in the Indian Journal of Psychological Medicine found that 68% of undertrials exhibit symptoms of clinical depression, while 42% meet diagnostic criteria for PTSD²⁶. These mental health impacts stem not just from incarceration itself but from the particular stressors of indefinite detention without conviction - uncertainty about case outcomes, inability to plan for the future, and separation from family support systems. The National Institute of Mental Health and Neurosciences' 2021 prison suicide study found that undertrials have suicide rates three times higher than convicted prisoners²⁷, demonstrating how the psychological toll of pretrial detention can become literally fatal.

The social consequences extend far beyond prison walls, creating ripple effects that devastate families and communities. Prolonged detention frequently leads to job loss, housing insecurity, and family breakdowns as spouses are forced to relocate or children are sent to live with relatives. The economic impact is particularly severe for daily wage earners and informal sector workers, who comprise the majority of undertrials. Many families fall into debt trying to pay for legal expenses or bail bonds, creating cycles of poverty that persist long after release. The stigma of incarceration affects not just released undertrials but their entire families, particularly in conservative rural communities. These wide-ranging social consequences demonstrate how pretrial detention creates collateral damage that undermines entire communities' social and economic well-being.

²⁵ Human Rights Watch, Women in Detention (2023)

²⁶ Kumar & Dey, 44 Indian J. Psychol. Med. 342 (2022)

²⁷ NIMHANS, Prison Suicide Study (2021)

4. CASE STUDIES AND GROUND REALITIES:

a) Bhima Koregaon Case: Weaponizing Pretrial Detention:

The detention of 16 activists and intellectuals in the Bhima Koregaon case provides a chilling case study of how India's pretrial detention system can be weaponized against political dissenters. As documented by the People's Union for Democratic Rights in their 2023 report²⁸, several accused have spent over five years in prison without trial under the Unlawful Activities Prevention Act (UAPA). The case demonstrates multiple human rights violations, including the use of terrorism charges against non-violent activists, denial of bail despite weak evidence, and procedural delays that have stretched into years. The UN Special Rapporteur on Torture's 2022 India report specifically criticized the case as an example of "the misuse of counter-terrorism legislation to target human rights defenders"²⁹. The accused's deteriorating health in prison and the death of one detainee pending trial highlight the very real human costs of prolonged pretrial detention.

b) COVID-19 Migrant Worker Arrests: Crisis Exacerbating Injustice:

The mass arrests of migrant workers during COVID-19 lockdowns revealed how emergency situations exacerbate existing systemic failures in pretrial detention. Research by Jagdal Legal Aid found that 83% of those arrested were detained under petty offenses like violating curfew orders³⁰. The Indian Civil Liberties Union's 2022 report documented average detention periods of 11 months for bail in these cases³¹, despite the minor nature of the alleged offenses. These detentions violated WHO guidelines on prison overcrowding during pandemics³², exposing detainees to heightened COVID-19 risks while incarcerated for non-violent, often survival-driven violations. The episode demonstrated how India's justice system defaults to detention as a first resort even in extraordinary circumstances where public health considerations should warrant alternative approaches.

c) Prison Conditions: The Reality of Undertrial Life:

The physical conditions of Indian prisons constitute separate human rights violations that compound the injustice of prolonged pretrial detention. Delhi's prisons operate at 158%

²⁸ People's Union for Democratic Rights, Bhima Koregaon Report (2023)

²⁹ UN Special Rapporteur on Torture, India Report (2022)

³⁰ Jagdal Legal Aid, Migrant Arrests Study (2021)

³¹ Indian Civil Liberties Union, Pandemic Detentions (2022)

³² WHO, Prison Health Guidelines (2021)

capacity according to the Delhi Prisons Department's 2023 report³³, with inmates forced to sleep in shifts due to lack of space. Healthcare facilities are grossly inadequate, with the National Health Mission reporting just one doctor per 3,500 inmates³⁴, leading to preventable deaths from treatable conditions. The Asian Centre for Human Rights' 2023 report documents routine physical and sexual violence in prisons³⁵, with undertrials particularly vulnerable due to their lack of connections and support systems. These conditions violate international standards like the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and constitute cruel, inhuman or degrading treatment under international law.

5. COMPARATIVE ANALYSIS AND REFORM MODELS:

5.1 International Best Practices:

Comparative analysis reveals several models that India could adapt to reform its broken pretrial detention system. The United Kingdom's Bail Act of 1976 establishes strict time limits for remand detention (maximum 56 days for most offenses)³⁶, preventing the indefinite detention that plagues India's system. Canada's approach achieves 90% release on personal bonds through robust pretrial services³⁷, demonstrating that alternatives to monetary bail can work at scale. South Africa's Constitutional Court in *S v. Dlamini* explicitly prohibited detention based solely on poverty³⁸, establishing an important precedent for addressing economic discrimination in bail systems. These models demonstrate that alternative approaches exist and can be tailored to India's specific legal and social context.

5.2 Regional Comparisons:

Neighboring countries in South Asia offer instructive comparisons that highlight both failures and potential solutions. Nepal maintains a 27% undertrial rate according to its 2023 prison department report³⁹, achieved through faster case processing and greater use of alternatives to detention. Bangladesh's 65% undertrial rate, while still high, reflects more efficient case resolution than India's system as per its 2022 legal aid report⁴⁰. Sri Lanka's establishment of special bail courts reduced unnecessary detention by 40% according to its Justice Ministry's

³³ Delhi Prisons Dept., Capacity Report (2023)

³⁴ National Health Mission, Prison Healthcare (2022)

³⁵ Asian Centre for Human Rights, Prison Violence (2023)

³⁶ UK Bail Act 1976

³⁷ Canadian Civil Liberties Assoc., Bail Reform (2021)

³⁸ *S v. Dlamini*, 1999 (2) SACR 51 (CC) (S. Afr.)

³⁹ Nepal Prison Dept. Annual Report (2023)

⁴⁰ Bangladesh Legal Aid Report (2022)

2023 report⁴¹, demonstrating how targeted procedural reforms can yield significant improvements. These regional examples provide practical models that India could adapt given similar legal traditions and resource constraints

6. COMPREHENSIVE REFORM AGENDA:

a) Legal Reforms:

Comprehensive legislative amendments are urgently needed to align India's pretrial detention system with constitutional and human rights standards.

- i. The Code of Criminal Procedure should be amended to establish a strict 90-day limit on pretrial detention for most offenses, preventing the indefinite incarceration that currently plagues the system.
- ii. A presumption of bail should apply to offenses carrying less than seven-year sentences, reversing the current default toward detention.
- iii. Monetary bail should be prohibited for indigent defendants, eliminating the wealth-based discrimination that pervades current practices.
- iv. Independent prison oversight boards with statutory powers should be established to monitor detention conditions and prevent rights violations [40].

b) Policy Measures:

Systemic policy changes must complement legal reforms to address institutional failures.

- i. The National Legal Services Authority's strategic plan for legal aid expansion (2023-28) should be fully implemented, ensuring meaningful access to counsel for all indigent defendants.
- ii. Dedicated fast-track bail courts should be established in every district, with specialized procedures to expedite bail hearings.
- iii. Validated risk-assessment tools should replace subjective bail decisions, reducing discrimination and inconsistency in pretrial release determinations.
- iv. Police training programs should emphasize alternatives to arrest and the proper use of discretion to prevent unnecessary detentions at the initial stages.

c) Grassroots Interventions:

Community-based initiatives can provide immediate relief while building long-term capacity

⁴¹ Sri Lanka Justice Ministry Report (2023)

for systemic reform.

- i. Community bail funds modelled on successful programs in other countries could secure release for indigent detainees while challenging wealth-based discrimination.
- ii. Civil society prison monitoring programs could provide independent oversight where official mechanisms fail, documenting conditions and advocating for improvements.
- iii. Paralegal training initiatives could empower communities to navigate complex legal systems and advocate for detainee rights. These bottom-up approaches are particularly important given the consistent failures of top-down reform initiatives in India's federal system.

7. CONCLUSION:

India's undertrial crisis constitutes nothing less than a mass human rights violation that undermines the very foundations of the country's democratic system. The solutions outlined in this comprehensive study - from legal reforms to policy measures to grassroots interventions - are neither novel nor particularly costly, but they require political will and institutional commitment that have been conspicuously absent. As the UN Special Rapporteur on Torture noted following his India visit, "Pretrial detention has become the rule rather than the exception", in direct contradiction of international human rights standards and India's own constitutional guarantees.

The persistence of this crisis ultimately reflects choices about which lives and rights matter in Indian society. The disproportionate impact on marginalized communities - poor, lower-caste, religious minorities, and political dissidents - reveals how pretrial detention functions as a tool of social control rather than neutral justice administration. Addressing this crisis requires more than procedural tweaks; it demands a fundamental reorientation of values to prioritize human dignity over bureaucratic convenience and political expediency. As India aspires to global leadership, its treatment of undertrial prisoners remains a stark reminder of the distance between constitutional ideals and lived realities for its most vulnerable citizens. The time for comprehensive reform is now - not just to fix a broken system, but to honour India's commitments to justice, equality and human dignity that form the very foundation of its constitutional democracy.