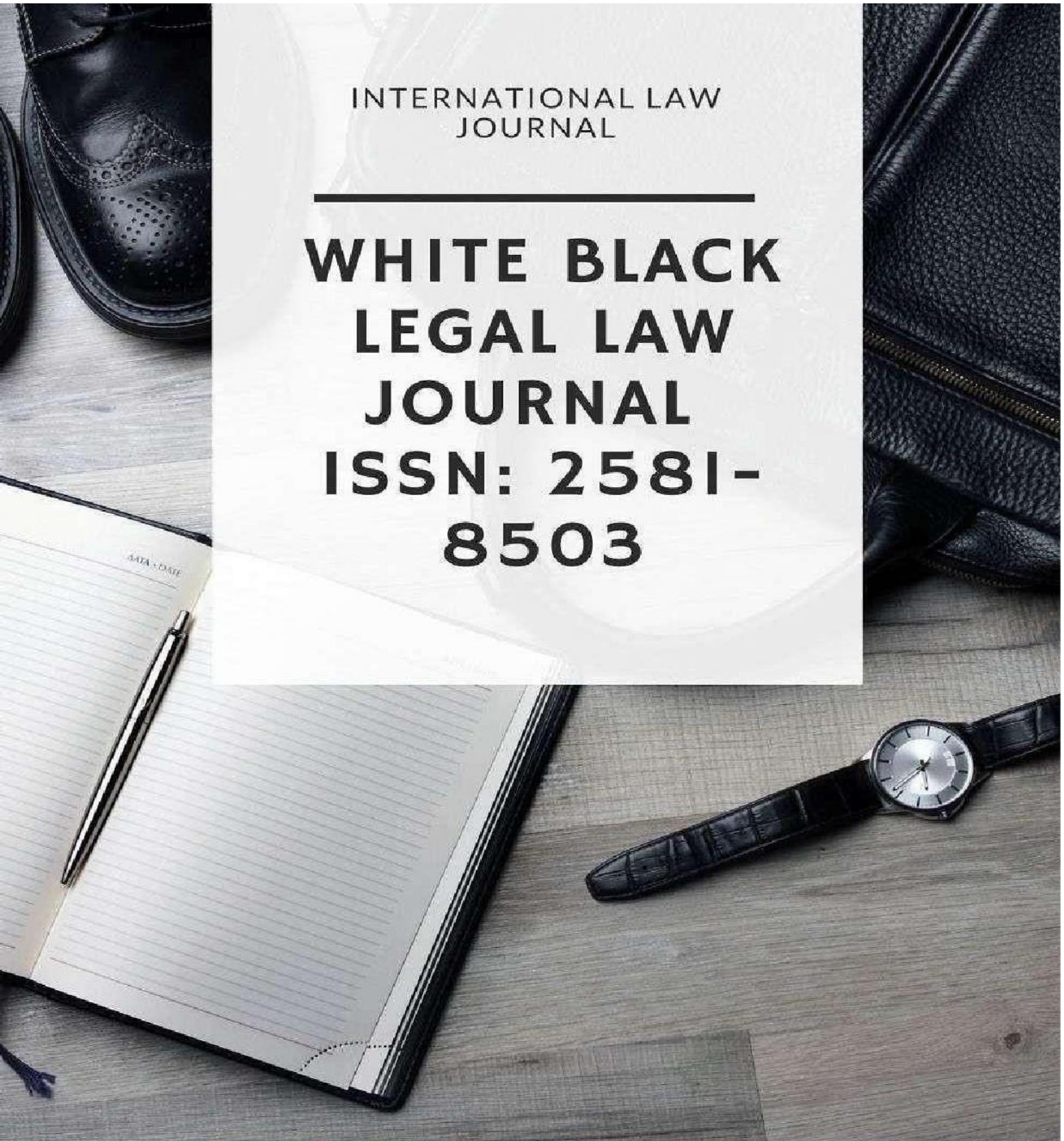




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CUSTODY BEFORE CONVICTION: UNDERTRIAL PRISONER TRENDS AND THE BNSS SECTION 479 BAIL REFORM, 2019–2024

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Abstract

India's prison stock is still a stock of people who have not been convicted. This paper reconstructs the official undertrial series from the National Crime Records Bureau's Prison Statistics India annual reports for 2019–2024 and places that series beside the first calendar year of Bharatiya Nagarik Suraksha Sanhita, 2023, section 479. Section 479, in force from 1 July 2024, requires a court to release a first-time undertrial on bond after one-third of the maximum sentence, and any other eligible undertrial after one-half, except where death or life imprisonment is a specified punishment. The Supreme Court has held the clause to operate retrospectively. PSI 2023 records 5,30,333 inmates on 31 December 2023, of whom 3,89,910 (73.5 per cent) were undertrials, against a capacity of 4,39,119 (occupancy 120.8 per cent). PSI 2024, the first year-end after the clause took effect, records 5,11,542 inmates, 3,71,440 undertrials (72.6 per cent) and occupancy of 112.7 per cent. That is a second consecutive fall in the undertrial stock, not a collapse of pre-trial detention. Across 28 States in 2023 the undertrial share had a mean of 69.8 per cent, a standard deviation of 9.2 points and a range from Madhya Pradesh (50.4) to Bihar (87.7). Occupancy and undertrial share are uncorrelated in that cross-section (Pearson $r = -0.20$, $p = 0.32$). Table 7.4 of PSI 2024 records 968 undertrials eligible under section 479 or the surviving Code of Criminal Procedure, 1973, section 436A, and 627 released. A Ministry of Home Affairs special campaign identified 951 eligible prisoners and obtained 334 grants by 26 November 2024. The World Prison Brief still places India with Bangladesh and Pakistan, not with Germany, Brazil or England and Wales. The pre-reform crisis the clause was written to fix is documented. The first post-reform year-end is not yet proof that it has been fixed.

Keywords: undertrial prisoners, BNSS section 479, CrPC section 436A, Prison Statistics India, occupancy, World Prison Brief, bail, India.

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1. Introduction

A person in an Indian prison is more likely to be awaiting trial than to be serving a sentence. The National Crime Records Bureau has published that fact, State by State and year by year, in Prison Statistics India. The 2023 edition records 3,89,910 undertrials out of 5,30,333 inmates on 31 December 2023, or 73.5 per cent of the stock.³ The 2024 edition records 3,71,440 undertrials out of 5,11,542 inmates, or 72.6 per cent.⁴ Occupancy fell from 120.8 per cent to 112.7 per cent between those two year-ends. The undertrial share did not fall below seven in ten.

The constitutional baseline is older than either report. The Supreme Court held in *Hussainara Khatoon* that a speedy trial is part of the life and personal liberty guaranteed by Article 21.⁵ It has also held that bail is the rule and jail the exception, and that arrest for offences punishable with less than seven years is not to be mechanical.⁶ Parliament's first statutory answer to endless remand was section 436A of the Code of Criminal Procedure, 1973, inserted in 2005, which entitled an undertrial who had served half the maximum sentence — death-penalty cases excepted — to release on a personal bond.⁷ The Law Commission's 268th Report recorded that the clause was barely used and that poverty, not flight risk, kept most undertrials inside.⁸

The Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced the 1973 Code from 1 July 2024, rewrote the clause as section 479. For a first-time offender the threshold falls from one-half to one-third. The jail superintendent is to apply to the court once the period is reached. Offences for which death or life imprisonment is a specified punishment are excluded.⁹ On 23 August 2024 the Supreme Court, in the continuing *Inhuman Conditions in 1382 Prisons* matter, directed that section 479 apply retrospectively to undertrials already in custody.¹⁰ The Ministry of Home Affairs then ran a Constitution-Day campaign. By 26 November 2024 the States and Union Territories had identified 951 eligible prisoners and courts had granted bail or bond in 334 of those cases.¹¹

³ NCRB, *Prison Statistics India 2023*, executive summary, xi–xii, and Table 2.2 (printed p. 47).

⁴ NCRB, *Prison Statistics India 2024*, executive summary, x–xi. West Bengal 2024 not received; 2023 cells reused.

⁵ *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 81; Constitution of India, art. 21.

⁶ *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51; *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565; *Armesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

⁷ Code of Criminal Procedure, 1973, s. 436A, inserted by Act 25 of 2005.

⁸ Law Commission of India, 268th Report (May 2017).

⁹ *Bharatiya Nagarik Suraksha Sanhita*, 2023, No. 46 of 2023, s. 479, in force 1 July 2024.

¹⁰ *In Re: Inhuman Conditions in 1382 Prisons*, Supreme Court of India, order dated 23 August 2024.

¹¹ Ministry of Home Affairs, “Release of prolonged under-trial prisoners,” PIB, 2 April 2025, PRID 2117796.

The gap this paper fills is documentary. The NCRB tables already contain the national trend, the State dispersion and, from 2024, a dedicated section 479 / 436A release account. The World Prison Brief already contains a pre-trial share for most countries.¹² What has been missing is a single official-table paper that reads those three sources together across the 2019–2024 window, with 1 July 2024 as the statutory hinge, without treating a two-year decline in the undertrial stock as a completed reform.

The working claim is modest. Indian prisons entered the BNSS era with undertrials at 73 to 77 per cent of the stock. The first post-479 year-end shows a further, small decline in that share and a larger decline in occupancy, driven partly by added capacity. Releases under the new clause, on the Bureau's own Table 7.4, number in the hundreds against an undertrial stock of 3.71 lakh. A South Asian pre-trial share has not become a European one.

2. Objectives of the Study

The study has the following objectives:

- To reconstruct the official all-India time series of prison capacity, inmate stock, occupancy and undertrial share from Prison Statistics India for 2019–2024.
- To measure the duration-of-confinement distribution of undertrials in 2023 and 2024.
- To report State-wise dispersion of undertrial share and occupancy (mean, standard deviation, range) for the complete 2023 cross-section, and to test whether those two rates move together.
- To read Table 7.4 of PSI 2024 (section 479 BNSS / section 436A CrPC) against the Ministry of Home Affairs campaign figures of 951 identified and 334 granted.
- To place India's pre-trial share beside the World Prison Brief country pages for selected comparators.

3. Research Methodology

3.1 Research Design

The study adopts a quantitative, empirical and secondary-data based design. The units of analysis are the calendar year (31 December stock), the State or Union Territory, and the national prison system of a comparator country. The design describes official series and estimates a small-n association. It does not identify a causal effect of section 479 on the 2024 stock. A six-month in-force window cannot support that claim.

¹² World Prison Brief, ICPR, Birkbeck, University of London, country page "India".

3.2 Data Sources

Four official or official-derived families are used. First, NCRB, Prison Statistics India 2023, especially the executive summary, Table 1.2, Table 2.2, Table 6.5, Table 7.4 and Chart 2.12.¹³ Second, NCRB, Prison Statistics India 2024, especially the executive summary, Table 1.2, Table 2.2 and Table 7.4. NCRB records that West Bengal did not furnish 2024 data and that 2023 West Bengal cells were reused.¹⁴ Third, the 2019 baseline is taken from Prison Statistics India 2019 as published: 1,350 prisons, capacity 4,03,739, stock 4,78,600, occupancy 118.5 per cent, undertrial share 69.05 per cent. PSI 2023 Chart 2.12 reprints a slightly higher 2019 stock (4,81,387 inmates; 3,32,916 undertrials).¹⁵ Fourth, the abroad comparator is the World Prison Brief, Institute for Crime & Justice Policy Research, Birkbeck, University of London.¹⁶ The Ministry of Home Affairs press release of 2 April 2025 supplies the campaign annex of 951 identified and 334 granted up to 26 November 2024. That annex is a different window from NCRB's calendar year and is not added to Table 7.4.

3.3 Method of Analysis

Descriptive tables report levels and rates. Undertrial share is undertrials divided by total inmates on 31 December. Occupancy is inmates divided by sanctioned capacity. For the 28 States, mean, population standard deviation and range are reported. A Pearson product-moment correlation is estimated between 2023 State occupancy and undertrial share. Union Territories are dropped from the Pearson because Lakshadweep's 100 per cent undertrial share rests on three inmates. No coefficient is read as a treatment effect of section 479.

3.4 Limitations

PSI is a year-end census, not a flow of person-days. Occupancy uses sanctioned capacity. The 2024 all-India totals reuse West Bengal's 2023 cells. Section 479 excludes death- and life-imprisonment offences. Table 7.4's "eligible" count is the count the jails reported, not an independent audit. World Prison Brief dates do not align on 31 December 2024. The 2019 occupancy row and the 2019 Chart 2.12 reprint are adjacent vintages, not a single printed page.

¹³ NCRB, Prison Statistics India 2023.

¹⁴ NCRB, Prison Statistics India 2024, including the 2024 Executive Summary.

¹⁵ PSI 2019 as published, quoted by PARI, CJP, and Raghavan (2020): 4,78,600 inmates; capacity 4,03,739; occupancy 118.5%; UT share 69.05%. Chart 2.12 reprint: 4,81,387 / 3,32,916.

¹⁶ World Prison Brief country pages opened for India, United States, England and Wales, Germany, Japan, Brazil, Bangladesh, Pakistan and Canada.

4. Results and Empirical Analysis

4.1 National Snapshot

Table 1 places the last pre-reform year-end beside the first post-reform year-end. The undertrial count fell by 18,470, or 4.7 per cent. The undertrial share fell by less than one percentage point. Capacity rose by 14,650 (3.3 per cent) while the inmate stock fell by 18,791 (3.5 per cent). Occupancy therefore fell faster than the undertrial share.

Table 1. Indian prisons, 31 December 2023 and 31 December 2024

Indicator	2023	2024
Prisons	1,332	1,333
Sanctioned capacity	4,39,119	4,53,769
Inmates	5,30,333	5,11,542
Occupancy (%)	120.8	112.7
Convicts	1,35,536 (25.6%)	1,36,138 (26.6%)
Undertrials	3,89,910 (73.5%)	3,71,440 (72.6%)
Detenues	3,916 (0.7%)	3,048 (0.6%)
Other inmates	971 (0.2%)	916 (0.2%)
Undertrials confined up to 1 year	2,70,256 (69.3%)	2,59,608 (69.9%)
Undertrials confined above 5 years	10,392 (2.7%)	9,028 (2.4%)
Highest State/UT occupancy	Delhi 200.2%	Delhi 194.6%
Released under 436A / 479 in the year	656 (436A)	627 (479 + 436A)

Source: NCRB, Prison Statistics India 2023 and 2024, executive summaries and Tables 1.2, 2.1, 6.5, 7.4. 2024 West Bengal cells are 2023 carry-forward.

4.2 Year-on-Year Trend, 2019–2024

Table 2 is the official spine of the paper. The pandemic years are the hinge of the series, not 1 July 2024. Undertrial numbers jumped from 3.30 lakh in 2019 to 4.27 lakh in 2021. The share crossed 77 per cent. Occupancy crossed 130 per cent and stayed there through 2022, when the stock peaked at 5.73 lakh. The 2023 decline began a full year before section 479 entered into force.

Table 2. All-India prison stock, occupancy and undertrial share, 31 December 2019–2024

Year	Prisons	Capacity	Inmates	Occ. %	Undertrials	UT %
2019	1,350	4,03,739	4,78,600	118.5	3,30,473	69.05
2020	1,306	4,14,033	4,88,511	118.0	3,71,848	76.1
2021	1,319	4,25,609	5,54,034	130.2	4,27,165	77.1
2022	1,330	4,36,266	5,73,220	131.4	4,34,302	75.8
2023	1,332	4,39,119	5,30,333	120.8	3,89,910	73.5
2024	1,333	4,53,769	5,11,542	112.7	3,71,440	72.6

Sources: 2019 — PSI 2019 as published (PARI/CJP/Raghavan); undertrial headcount is 69.05% of 4,78,600. 2020 — PSI 2022/2023 comparison tables. 2021–23 — PSI 2023 executive summary. 2024 — PSI 2024 executive summary. PSI 2023 Chart 2.12 reprints 2019 as 4,81,387 inmates and 3,32,916 undertrials (69.2%).



Figure 1. Prison stock and undertrial stock, 31 December 2019–2024.

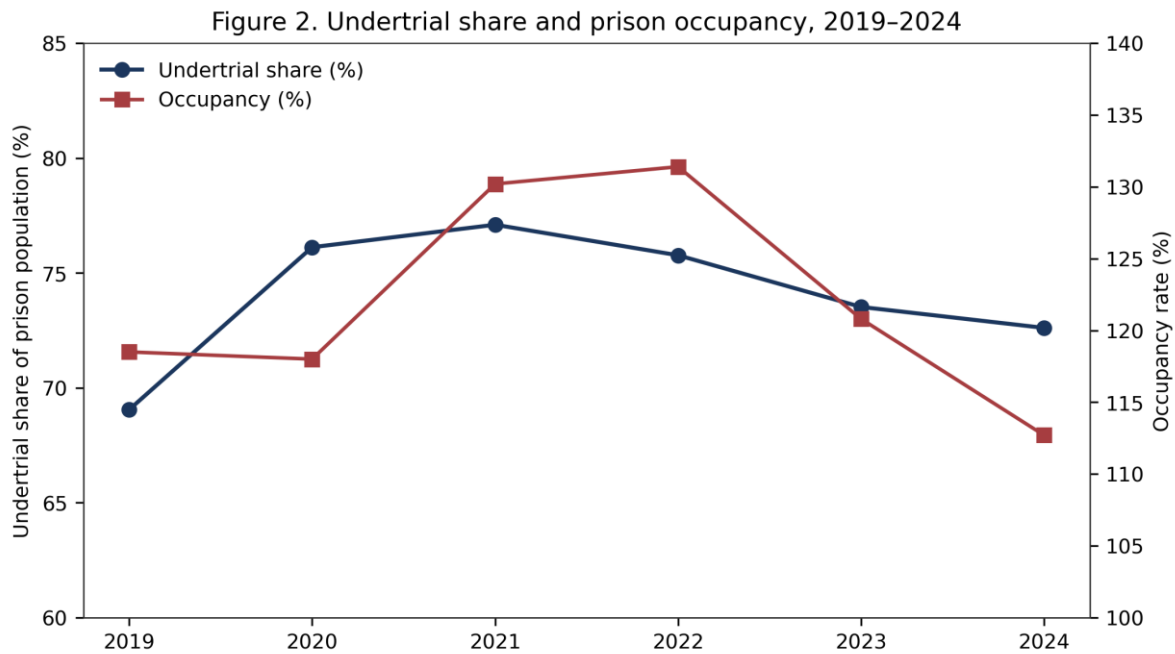


Figure 2. Undertrial share and prison occupancy, 2019–2024.

Chart 2.12 of PSI 2023 adds the longer reprint. From 31 December 2018 to 31 December 2023 the inmate stock rose 13.6 per cent (4,66,802 to 5,30,333) while the undertrial stock rose 20.3 per cent (3,24,141 to 3,89,910) and the convict stock fell 3.0 per cent.¹⁷ The overcrowding of Indian prisons in this window is an undertrial overcrowding.

4.3 How Long the Unconvicted Remain

Most undertrials are not the five-year cases that dominate public argument. Seven in ten have been inside for a year or less. That is the population for whom a functioning bail list and a functioning section 479 application should matter quickly. 9,028 people had been unconvicted for more than five years on 31 December 2024. Many of those cases will be life-imprisonment or death-penalty charges, which section 479 does not reach.

Table 3. Undertrial prisoners by duration of confinement

Band	31 Dec 2023	%	31 Dec 2024	%
Up to 3 months	1,26,757	32.5	1,25,894	33.9
3–6 months	78,564	20.1	72,452	19.5
6–12 months	64,935	16.7	61,262	16.5

¹⁷ PSI 2023, Chart 2.12 (printed p. 44).

Up to 1 year (subtotal)	2,70,256	69.3	2,59,608	69.9
1–2 years	54,655	14.0	51,702	13.9
2–3 years	31,601	8.1	30,194	8.1
3–5 years	23,006	5.9	20,908	5.6
Above 5 years	10,392	2.7	9,028	2.4
Total undertrials	3,89,910	100	3,71,440	100

Source: PSI 2023, Table 6.5 and executive summary; PSI 2024 executive summary. 2024 percentages computed from printed band counts $\div 3,71,440$.

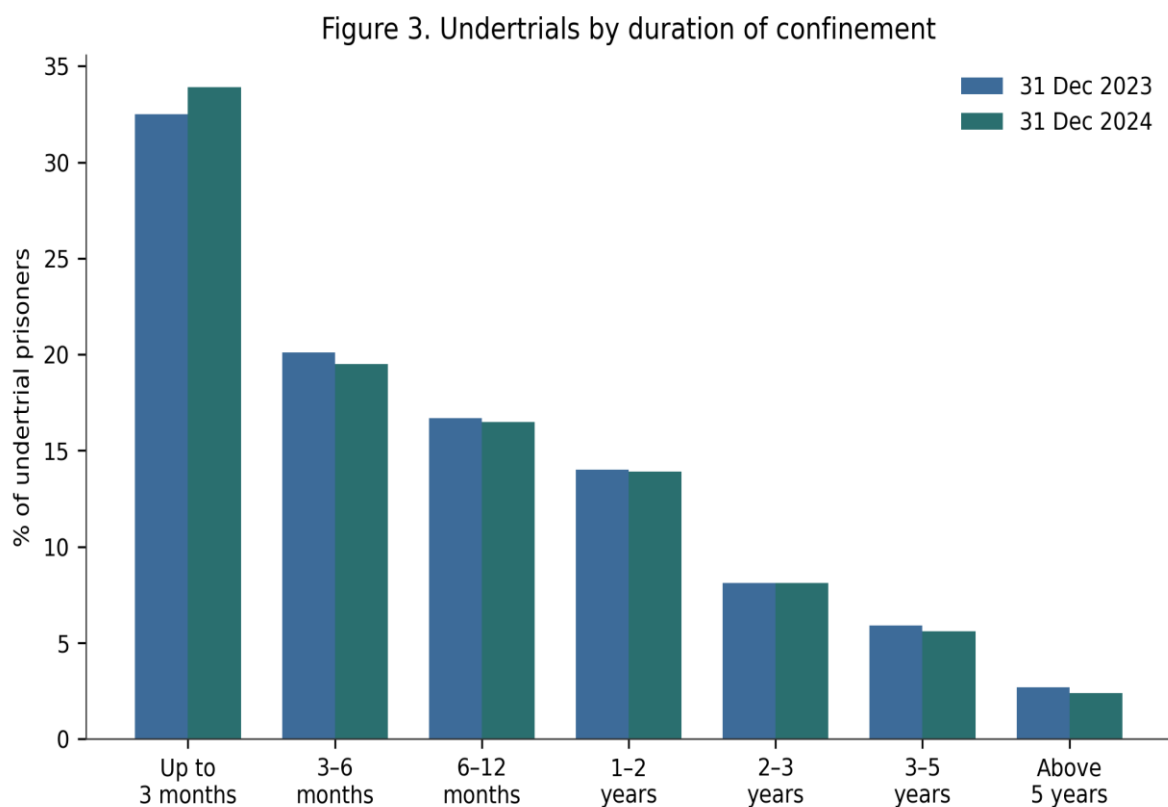


Figure 3. Undertrials by duration of confinement, 2023 and 2024.

4.4 State-wise Dispersion

The national 73.5 per cent is not a State average. Table 4 reports the 2023 census of 28 States in the same mean–standard-deviation–range format as Table 1 of the companion sample paper.

Table 4. Dispersion of undertrial share and occupancy, 31 December 2023

Series	n	Mean	SD	Min	Max	Range
UT share, 28 States (%)	28	69.8	9.2	50.4 (MP)	87.7 (Bihar)	37.3
Occupancy, 28 States (%)	28	110.9	35.7	39.7 (NL)	188.7 (ML)	149.0
UT share, 36 S/UT (%)	36	72.1	12.1	45.0 (A&N)	100.0 (LD, n=3)	55.0
Occupancy, 36 S/UT (%)	36	108.0	42.1	4.7 (LD)	200.2 (Delhi)	195.5

Source: computed from PSI 2023, Tables 1.2 and 2.2. SD is the population standard deviation (complete census).

Table 5. Selected States and Union Territories, 31 December 2023

State / UT	Inmates	Occupancy %	UT share %
Delhi	20,077	200.2	88.8
Meghalaya	1,283	188.7	68.7
Uttarakhand	6,885	183.1	63.9
Maharashtra	40,805	155.3	79.5
Madhya Pradesh	45,543	152.4	50.4
Uttar Pradesh	98,849	150.1	74.3
Bihar	53,076	108.3	87.7
Goa	568	91.0	83.8
Odisha	18,170	73.7	81.3
Tamil Nadu	19,738	81.1	62.6
Telangana	5,853	72.8	64.9
Nagaland	591	39.7	73.1
All-India	5,30,333	120.8	73.5

Source: PSI 2023, Tables 1.2 and 2.2.

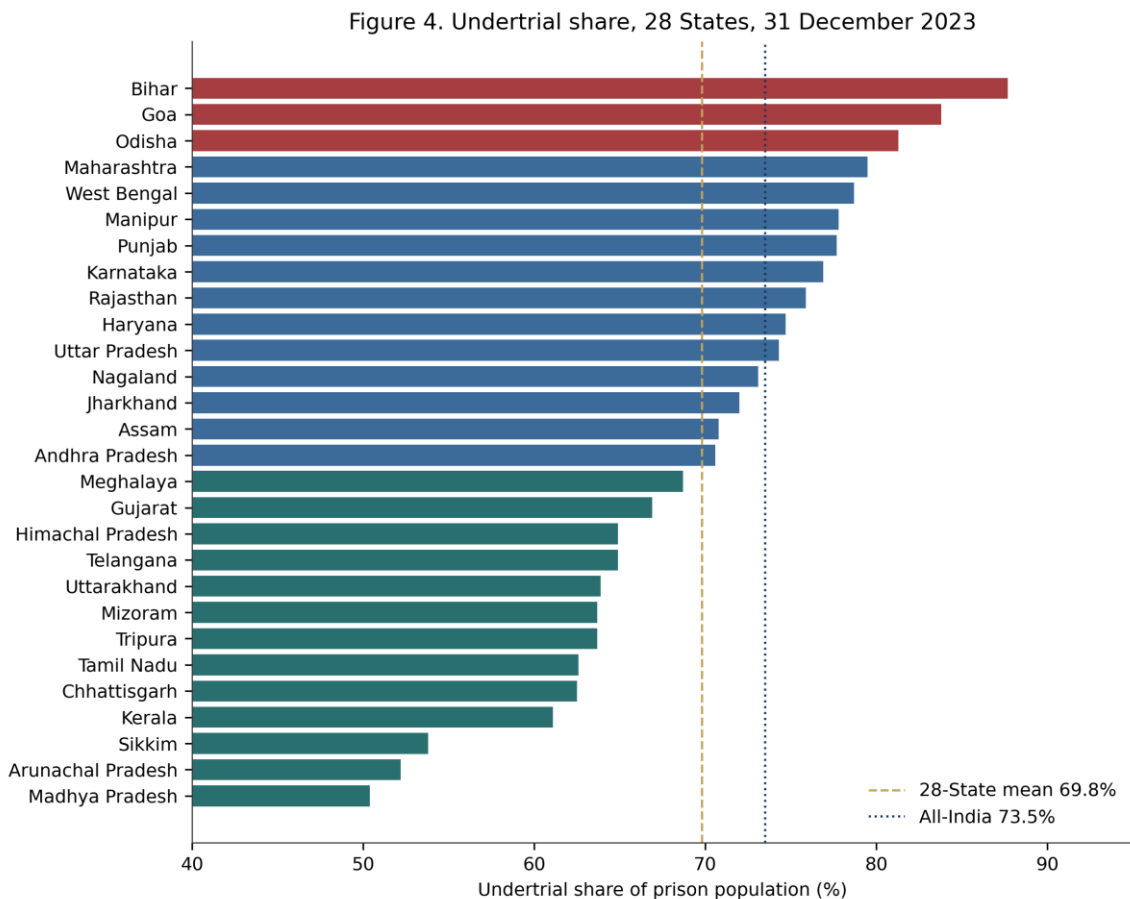


Figure 4. Undertrial share, 28 States, 31 December 2023.

Bihar and Delhi are undertrial prisons. Madhya Pradesh and Uttarakhand are overcrowded prisons whose convict share is high. The 28-State Pearson correlation between occupancy and undertrial share is $r = -0.20$ (two-tailed $p = 0.32$).¹⁸ Spearman's ρ is -0.22 ($p = 0.27$). Dropping Manipur and Nagaland, whose occupancy is below 50 per cent, leaves $r = -0.13$ ($n = 26$, $p = 0.53$). The 2024 28-State pair, which still carries West Bengal's 2023 cells, is $r = -0.17$ ($p = 0.40$). A State can crowd its jails with convicts. A State can keep occupancy near capacity and still hold eight undertrials in every ten beds. Section 479 will not decongest Madhya Pradesh if Madhya Pradesh's extra bodies are already sentenced.

4.5 Section 436A and the First Months of Section 479

Even in the last full year of section 436A the jails identified only 1,384 eligible undertrials in a stock of 3.89 lakh, and released 656.¹⁹ The first six months of section 479 produced 300 recorded releases on the Bureau's split rows (204 first-time plus 96 other) and 627 on the

¹⁸ Computed from PSI 2023 Tables 1.2 and 2.2; SciPy 1.15, two-tailed Pearson / Spearman.

¹⁹ PSI 2023, Table 7.4 (printed p. 173) and Chapter 7 text (p. 166).

combined 479-plus-436A row.²⁰ Against 3.71 lakh undertrials that is 0.17 per cent of the stock.

Table 6. Eligible and released under section 436A CrPC and section 479 BNSS

Window	Eligible	Released	Released %
2023, s. 436A only	1,384	656	47.4
2024, s. 436A (legacy files)	481	327	68.0
2024, s. 479 first-time offenders	321	204	63.6
2024, s. 479 other undertrials	166	96	57.8
2024, s. 479 + 436A combined	968	627	64.8
MHA campaign to 26 Nov 2024	951 identified	334 granted	35.1

Sources: PSI 2023, Table 7.4; PSI 2024, Table 7.4 (pp. 175–178); MHA PIB, 2 April 2025, PRID 2117796. The campaign annex and the NCRB calendar-year table are different windows and must not be added.

The Home Ministry’s 334 grants by Constitution Day and the Bureau’s 627 calendar-year releases agree on the order of magnitude: hundreds, not lakhs. Uttar Pradesh dominates both accounts (412 of 656 releases in 2023; 287 of 627 in 2024). Delhi’s 2024 combined row is 143 eligible and 41 released, almost all of them first-time section 479 files. Several large States reported zeros across the first-time 479 columns.

4.6 Abroad Comparator: World Prison Brief

Table 7 is the one-table comparison the Brief invites. India is not an outlier in South Asia. It is an outlier among large constitutional democracies that publish a pre-trial share. Brazil, which holds a larger prison population than India and runs at 135.6 per cent occupancy, keeps pre-trial detention to 23.6 per cent.²¹

Table 7. Pre-trial / remand prisoners as a percentage of the prison population

Jurisdiction	Reference date	Pre-trial share (%)
Japan	Mid-2025	15.8
England and Wales	31 March 2026	18.3

²⁰ PSI 2024, Table 7.4, pages 1–4 (printed pp. 175–178) and Chapter 7 text (p. 168).

²¹ World Prison Brief, Brazil country page (31 December 2024).

Brazil	31 December 2024	23.6
United States	2023	25.5
Germany	31 January 2025	26.6
Canada	Average, year to 31 March 2024	49.6
India	31 December 2024	72.6
Bangladesh	29 November 2025	73.1
Pakistan	July / August 2024	73.4

Source: World Prison Brief country pages, ICPR, Birkbeck, University of London, opened for this paper. India's 72.6 per cent is the Brief's reprint of NCRB 31 December 2024.

Figure 5. India and selected World Prison Brief comparators

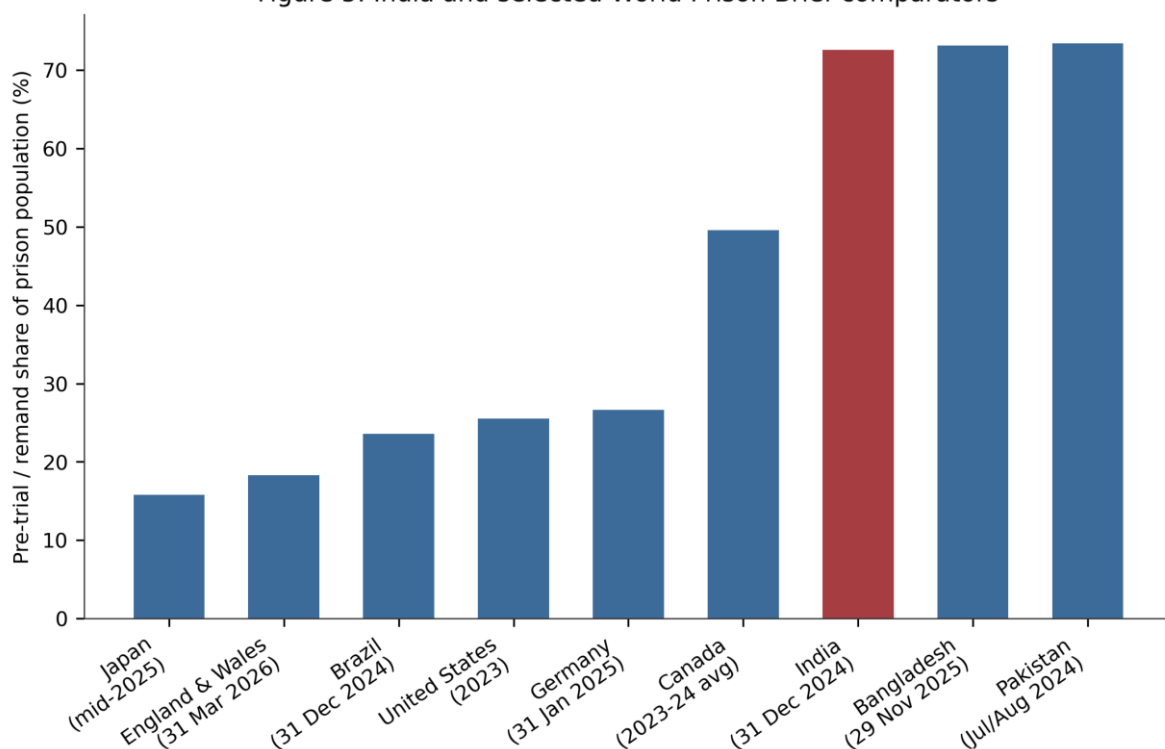


Figure 5. India and selected World Prison Brief comparators.

5. The Statutory Hinge: From Section 436A to Section 479

Section 436A was inserted by the Code of Criminal Procedure (Amendment) Act, 2005. It provided that an undertrial who had undergone detention for half the maximum imprisonment specified for the offence, death-penalty cases excepted, “shall be released by the Court on his

personal bond with or without sureties.” The accused could not be detained beyond the maximum period of imprisonment provided for the offence.

Section 479 of the BNSS keeps the structure and changes three things. A first-time offender — a person who has never been convicted — “shall be released on bond” after one-third of the maximum period. Other eligible undertrials remain at one-half. Offences for which death or life imprisonment is specified as one of the punishments are excluded. The prison superintendent is to make an application to the court once the period is completed.

The life-imprisonment exclusion is a narrowing, not a widening, relative to section 436A. A first-time accused of an offence punishable with a term of years gains six months or more. A first-time accused of murder, or of any other offence for which life is a specified punishment, loses the statutory door that 436A had left ajar. Table 6.1 of PSI 2023 records that 75,040 of 1,35,536 convicts were serving life.²² The matching undertrial stock is not separately printed.

The Supreme Court’s 23 August 2024 direction that section 479 apply to undertrials already in custody closed the most obvious transitional gap. It did not enlarge the class of eligible offences. It did not create a surety exemption. It did not repeal Arnesh Kumar. Mechanical arrest and mechanical remand remain the intake that section 479, months later, is asked to drain. Satender Kumar Antil asked for a Bail Act and restated that bail is the rule.²³ The Law Commission’s 268th Report had already said that the poor stay inside because they cannot furnish surety. Section 479 is a time-served rule. It is not a surety rule.

6. Discussion

The official series supports four statements and refuses a fifth. The first statement is that the pre-reform crisis is not a slogan. Undertrials were 69 per cent of the stock in 2019, 76 to 77 per cent in the pandemic years, and 73.5 per cent on the last 31 December before the BNSS. Occupancy sat between 118 and 131 per cent. Section 436A released 656 people in 2023.

The second statement is that 2024 is a continuation, not a break. The undertrial stock and the occupancy rate had already fallen in 2023. Capacity rose faster in 2024 than in 2023. West Bengal is frozen at 2023. A before/after design that treated 31 December 2023 as “before” and 31 December 2024 as “after section 479” would attribute to the clause a decline that began while section 436A was still the law.

The third statement is that State dispersion is wide and that occupancy does not track

²² PSI 2023 executive summary, xvi: 75,040 of 1,35,536 convicts sentenced to life (55.4%).

²³ Satender Kumar Antil, *supra* note 4; Moti Ram v. State of M.P., (1978) 4 SCC 47; Sunil Batra v. Delhi Administration, (1980) 3 SCC 488; Bhim Singh v. Union of India, (2015) 13 SCC 605.

undertrial share. The Pearson null is not a finding that undertrials do not crowd prisons. It is a finding that which State is crowded is not the same question as which State is majority-undertrial.

The fourth statement is that section 479 is, so far, a small official flow. Hundreds of releases against 3.71 lakh undertrials will not move the national share by a percentage point. The eligible counts themselves — 321 first-time, 166 other, 481 leftover 436A — suggest that jail headquarters are not reading the remand population as a section 479 population.

The fifth statement, which the data do not support, is that India has used the first year of the BNSS to leave the South Asian pre-trial band. Table 7 is unchanged in rank. A second and third PSI edition after 2024 will be the proper after-period. This paper is the baseline plus the first official year-end.

7. Conclusion and Suggestions

The NCRB tables already answer the question this paper was written to ask. Indian prisons, on every 31 December from 2019 to 2024, have been majority-unconvicted. The pandemic pushed the undertrial share above 77 per cent and occupancy above 130 per cent. Both rates have since eased. They have not changed category. Section 479 is a narrower, and for first-time term-of-years accused a more generous, successor to section 436A. Its first year-end, on the Bureau's own release table, is measured in hundreds of people.

The following suggestions follow from the tables rather than from a new principle.

- Table 7.4 should be published as a mandatory quarterly return to the State Legal Services Authority and to the Undertrial Review Committee, not only as an annual NCRB cell.
- The life-imprisonment exclusion should be read against the 436A baseline and counted as a class in the next PSI year.
- Occupancy reduction by construction should be reported separately from occupancy reduction by release. Uttar Pradesh in 2024 is the construction example.
- The World Prison Brief pre-trial share should sit in the PSI executive summary beside Table 2.2.
- Arnesh Kumar compliance should be the intake metric that matches section 479 as the outflow metric.

The 2025 and 2026 editions of Prison Statistics India will show whether section 479 is a valve or a footnote. The 2019–2024 editions already show why the valve was fitted.

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