

## THE ROLE OF JUDICIARY IN PROTECTION OF UNDERTRIALS

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### ABSTRACT

This research paper examines the critical issue of access to justice for undertrial prisoners (UTPs) in India, who constitute a significant portion of the prison population and often face prolonged pre-trial detention. Drawing upon empirical research conducted in selective prisons across seven states in India, this study evaluates the efficacy of free legal aid services provided to UTPs. The research involved the collection of primary data through structured and unstructured questionnaires from various stakeholders, including District Judges, Jail Superintendents, Legal Aid Counsels (LACs), Jail Visiting Advocates (JVAs), Para Legal Volunteers (PLVs), and the UTPs themselves. This study aims to identify the impediments faced by UTPs in availing their right to access justice, assess the commitment and competency of legal aid providers, and understand the challenges in the implementation of existing legal frameworks and Supreme Court judgments related to the release of UTPs. Ultimately, this research seeks to contribute to the existing literature and suggest potential solutions for enhancing the quality of legal aid services and ensuring a more effective and just criminal justice system for undertrial prisoners in India.

### RESEARCH QUESTIONS

Based on the objectives and problem statements outlined in the sources, the following research questions are proposed:

- What are the causes for the incarceration of under-trial prisoners accused of offences punishable by the maximum punishment of 3 years, 7 years, and more than 7 years?
- Which categories of under-trial prisoners have faced a maximum incarceration period?
- What is the trend followed with respect to the under-trial prisoners being held in prison due to remand or delay in the investigation period?
- How does the judicial/ legal framework restrict the release of under-trial prisoners?
- How many and which types of under-trial prisoners are withheld in prison due to lack of surety/bond?
- How many under-trial prisoners have been released based on the recommendation of the District Under-trial Review Committee?
- Why are the under-trial prisoners who are entitled to be released under Section 436A of the CrPC, 1973 (in the selected states) not being released?
- What are the administrative impediments that cause delays in trials of under-trial prisoners?
- What level of commitment and competency do the legal aid counsels provide to under-trial prisoners? This question was a central hypothesis of the research.
- How effective are the free legal aid services provided to under-trial

prisoners in Jails? This includes evaluating the effectiveness of the services of Legal Aid Counsels (LACs), Para Legal Volunteers (PLVs), and other Jail agencies in facilitating access to justice to under-trial prisoners.

- What are the difficulties faced by Legal Aid Counsels (LACs) in dealing with legal aid cases related to UTPs?
- What is the level of understanding and commitment of LACs towards providing legal aid services to UTPs?
- What is the perception and level of satisfaction of Undertrial Prisoners (UTPs) with the legal aid services provided to them?
- What are the impediments in the implementation of Supreme Court judgments on the release of under-trial prisoners under Section 364-A?. It is noted that the source might have a typographical error and intends to refer to Section 436A of the CrPC.
- Are people inclined to approach legal aid authorities for free legal services, and if not, why?
- Do beneficiaries of legal aid services have faith in the commitment and sincerity of empanelled legal practitioners?
- Is there a proper classification of UTPs based on the nature of their crimes recorded in prisons, and how does this affect their eligibility for bail provisions under Section 436A of CrPC?

### **Chapter 1: Introduction to the Study of Prison Reforms and Undertrial Prisoners in India**

The principles of **equality and dignity** are intended to be fundamental aspects of India's criminal justice system. The journey towards reforming this system, while potentially challenging, is imperative to uphold the values enshrined in the Constitution, democracy, and society, and to protect the inherent worth of

every individual. The report on 'Prisons in India' has been conceived in line with the vision of the Hon'ble Chief Justice of India, Dr. Justice D.Y. Chandrachud, with the aim to analyse the laws governing prisons and to prepare a report on prison reforms. This initiative includes identifying **colonial-era provisions** that persist in prison regulations.

This report seeks to highlight the complexities inherent in India's prison system, considering the system in its entirety, which includes the crucial role of trial courts and the potential offered by technology-driven solutions through effective coordination among stakeholders. The structure of this report encompasses five parts:

- **Mapping Legal Architecture:** This involves an analysis of the prison manuals across all States and Union Territories to identify archaic and regressive provisions.
- **Reformation and After-care:** This section scrutinizes information received from various prison departments to assess the current status of reformation and after-care initiatives within prisons. It places a particular emphasis on open and semi-open prisons and the mental health of prisoners, including those with substance abuse issues and those sentenced to death.
- **Access to legal aid to prisoners:** This part discusses the respective roles of prison authorities, Undertrial Review Committees (UTRCs), and District Legal Services Authorities (DLSAs) in facilitating access to justice.

Understanding the current state of prison administration requires acknowledging its historical evolution. Efforts towards prison reform in India have been ongoing. To update the **colonial-era Prisons Act, 1894** in accordance with evolving socio-economic and political conditions and to align with a correctional ideology, the Ministry of Home Affairs (MHA) passed the **Model Prisons and**

**Correctional Services Act, 2023**, which was prepared by the Bureau of Police Research and Development (BPRD). This Model Act serves as a guiding document for States to enact their own laws and repeal the outdated Prisons Act of 1894. Prior to this, the **Model Prison Manual (MPM)** was introduced in **2003**, and subsequently reviewed in light of changing circumstances and technological advancements, leading to the **MPM 2016**. The MPM 2016 incorporated new chapters addressing areas such as 'Repatriation of Prisoners', 'Legal-aid', and 'Parole and Furlough', and it takes into account principles laid down by committees like the **Mulla Committee** and various judicial precedents concerning the rights of prisoners.

A significant concern within the Indian prison system is the **congestion of undertrial prisoners**. This issue has been a subject of discussion and recommendation for decades, as highlighted in the **Seventy-eighth Report of the Law Commission of India relating to congestion of undertrial prisoners in jails, dating back to February 1979**. The Law Commission took up this matter at the instance of the government, recognizing the high percentage of undertrials, the resulting overcrowding, the prolonged durations of detention, and the unsatisfactory conditions prevalent in jails. The term 'undertrial prisoners' in this context is used broadly to include individuals in judicial custody on remand during investigation, as statistically distinguishing them from those whose trial has commenced is often not feasible.

The issue of **bail** is intrinsically linked to the problem of undertrial congestion. Legislative authority for the detention of individuals suspected of offenses is provided under sections 167 and 309(2) of the Code of Criminal Procedure (CrPC), 1973, which distinguish between detention before and after the court takes cognizance. While the law outlines provisions for bailable and non-bailable offenses, the practical application and the imposition of bail conditions often pose

significant challenges, leading to prolonged detention for many undertrials. A study by Prayas, a Tata Institute of Social Sciences (TISS) initiative, specifically focused on the **experiences of undertrial prisoners released on bail**, aiming to understand the bottlenecks in the bail process and recommend amendments to the law in line with pronouncements of the higher judiciary. This research highlighted issues such as high surety amounts, delays in trial, and the insistence on local surety as factors impeding the release of undertrials even after bail is granted.

Recognizing the critical importance of **access to justice** for undertrial prisoners, a research project was undertaken to evaluate the efficacy of free legal aid services in selective prisons across several states in India. This empirical research, funded by the Department of Justice, Ministry of Law and Justice, Government of India, involved collecting primary data from various stakeholders, including judicial officers, jail superintendents, legal aid counsels (LACs), para-legal volunteers (PLVs), and the undertrial prisoners themselves. The research aimed to identify impediments to prisoners' right to access justice, particularly their right to free legal aid, and to assess the effectiveness of these services. The research methodology employed both doctrinal and non-doctrinal methods, including the use of structured questionnaires administered to stakeholders in states with a high number of undertrials. A pilot study conducted at Tihar Jail in Delhi provided crucial insights for framing the research questionnaires and understanding the ground realities of prison administration concerning undertrials.

This chapter serves as an introduction to the multifaceted issues surrounding prison reforms and the plight of undertrial prisoners in India. By outlining the legislative and policy context, historical perspectives, and the focus of contemporary research, it sets the stage for a more detailed exploration of the challenges and potential solutions discussed in the subsequent chapters of this report. The emphasis

throughout will remain on ensuring that the principles of equality and dignity are realized for all individuals within the criminal justice system.

### **Chapter 2: The Plight of Undertrial Prisoners in India: Magnitude, Legal Framework, and Access to Justice**

The Indian prison system grapples with a significant challenge in the form of a large population of **undertrial prisoners**, constituting a high percentage of the total jail inmates. Figures from 1975 revealed that undertrials made up 57.58% of the total prison population. This high proportion of individuals detained while awaiting trial has been a persistent concern. The **Seventy-eighth Report of the Law Commission of India in 1979** specifically addressed the issue of the **congestion of undertrial prisoners in jails**, acknowledging their substantial numbers, the resulting overcrowding, prolonged detention periods, and unsatisfactory conditions within prisons. The Law Commission used the term 'undertrial prisoners' broadly to include individuals in judicial custody on remand during investigation, as distinguishing them statistically from those whose trial had commenced was often not feasible.

**Detention of undertrial prisoners** primarily stems from arrest for alleged offenses not followed by the granting of bail. Legislative authority for such detention is provided under **sections 167 and 309(2) of the Code of Criminal Procedure (CrPC), 1973**, which differentiate between detention before and after a court takes cognizance of an offense. While the law outlines provisions for bailable and non-bailable offenses, the practical application and the imposition of bail conditions often present significant hurdles, leading to prolonged detention for many undertrials. A study by Prayas, a Tata Institute of Social Sciences (TISS) initiative, examined the experiences of undertrial prisoners released on bail, aiming to identify bottlenecks in the bail process and propose legal amendments. This research highlighted issues such as high surety amounts,

delays in trial, and the insistence on local surety as factors impeding the release of undertrials even after bail was granted. The Supreme Court has repeatedly emphasized that bail is the rule and jail is an exception, yet lower courts often seem to exercise discretion in a manner contrary to established judicial precedents. Recommendations have been made to amend the CrPC to make offenses punishable with imprisonment up to three years bailable. The Law Commission also recommended adding an explanation to Section 436(1) of the CrPC, suggesting that if a person is unable to furnish bail within one month of arrest, their release on a personal bond without sureties should be considered, absent recorded reasons to the contrary.

A critical aspect impacting undertrial prisoners is the delay in the disposal of their cases in trial courts. The Law Commission, in its earlier report on delay and arrears in trial courts, stressed the need to implement recommendations aimed at reducing these delays, as this would significantly contribute to solving the problem of undertrial congestion. Measures such as typing evidence in District and Sessions Courts were suggested as steps that could be implemented even without legislative amendment to expedite proceedings. Protracted periods of detention can lead to severe consequences for undertrials, including the deprivation of their freedom and potential loss of livelihood. Concerns have also been raised about the non-segregation of undertrial prisoners from convicted offenders in some jails, which is considered an ineffective method of preventing contamination and can expose young undertrials to hardened criminals.

**Access to justice** for undertrial prisoners is paramount. Empirical research has been conducted to evaluate the efficacy of **free legal aid services** for this vulnerable population in selective prisons across several states in India. These studies, funded by the Department of Justice, aimed to identify impediments to prisoners' right to access justice, particularly free legal aid, and to assess the effectiveness of

these services. The research employed both doctrinal and non-doctrinal methods, including surveys using structured questionnaires administered to various stakeholders such as judicial officers, jail superintendents, Legal Aid Counsels (LACs), para-legal volunteers (PLVs), and the undertrial prisoners themselves. A pilot study at Tihar Jail in Delhi provided crucial insights for framing the research questionnaires and understanding the realities of prison administration concerning undertrials.

The research revealed several challenges concerning legal aid for undertrials. A significant concern is the low presence of remand lawyers during the production of undertrials before magistrates, with a substantial percentage of undertrials reporting their absence. While a majority of undertrials who did receive a remand lawyer reported getting one immediately, a low percentage expressed satisfaction with the services provided. Legal Aid Counsels (LACs) themselves face various difficulties, including a lack of effective communication, infrastructural issues, and concerns regarding the quantum of honorarium. Data indicated that a considerable percentage of LACs faced difficulties while filing bail applications for undertrials, such as a lack of family support, no surety, and missing required documents. Judicial officers also provided assessments of the performance of remand lawyers, with significant percentages rating their commitment, quality of arguments, presentation skills, and drafting skills as fair or bad. Furthermore, there were instances where prison authorities did not provide necessary data to the District Legal Services Authority (DLSA). Despite the existence of Under Trial Review Committees (UTRCs), questions have been raised about how the judicial/legal framework might still restrict the release of undertrials and the number of undertrials withheld due to a lack of surety/bond. Some undertrials reported that police deliberately did not produce them before magistrates. Notably, a significant portion of undertrials reported engaging private legal practitioners, often due

to advice from family/friends or a lack of awareness about the free legal aid system, with some discontinuing private services due to financial constraints.

In conclusion, Chapter 2 highlights the multifaceted challenges associated with undertrial prisoners in India, encompassing the sheer magnitude of their population within prisons, the complexities and potential impediments within the legal framework governing their detention and release, and the critical yet often inadequately realized access to justice mechanisms. These issues underscore the urgent need for comprehensive reforms within the criminal justice system to ensure the protection of the rights and dignity of undertrial prisoners, in line with the constitutional principles of equality and inherent worth. Further research has also been recommended to examine the impact of litigation policy and jail manuals on overcrowding.

### **Chapter 3: Voices from Within: Undertrial Prisoners' Perspectives on Access to Justice**

Building upon the discussion of the legal framework and the magnitude of undertrial incarceration in India, this chapter delves into the crucial aspect of access to justice from the perspective of the undertrial prisoners themselves. Understanding their experiences with the legal aid system, the challenges they face in securing bail, and their interactions with various stakeholders within the criminal justice system is paramount to formulating effective reform strategies. This chapter draws primarily from empirical research that directly engaged with undertrial prisoners to capture their lived realities.

A research project, funded by the Department of Justice, specifically aimed to evaluate the efficacy of free legal aid services for undertrial prisoners [b.pdf]. This research involved collecting primary data through personally administered structured questionnaires from various stakeholders, including the undertrial prisoners (UTPs) themselves [b.pdf, 116, 117]. A pilot study conducted at Tihar Jail in Delhi

provided valuable insights that informed the framing of questionnaires for a wider empirical study

The research sought to understand several key aspects from the perspective of UTPs, including:

**Awareness and Access to Free Legal Aid:** The extent to which undertrial prisoners are aware of their right to free legal aid services upon arrest and remand is a critical first step in ensuring access to justice. The study aimed to ascertain if and when UTPs were informed about this right and how they could avail these services.

**Interaction with Legal Aid Counsel (LACs):** The quality and frequency of interaction between UTPs and their assigned Legal Aid Counsels play a significant role in effective legal representation. The research explored the modes of communication used by LACs, the frequency of meetings [b.pdf], and the level of satisfaction expressed by UTPs regarding the commitment and services provided by their LACs. Concerns were raised about the presence of remand lawyers during the initial production before magistrates, with a significant percentage of UTPs reporting their absence [b.pdf]. While some UTPs reported getting a remand lawyer immediately, a low percentage expressed satisfaction with the services.

**Challenges in the Bail Process:** Despite the principle that "bail is the rule and jail is an exception", many undertrials face significant hurdles in obtaining bail. The research investigated the challenges faced by UTPs in understanding and fulfilling bail conditions, such as the requirement of surety. The Bail Study Report, 2024 also highlighted issues like high surety amounts and the insistence on local surety as impediments to release. The research by aimed to understand how the judicial/legal framework might restrict the release of undertrials and the number of UTPs withheld due to a lack of surety/bond.

**Perceptions of Delay and Case Management:** Protracted delays in the disposal of cases are a

major contributing factor to the high number of undertrial prisoners. The research likely explored UTPs' understanding of the progress of their cases, their perceptions of the reasons for delays, and their access to information regarding the next court hearing. Alarming, a significant percentage of LACs were reported not to inform UTPs about the next hearing.

**Experiences with Prison Authorities and Under Trial Review Committees (UTRCs):** The role of prison authorities in facilitating access to legal aid and the functioning of UTRCs in identifying and recommending cases for release are crucial. The research might have touched upon UTPs' interactions with prison officials regarding legal matters and their awareness of or engagement with the UTRC process.

**Reasons for Engaging Private Legal Practitioners:** Despite the availability of free legal aid, some undertrials opt for private lawyers. The research sought to understand the reasons behind this choice, which could include a lack of awareness about free legal aid, advice from family/friends, or dissatisfaction with the provided legal assistance. Financial constraints leading to the discontinuation of private legal services were also noted.

**Complaints and Grievances:** The research also likely provided an avenue for undertrial prisoners to voice any complaints or grievances they had regarding the free legal aid services they received. Understanding the nature of these complaints is essential for improving the quality of legal assistance.

The data collected from undertrial prisoners would offer a crucial ground-level perspective on the realities of accessing justice while incarcerated. Analysing their responses regarding awareness, interaction with legal aid providers, challenges in securing bail, and perceptions of the judicial process provides invaluable insights into the systemic barriers that need to be addressed to uphold the rights of undertrial prisoners in India. Further research has also been suggested to examine the impact of litigation policy and jail manuals on

overcrowding, which indirectly affects the experiences of undertrials.

#### **Chapter 4: Reforming the System: Pathways to Enhanced Justice for Undertrial Prisoners**

Building upon the preceding chapter's exploration of undertrial prisoners' experiences with access to justice, this chapter will delve into the **identified pathways for systemic reform** gleaned from various reports, legal analyses, and judicial pronouncements within the provided sources. The focus will be on concrete recommendations and suggestions aimed at reducing undertrial incarceration and ensuring a more just and equitable criminal justice system for those awaiting trial.

Several key areas for reform emerge from the sources, each addressing different facets of the challenges faced by undertrial prisoners.

#### **4.1 Streamlining the Bail Process and Addressing Surety Issues:**

A significant impediment to the release of undertrial prisoners is the **stringent bail conditions, particularly the requirement for sureties**. The Bail Study Report, 2024 specifically highlights this as a bottleneck. The report notes discrepancies in the acceptance of surety documents across different jurisdictions, such as the Mumbai Metropolitan Courts accepting income affidavits while the Thane Magistrates' Courts do not. To address this, the researchers recommend the **establishment of uniform guidelines for trial courts regarding the acceptance of various types of surety documents**.

Furthermore, the report emphasizes the importance of adhering to Section 440 of the Code of Criminal Procedure (Cr.P.C.), which mandates that the amount of the bond should not be excessive. The Supreme Court, in *Kanwar Singh Meena v. the State of Rajasthan and Others*, reiterated that while higher courts have more power in granting bail, they also follow the same principles, including ensuring the bail amount is not excessive.

The "Congestion Of Under Trial Prisoners In Jails" report also dedicates attention to the amount of the bond, noting the difficulties faced by the poor in furnishing bail for excessive amounts. The report considered and ultimately did not favor a statutory limit on the amount of bail. However, it strongly recommended amending Section 437(1) of the Cr.P.C. to grant officers or courts the discretion to release individuals on bond without sureties, particularly after the expiry of one month after arrest. This recommendation aligns with the spirit of Section 436(1) Cr.P.C. concerning bailable offences, where a proviso suggests release on a personal bond without sureties if an individual is unable to furnish bail within one month of arrest, provided reasons are recorded. The report even suggests adding an explanation to Section 436(1) to explicitly state this.

The report further recommends inserting a definition of "bail" in Section 2 of the Cr.P.C. to include release on a bond without sureties where permitted by the Code. Additionally, it suggests expressly providing the power to release on bond without surety in Sections 395(3) and 439(1)(a) Cr.P.C.

The Bail Study Report, 2023 also suggests alternatives to cash bail, including exploring Community Service as a bail condition under Sections 437(3), 438(2), and 439(1) Cr.P.C.. It highlights the social and cognitive benefits of community service as a pre-trial reform.

#### **4.2 Enhancing the Efficacy of Legal Aid and Awareness:**

The previous chapter highlighted concerns regarding the awareness and quality of legal aid provided to undertrial prisoners. To address this, several recommendations emerge:

**Sensitization and Legal Literacy:** The Bail Study Report, 2023 emphasizes the need to enshrine the principles laid down in Supreme Court judgments like D.K. Basu, Satender Kumar Antil, and Arnesh Kumar in police manuals and the syllabus of judicial academies. The "b.pdf" report also recommends amplifying the number of

legal literacy classes and legal aid camps held within prison premises to make undertrials aware of their rights to free legal aid services (FLASSs).

**Role of Legal Aid Counsel (LACs) and District Legal Services Authorities (DLSAs):** The research collected data from LACs regarding their interaction with undertrials. Recommendations include ensuring that the DLSA appoints a Legal Aid Counsel to represent the undertrial prisoner immediately upon being informed. Furthermore, it is suggested that jail administrations should maintain and update records of undertrials for the purpose of Section 436A Cr.P.C. and that DLSA should make arrangements for funds when undertrials are unable to provide surety due to poverty. The Bail Study Report, 2023 suggests amending the NALSA Regulations to provide financial support to undertrials in desirable cases for bail bonds.

**Video Conferencing for Legal Aid:** Recognizing the vacuum in legal aid services at police stations, the Bail Study Report, 2023 proposes that designated Remand Advocates should represent undertrial prisoners at police stations through video conferencing facilities. Legal Aid Help Desks at NLUs or pro bono clinics could also be involved.

#### 4.3 Expediting Trials and Reducing Delays:

The "Congestion Of Under Trial Prisoners In Jails" report identifies **delay in the disposal of cases** as a primary factor contributing to the high number of undertrials. It reiterates the need to implement recommendations made in its earlier report on delay and arrears in trial courts. These recommendations broadly include:

- Strengthening the subordinate judiciary in terms of number and efficiency.
- Improving the machinery and equipment of trial courts, such as providing stenographers and typed evidence.
- Paying adequate attention to existing procedural provisions and administrative aspects to avoid delays,

particularly in cases involving undertrial prisoners. The report emphasizes that in criminal cases, where evidence is often oral, delays can be particularly detrimental due to fading memories of witnesses.

- Amending procedural law to streamline the functioning of criminal courts

The report specifically stresses that adjournments of cases where the accused is in jail should not be granted unless absolutely necessary.

It also suggests setting a target for the disposal of cases where the accused is in jail to four months, instead of six months as recommended in an earlier report.

Trial Magistrates should furnish periodical statements of cases where the accused are in custody and trials are not concluded within the prescribed time.

In situations of mass arrests during agitations, those not offering bail should be put up for trial soon after arrest to avoid jail congestion.

The Bail Study Report, 2023 also mentions the need for strict compliance with the mandate laid down in the Siddharth case and for the State and Central Governments to comply with directions regarding the constitution of special courts and filling vacancies expeditiously. The High Courts are directed to identify undertrial prisoners unable to comply with bail conditions and take appropriate action under Section 440 Cr.P.C. to facilitate release, and to similarly comply with Section 436A Cr.P.C. It further suggests that bail applications ought to be disposed of within two weeks, except when provisions mandate otherwise or in case of intervening applications.

#### 4.4 Addressing Archaic Prison Provisions and Promoting Reformation:

There exists a need to highlight the need to revise prison legislations to address various issues. This aligns with the vision of the Hon'ble Chief Justice of India to identify colonial-era provisions. Key recommendations include:

**Replacing stereotypical terminology** like “menial” and “degrading” associated with essential institutional services. The report points out that some prison manuals continue to use disparaging terminology for sanitation tasks.

Eliminating classification of work based on caste, which the report notes is still present in some state prison manuals and has been held unconstitutional. Rajasthan's amendment of its prison rules in 2021 to remove caste-based assignment of work is highlighted as a positive step. The report also mentions that **the Model Prison Manual 2016 (MPM 2016)** explicitly states that no classification of prisoners shall be allowed on grounds of socio-economic status, caste, or class.

Ending classification of prisoners based on socio-economic status. While Article 14 mandates equality, prison manuals in some states still classify prisoners based on their social status. Goa Prisons Rules, 2021, explicitly state that classification of undertrials should be based only on security, discipline, and institutional programs, not social status.

Revising provisions related to the confinement of prisoners sentenced to death, moving away from terms like ‘condemned prisoners’ and ensuring treatment as normal convicted prisoners until all legal remedies are exhausted, as seen in the Haryana and Kerala prison manuals.

Ensuring harmonization with the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, to prohibit manual removal and disposal of human waste inside prisons, as exemplified by the Delhi Prison Rules, 2018.

Promoting the correctional objective of prisons, as embodied in the MPM 2016, which incorporates terms like ‘correctional administration’ and ‘correctional personnel’.

Strengthening after-care and rehabilitation services for prisoners upon release. Chapter XXII of the MPM 2016 provides a detailed framework for after-care assistance. The “Congestion Of

Under Trial Prisoners In Jails” report also mentions the establishment of bail hostels as part of after-care efforts in England. The report notes that many states have not yet constituted the Discharged Prisoner After-care and Rehabilitation Committee.

#### **4.5 Leveraging Technology for Efficiency:**

The Bail Study Report, 2023 highlights a fellow's suggestion that e-filing and digitization of court processes must be strengthened to expedite legal proceedings. The “Delay in Process, Denial of Justice” also supports the greater use of technology to expedite proceedings for undertrial prisoners.

#### **4.6 Legislative and Policy Initiatives:**

The Report underscores the significance of the Model Prisons and Correctional Services Act, 2023, as a guiding document for states to repeal the colonial-era Prisons Act, 1894. It also mentions the MPM 2016 as a model prison policy. The report notes that many states are in the process of amending their prison manuals in light of these model guidelines.

The Report discusses the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which incorporates modifications related to bail. For instance, it provides that the mere fact that an accused person may be required for identification or police custody beyond the initial fifteen days is not sufficient ground to refuse bail if otherwise entitled and gives an undertaking to comply with court directions. It also mentions that as per the new law, having served even one-third of the sentence could be a factor in release on bail.

Furthermore, the report touches upon plea bargaining as a concessional option in criminal procedure, now codified in Chapter XXI-A of the Cr.P.C. (Sections 265 A to 265 L), which corresponds to Sections 289 to 300 of the BNSS 2023. The Supreme Court has issued directions to facilitate the disposal of cases through plea bargaining.

The “Congestion Of Under Trial Prisoners In Jails” report also recommended expanding the

category of bailable offences by amending Part II of the First Schedule of the Cr.P.C., suggesting specific classifications based on the length of imprisonment prescribed for offences under other laws. It specifically recommended that offences under the Official Secrets Act, 1923, should remain non-bailable due to national security concerns.

#### 4.7 Conclusion:

The sources collectively offer a comprehensive set of recommendations and insights for reforming the criminal justice system to better address the plight of undertrial prisoners. These range from streamlining bail procedures and enhancing legal aid to modernizing prison regulations and expediting trials. The implementation of these measures, guided by the principles of equality and dignity enshrined in the Constitution, is crucial to reducing the burden of undertrial incarceration and upholding the fundamental rights of every individual within the criminal justice system. Continuous review, adaptation, and effective implementation of these reforms, along with further empirical research as suggested, are essential steps towards achieving a more just and humane criminal justice system in India.

### Chapter 5: Challenges Faced by Undertrial Prisoners

This chapter aims to highlight the multitude of challenges encountered by undertrial prisoners (UTPs) within the Indian criminal justice and prison systems, drawing upon the information presented in the sources.

#### 5.1 Prolonged Pre-Trial Detention and Congestion

One of the most significant challenges faced by UTPs is **prolonged detention before their trial concludes**. A substantial portion of the prison population consists of undertrials, contributing significantly to overcrowding in jails. As of January 1, 1978, in India, out of a total prison population, 75% were undertrial prisoners. This high percentage indicates a systemic issue where individuals are confined for extended

periods without a conviction. In some states, the proportion of undertrials has been reported to be as high as 80 percent of the total inmate population.

Extended pre-trial incarceration is detrimental to individuals as it deprives them of their liberty and income, and may even lead to job loss. It is also costly to the public due to the expenses of feeding and supervising pre-trial detainees. The problem of delay and arrears in trial courts is a major contributing factor to this prolonged detention. The Law Commission has previously emphasized the need to reduce delay in trial courts to address the issue of undertrial prisoners.

#### 5.2 Difficulties in Accessing Justice and Legal Aid

UTPs often face significant hurdles in accessing justice. The research study highlights that a large percentage (78%) of UTPs reported that **no remand lawyers were present during their initial production before a magistrate**. This lack of legal representation at a crucial early stage can severely prejudice their case. Even when legal aid is provided, a significant proportion of UTPs (78%) were not satisfied with the services of the remand lawyer.

Several factors contribute to the challenges in accessing legal aid:

- **Lack of awareness:** UTPs may not be fully aware of their right to free legal aid.
- **Quality of legal aid services:** Some UTPs express dissatisfaction with the commitment and effectiveness of Legal Aid Counsels (LACs). Some suggest that LACs do not give sufficient time, do not meet them adequately, or work inefficiently.
- **Financial constraints:** Many UTPs are poor and unable to afford bail bonds, even after bail has been granted. The Supreme Court has discussed the issue of detention despite the granting of bail due to the inability to furnish bail bonds.

- **Preference for private lawyers:** Some individuals prefer private legal practitioners over LACs.

### 5.3 Socio-Economic Disadvantages

The problem of prolonged detention disproportionately affects the poor and marginalized sections of society. Many undertrials are in prison for minor offences but remain incarcerated for extended periods because they cannot afford bail or legal representation. The study in The Report specifically focuses on the socio-economic background of the respondents.

### 5.4 Challenges Related to Prison Conditions

Beyond the legal challenges, UTPs also face numerous difficulties within the prison environment:

- **Overcrowding:** The high number of undertrials exacerbates the problem of overcrowding in prisons, leading to poor living conditions.
- **Inadequate facilities:** Police lock-ups, where apprehended individuals are often kept before being transferred to judicial custody, are reported to have insufficient basic facilities like lavatories, light, and ventilation.
- **Health concerns:** Undertrials, like other prisoners, are susceptible to health issues. The NHRC has a proforma for health screening of prisoners on admission to jail.
- **Lack of proper treatment:** The energy of prisons should be focused on offering corrective treatment, but this is often hindered by the large population of undertrials.

### 5.5 Procedural and Systemic Issues

Several procedural and systemic issues contribute to the challenges faced by UTPs:

- **Delay in investigations:** Protracted investigations can lead to prolonged detention. In summons-cases triable by

a Magistrate, if the investigation is not concluded within six months from the date of arrest, the Magistrate can order a stop to further investigation under certain conditions.

- **Adjournments:** Frequent adjournments of cases, especially where the accused is in jail, contribute to delays in trials. It has been emphasized that adjournments should only be granted if absolutely necessary.
- **Non-production in court:** There can be instances where UTPs are not produced in court on the scheduled dates. JVs are sometimes tasked with informing the DLSA about such non-production.
- **Data management issues:** Delays in communication between courts and prison authorities regarding bail or acquittal orders can lead to continued detention even after release orders. The implementation of e-prisons modules like the e-Custody Certificate is aimed at addressing these issues. However, challenges remain in ensuring dedicated manpower for data entry and proper training for prison staff.

### 5.6 Impact on Mental Health

The combination of prolonged uncertainty, poor living conditions, and lack of adequate legal support can severely impact the mental health of undertrial prisoners. UTPs who are of unsound mind require appropriate treatment as per Chapter XXV of the Code of Criminal Procedure.

In conclusion, undertrial prisoners in India face a complex web of challenges that span legal, socio-economic, and systemic dimensions. Addressing these issues requires a multi-pronged approach focusing on expediting trials, ensuring effective access to quality legal aid, improving prison conditions, and streamlining procedural processes to uphold the rights and dignity of this vulnerable population.

## **Chapter 6: Addressing the Challenges and the Way Forward for Undertrial Prisoners**

This chapter will build upon the challenges faced by undertrial prisoners (UTPs) as outlined in the previous chapter, and will focus on the potential avenues for addressing these issues and improving the situation of UTPs within the Indian criminal justice system, drawing upon the recommendations and observations presented in the sources.

### **6.1 Expediting Trials and Reducing Delays**

A primary focus for improving the situation of UTPs must be on **expediting the judicial process and reducing the delays in trials**. The 77th Report of the Law Commission emphasized the need to reduce delay and arrears in trial courts to solve the problem of undertrial prisoners. Implementing the recommendations made in that report concerning criminal courts is considered a measure of the first importance.

Several measures can contribute to faster disposal of cases:

- **Strict adherence to time limits for bail applications:** Bail applications ought to be disposed of within a period of two weeks, unless mandated otherwise, with the exception of intervening applications.
- **Efficient evidence recording:** Typing evidence in District and Sessions Courts and providing carbon copies of depositions immediately can substantially contribute to reducing the duration of cases. These measures can be implemented even without legislative amendments.
- **Eliminating delays in criminal cases:** Given that decisions often depend on oral evidence, eliminating delays is crucial as witnesses' memories fade over time.
- **Preventing unnecessary adjournments:** Strictness is necessary to ensure prompt disposal of cases and prevent interested

parties from prolonging pendency. Adjournments should only be granted if absolutely necessary.

- **Timely investigation and filing of charge sheets:** An incomplete charge sheet filed without completing the investigation cannot defeat the right to statutory bail. In summons-cases triable by a Magistrate, if the investigation is not concluded within six months from the date of arrest, the Magistrate can order a stop to further investigation under certain conditions. However, a Sessions Judge can vacate such an order if further investigation is deemed necessary.
- **Prompt trial for those arrested during agitations:** Persons arrested for defying law and court orders during agitations should be put up for trial soon after their arrest to avoid jail congestion.
- **Furnishing periodical statements of pending cases:** Trial Magistrates should provide regular updates on cases where the accused are in custody and trials are not concluded within the prescribed time.

### **6.2 Strengthening Access to Justice and Legal Aid**

Ensuring effective access to justice, particularly through robust legal aid mechanisms, is critical for UTPs. The research study in "b.pdf" highlights the importance of addressing shortcomings in the provision of legal aid.

Key areas for improvement include:

- **Presence of remand lawyers:** Ensuring that remand lawyers are present during the initial production of UTPs before a magistrate is crucial. The fact that a large percentage of UTPs reported the absence of remand lawyers during their initial production is a serious concern [b.pdf].

- **Quality of legal aid services:** Steps should be taken to improve the commitment and effectiveness of Legal Aid Counsels (LACs). A significant proportion of UTPs in the study were not satisfied with the services provided [b.pdf]. Some LACs reportedly do not give sufficient time, meet adequately, or work efficiently [b.pdf]. Suggestions from UTPs include frequent meetings with LACs and prioritizing speedy case disposal.
- **Awareness of legal rights:** Efforts are needed to increase awareness among UTPs regarding their right to free legal aid.
- **Addressing financial constraints for bail:** The inability to afford bail bonds despite being granted bail is a significant issue. The possibility of releasing individuals on a personal bond without sureties should be considered, especially for those unable to furnish bail. The Law Commission recommended adding an explanation to Section 436(1) of CrPC to facilitate release on a personal bond if bail cannot be furnished within one month of arrest. It also recommended amending Section 437(1) to give the court discretion to release on a bond without sureties in non-bailable offences. The definition of "bail" should also be clarified in Section 2 of CrPC to include release on a bond without sureties where permitted.
- **Role of District Legal Services Authorities (DLSAs):** DLSAs play a crucial role in providing legal aid. Jail Visiting Advocates (JVAs) coordinate with DLSAs to appoint LACs for UTPs in need. Para Legal Volunteers (PLVs) also assist JVAs in providing legal advice. However, there can be issues such as prison authorities not providing necessary data to DLSAs.
- **Effective functioning of Under Trial Review Committees (UTRCs):** UTRCs are

meant to review the cases of UTPs and recommend releases. However, the functioning and effectiveness of these committees need to be ensured.

- **Plea Bargaining:** Plea bargaining can be a concessional option for sentence in criminal procedure. However, non-cooperation by the Investigating Officer (IO) has been reported as an impediment to its success.

### 6.3 Improving Prison Conditions and Treatment

Addressing the challenges within prisons is also essential for the well-being of UTPs.

Key areas for improvement include:

- **Reducing overcrowding:** Expediting trials and facilitating bail can help reduce the number of undertrials and consequently, overcrowding in prisons.
- **Improving basic facilities in police lock-ups:** Police lock-ups need to have sufficient basic amenities like lavatories, light, and ventilation. The living conditions in all police lock-ups should be improved.
- **Addressing health concerns:** Regular health screenings on admission to jail, as per the NHRC proforma, are important. Appropriate treatment should be provided to UTPs of unsound mind as per Chapter XXV of the Code of Criminal Procedure.
- **Purposeful engagement:** While the energy of prisons should focus on corrective treatment, the large population of undertrials often hinders this. However, UTPs should be allowed access to canteen facilities and their daily routine should include education, social, cultural, and recreational activities.
- **Classification of prisoners:** Classification should not be based on socio-economic status, caste, or class.

The Model Prison Manual, 2016, explicitly prohibits such classification.

#### 6.4 Leveraging Technology and Streamlining Procedures

Technology can play a significant role in improving the efficiency of the criminal justice system and the management of UTPs.

Opportunities include:

- **Implementation of e-prisons:** Modules like the e-Custody Certificate can facilitate the courts in obtaining necessary details of UTPs and convicts without delay. Activation of e-custody certificates in all states is recommended. However, ensuring dedicated manpower for data entry and proper training for prison staff is crucial for its effective implementation.
- **Video conferencing for court proceedings:** Utilizing video conferencing can reduce the need for physical production of UTPs in court, saving time and resources. Standard Operating Procedures (SOPs) for video conferencing should be followed.
- **Dedicated portal for government witnesses:** A dedicated portal for official witnesses can aid in the timely procurement of their attendance in court.
- **Improved data exchange:** Handshaking between various stakeholders is necessary for secure and reliable data exchange.

#### 6.5 Revising Prison Legislations and Addressing Stereotypes

Outdated and discriminatory terminology in prison manuals needs to be replaced. Stereotypical terms like "menial" and "degrading" associated with essential tasks should be removed. Prison legislations in various states still contain provisions that use such disparaging language for sanitation and cleanliness work. The Model Prison Manual, 2016,

note (ii) to Rule 26.04, states that no classification of prisoners shall be allowed on grounds of socio-economic status, caste, or class.

#### 6.6 After-Care and Rehabilitation

While the focus is often on undertrial status, considering the future of those who are eventually released is also important. Provisions for after-care, such as the establishment of District After-Care Shelters, as outlined in the Odisha Model Jail Manual, 2020, are steps in the right direction. However, the fact that nobody has been admitted to the shelter in Cuttack in the last three years suggests a need to review and improve the effectiveness of such programs.

#### 6.7 The Role of the Judiciary

The judiciary has a crucial role in protecting the rights of undertrial prisoners through various legal remedies like bail and habeas corpus. The Supreme Court has emphasized the right to free legal aid and directed the release of undertrials who have completed a significant portion of their potential sentence. Mandatory directions by the judiciary regarding arrest procedures and the right to a lawyer also play a vital role. The judiciary's consistent pronouncements on the importance of speedy trials and the need to avoid unnecessary detention are essential in addressing the challenges faced by UTPs.

#### 6.8 The New Legal Framework

The introduction of the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, brings certain changes relevant to undertrial prisoners. For instance, Section 479 (3) allows the Superintendent of jail to apply to the Court for the release of an accused person on bail after the completion of one-half or one-third of the period mentioned in sub-section (1). This new provision, having served even one-third sentence, would be a factor in the release of poor offenders. The new Sanhita also introduces a new part on mercy petitions in death sentence cases, aiming to expedite the clemency process. The amendments in bail

provisions in the new legal framework need to be effectively implemented to benefit undertrial prisoners.

In conclusion, addressing the multifaceted challenges faced by undertrial prisoners requires a concerted effort from all stakeholders, including the judiciary, the legislature, prison authorities, legal aid providers, and civil society organizations. By focusing on expediting trials, ensuring quality legal aid, improving prison conditions, leveraging technology, and reforming outdated practices, the Indian criminal justice system can move towards upholding the rights and dignity of undertrial prisoners and reducing the problem of prolonged pre-trial detention.

### **Chapter 7: Implementing Reforms, Ensuring Accountability, and Fostering Collaboration for Undertrial Prisoners**

This chapter will delve into the crucial aspects of putting the proposed solutions from the previous chapter into action, establishing mechanisms for accountability, and fostering collaboration among the various stakeholders to bring about meaningful improvements in the situation of undertrial prisoners (UTPs) within the Indian criminal justice system. It will draw upon the recommendations and findings highlighted in the sources to suggest concrete steps for effective implementation.

#### **7.1 Enhancing the Effectiveness of Legal Aid Services**

As emphasized in Chapter 6 and supported by the research in The Report, strengthening the provision of legal aid is paramount. Implementing the following measures can significantly enhance the effectiveness of legal aid services for UTPs:

- **Ensuring the Presence and Proactive Role of Remand Lawyers:** It is critical to ensure that remand lawyers are consistently present during the initial production of UTPs before a magistrate. Legal Services Authorities should establish clear protocols and monitoring

mechanisms to guarantee this presence. Furthermore, remand lawyers must actively engage with the UTPs, providing them with information about their rights and the legal process

- **Improving the Quality and Commitment of Legal Aid Counsels (LACs):** Addressing the reported lack of satisfaction with LAC services requires a multi-pronged approach. This includes:
  - **Regular training and sensitization programs** for LACs focusing on their duties, responsibilities, and effective case management.
  - **Establishing performance standards and evaluation mechanisms** for LACs, with consequences for non-performance or misconduct, such as demanding money from UTPs Table 7.23 in indicates that warnings have been given to LACs for a lack of commitment.
  - **Increasing the honorarium and providing adequate resources** to LACs to incentivize quality work and dedication.
  - **Facilitating regular and meaningful interaction** between LACs and UTPs, including frequent meetings within prisons to discuss their cases and address their concerns.
- **Empowering and Utilizing Jail Visiting Advocates (JVAs) and Para Legal Volunteers (PLVs):** JVAs play a vital role in coordinating legal aid. Their efforts should be supported by prison authorities providing necessary data. PLVs can assist JVAs in providing initial legal advice and bridging the communication gap between UTPs and lawyers.

- **Raising Awareness about the Right to Free Legal Aid:** Proactive measures are needed to educate UTPs about their entitlement to free legal aid at the earliest stage of detention. This can be done through legal literacy camps within prisons, distribution of informational materials, and clear communication by prison staff and remand lawyers.
- **Facilitating Release on Personal Bonds:** Implementing the Law Commission's recommendations to amend Sections 436(1) and 437(1) of the CrPC to explicitly allow for release on personal bonds for those unable to furnish bail within a reasonable timeframe is crucial. The proposed explanation to Section 436(1) suggesting release on a personal bond if bail is not furnished within one month of arrest should be adopted. The clarification of "bail" in Section 2 of CrPC to include release on a bond without sureties is also essential.

## 7.2 Strengthening the Functioning and Accountability of Under Trial Review Committees (UTRCs)

UTRCs are a vital mechanism for reviewing the cases of UTPs and recommending their release where appropriate. To enhance their effectiveness and ensure accountability:

- **Regular and Timely Meetings:** UTRCs should convene regularly, ideally once a month, as recommended in Chapter 6 [138, b.pdf]. Figure 7.9 in "b.pdf" shows the frequency of UTRC meetings. Delays in meetings can prolong unnecessary detention.
- **Comprehensive Case Review:** UTRCs must conduct thorough reviews of each case, considering factors such as the length of detention, the nature of the offense, the progress of the trial, and the UTP's eligibility for bail under provisions like Section 436A of CrPC and the new

Section 479 (3) of the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023.

- **Effective Follow-up on Recommendations:** There should be a system to track the recommendations made by UTRCs and ensure timely action by the concerned trial courts, jail superintendents, and District Legal Services Authorities (DLSAs).
- **Transparency and Data Management:** Maintaining proper records of the cases reviewed, the recommendations made, and the reasons for decisions is essential for transparency and accountability. Utilizing technology, as discussed in Chapter 6, can aid in efficient data management.
- **Addressing Non-Cooperation:** Instances of non-cooperation by Investigating Officers (IOs) that hinder processes like plea bargaining need to be addressed through clear guidelines and directives.

## 7.3 Enhancing Judicial Oversight and Ensuring Speedy Trials

The judiciary plays a critical role in safeguarding the rights of UTPs and ensuring the timely disposal of their cases. Key steps include:

- **Strict Adherence to Time Limits for Bail Applications:** Courts must adhere to the stipulated timelines for the disposal of bail applications, as highlighted in Chapter 6 and reiterated in the Report.
- **Proactive Case Management and Reduction of Adjournments:** Trial courts should adopt proactive case management strategies to minimize delays and grant adjournments only when absolutely necessary, as emphasized by the Law Commission.
- **Judicial Directions on Arrest Procedures and Right to Counsel:** The judiciary must continue to issue and enforce

mandatory directions regarding arrest procedures and the right to legal representation at the pre-arrest, arrest, and remand stages.

- **Regular Monitoring of Long-Pending Cases:** Higher judiciary should regularly monitor the progress of long-pending cases involving UTPs and issue necessary directions for their expeditious disposal. Trial Magistrates should also furnish periodical statements of cases where the accused are in custody and trials are not concluded within the prescribed time.
- **Utilizing Technology for Efficiency:** Encouraging and facilitating the use of video conferencing for court proceedings can significantly reduce delays associated with the physical production of UTPs. Standard Operating Procedures for video conferencing should be strictly followed.

#### 7.4 Strengthening the Role of Prison Authorities

Prison authorities are central to the implementation of reforms affecting UTPs. Their responsibilities include:

- **Facilitating Access to Legal Aid:** Prison authorities must actively cooperate with DLSAs, JVAs, and PLVs, providing them with necessary access to UTPs and relevant information. They should also facilitate communication between UTPs and their lawyers.
- **Improving Prison Conditions:** Addressing overcrowding and ensuring basic amenities in prisons and police lock-ups are crucial. Regular health screenings and appropriate medical treatment, including for mental health issues and substance abuse, should be provided as per the NHRC proforma.
- **Utilizing Technology for Efficient Management:** Prison authorities should actively implement and utilize e-prisons modules like the e-Custody Certificate to

provide necessary details of UTPs to the courts without delay. Ensuring adequate manpower and training for effective implementation is essential.

- **Facilitating UTRC Meetings and Recommendations:** Prison authorities should ensure the smooth functioning of UTRC meetings within the prison premises and take prompt action on the recommendations made by the committees.
- **Promoting Purposeful Engagement:** While undertrials await trial, they should be provided with opportunities for education, vocational training, and recreational activities to promote their well-being and potential for rehabilitation.

#### 7.5 Establishing Robust Monitoring and Evaluation Mechanisms

To ensure the effectiveness of the implemented reforms, robust monitoring and evaluation mechanisms are essential:

- **Regular Data Collection and Analysis:** Systematic collection and analysis of data on the number of UTPs, the duration of their detention, the status of their cases, the provision of legal aid, and the functioning of UTRCs are crucial to identify trends and areas needing improvement.
- **Independent Oversight Bodies:** Strengthening the role of independent oversight bodies, such as prison inspection committees and human rights organizations, can provide impartial assessments of the situation of UTPs and the implementation of reforms.
- **Performance Audits:** Regular performance audits of legal aid providers, UTRCs, and prison authorities can help identify inefficiencies and areas for improvement.

- **Feedback Mechanisms:** Establishing feedback mechanisms for UTPs to voice their concerns about legal aid, prison conditions, and the judicial process can provide valuable insights for reform efforts.

## 7.6 Fostering Collaboration Among Stakeholders

Addressing the challenges faced by UTPs requires seamless collaboration and coordination among all stakeholders:

- **Inter-Departmental Coordination:** Enhanced coordination between the judiciary, police, prisons department, legal aid authorities, and the government is essential for the effective implementation of reforms.
- **Regular Dialogue and Joint Initiatives:** Platforms for regular dialogue and joint initiatives between these stakeholders can facilitate information sharing, problem-solving, and the development of coordinated strategies.
- **Public Awareness and Civil Society Engagement:** Raising public awareness about the plight of UTPs and engaging civil society organizations in advocacy and support efforts can contribute significantly to driving positive change.

By focusing on these areas of implementation, accountability, and collaboration, the recommendations outlined in this report can translate into tangible improvements in the lives of undertrial prisoners, ensuring their fundamental rights are protected and the principles of justice are upheld within the Indian criminal justice system.

## **Chapter 8: Key Findings and Recommendations**

This chapter presents the key findings that emerge from the analysis of the prison system and the specific challenges faced by undertrial prisoners (UTPs) in India, as detailed in the preceding chapters and supported by the

research undertaken. Building upon these findings, it puts forth a comprehensive set of recommendations aimed at addressing the identified issues and fostering a more just and humane criminal justice system for UTPs. This chapter draws primarily from the "Prisons in India" report and the Report, and also considers relevant insights from the Law Commission's reports on undertrial prisoners.

### 8.1 Key Findings

The research and analysis presented in this report highlight several critical issues concerning undertrial prisoners in India:

- **Overcrowding and Prolonged Detention:** A significant percentage of the prison population consists of UTPs, many of whom have been detained for extended periods, sometimes exceeding the maximum sentence for the offenses they are accused of. The 78th report of the Law Commission of India (1979) had already identified the high percentage of undertrial prisoners as a major concern. This prolonged pre-trial incarceration contributes significantly to prison overcrowding.
- **Ineffective Legal Aid Services:** While the right to legal aid is enshrined in the Constitution, the effectiveness of the provided legal aid services for UTPs remains a concern [b.pdf]. The Report suggests potential bottlenecks in the process of releasing prisoners on bail, indicating gaps in legal assistance. Feedback from UTPs and judicial officers in the field study ("b.pdf") indicates dissatisfaction with the commitment and competence of some Legal Aid Counsels (LACs). Some UTPs prefer private legal practitioners over LACs.
- **Challenges with Bail Procedures:** Many UTPs, particularly those from socio-economically disadvantaged backgrounds, face difficulties in securing bail due to their inability to furnish bail

bonds or sureties. The Law Commission in its 78th Report (1979) also highlighted this issue.

- **Underutilization and Inconsistent Functioning of Under Trial Review Committees (UTRCs):** While UTRCs are designed to review the cases of UTPs and recommend release where appropriate, their functioning appears to be inconsistent across different jurisdictions [b.pdf]. The frequency of meetings, the thoroughness of case reviews, and the follow-up on recommendations may vary. Data provision to DLSA by prison authorities can also be an issue.
- **Lack of Awareness and Access to Information:** Many UTPs lack adequate knowledge about their case status, their rights, and the availability of legal aid. The provision of court documents necessary for appeals also needs strengthening.
- **Impact of Delay in Trials:** Protracted trials remain a significant factor contributing to the high number of UTPs. Delays in investigations and judicial proceedings lead to prolonged periods of detention for UTPs. The Law Commission has consistently emphasized the need for the expeditious disposal of cases.
- **Need for Improved Prison Conditions and Integration with Legal Aid:** Overcrowding, inadequate infrastructure, and insufficient access to healthcare and other essential services within prisons exacerbate the hardship faced by UTPs. Effective coordination between prison authorities and legal aid providers is crucial for ensuring UTPs can access justice.
- **Potential of Technology but Implementation Gaps:** Technology-driven solutions like video conferencing

for court proceedings and e-prisons systems hold promise for improving efficiency. However, their effective implementation and integration across all states need to be ensured. Issues like lack of options for entering multiple cases against a single person persist.

## 8.2 Recommendations

Based on the aforementioned findings and drawing from the insights presented in the sources, the following recommendations are proposed to address the challenges faced by undertrial prisoners in India:

- **Strengthening Legal Aid Effectiveness:**
  - **Ensure consistent presence and proactive engagement of remand lawyers** during the initial production of UTPs before magistrates, with strict monitoring by Legal Services Authorities.
  - **Enhance the quality and commitment of LACs** through regular training, performance evaluations, increased honorarium, and provision of adequate resources [b.pdf]. Complaints against LACs, such as demanding money, should be strictly addressed.
  - **Empower and effectively utilize Jail Visiting Advocates (JVAs) and Para Legal Volunteers (PLVs)** by providing them with necessary access and support from prison authorities. Regular training and clear guidelines for their roles are essential.
  - **Proactively raise awareness** among UTPs about their right to free legal aid through legal literacy camps and informational materials.

- **Facilitate the release of UTPs on personal bonds** by implementing the Law Commission's recommendations to amend Sections 436(1) and 437(1) of the CrPC and clarify the definition of "bail" in Section 2.
- **Improving the Functioning and Accountability of UTRCs:**
  - **Ensure regular and timely meetings** of UTRCs, preferably monthly.
  - **Mandate comprehensive case reviews** considering the length of detention, nature of offense, trial progress, and eligibility for bail under Section 436A of CrPC and the new Section 479 (3) of the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023.
  - **Establish a robust system for tracking and ensuring effective follow-up** on UTRC recommendations by relevant authorities.
  - **Enhance transparency and data management** of UTRC proceedings through proper record-keeping and utilization of technology.
  - **Develop mechanisms to address non-cooperation** from Investigating Officers (IOs) that impede UTRC processes.
- **Enhancing Judicial Oversight and Ensuring Speedy Trials:**
  - **Strictly adhere to timelines for the disposal of bail applications**
  - **Implement proactive case management strategies** in trial courts to minimize delays and unnecessary adjournments.
- **Reinforce judicial directions** regarding arrest procedures and the right to legal representation at all stages.
- **Implement regular monitoring of long-pending cases** involving UTPs by higher judiciary, with trial magistrates submitting periodical statements.
- **Promote and facilitate the widespread use of video conferencing** for court proceedings while adhering to Standard Operating Procedures.
- **Strengthening the Role of Prison Authorities:**
  - **Actively facilitate access to legal aid providers** (DLSAs, JVsAs, PLVs) and ensure effective communication between UTPs and their lawyers. Addressing issues of data not being provided to DLSA is crucial.
  - **Improve prison conditions** by addressing overcrowding and ensuring basic amenities, healthcare (including mental health and substance abuse treatment as per the NHRC proforma), and hygiene.
  - **Maximize the utilization of e-prisons modules** like the e-Custody Certificate in all states to provide timely information to courts. Addressing technical limitations in case entry is also important.
  - **Ensure the smooth functioning of UTRC meetings** within prisons and take prompt action on their recommendations.
  - **Provide opportunities for purposeful engagement** such as education and vocational

training for UTPs during their detention.

• **Establishing Robust Monitoring and Evaluation Mechanisms:**

- **Implement systematic data collection and analysis** on UTP numbers, detention periods, case status, legal aid provision, and UTRC functioning.
- **Strengthen the role of independent oversight bodies** for impartial assessments of the UTP situation.
- **Conduct regular performance audits** of legal aid providers, UTRCs, and prison authorities.
- **Establish feedback mechanisms** for UTPs to voice their concerns.

• **Fostering Collaboration Among Stakeholders:**

- **Enhance inter-departmental coordination** between the judiciary, police, prisons, legal aid authorities, and the government.
- **Promote regular dialogue and joint initiatives** among stakeholders to address systemic issues.
- **Raise public awareness** and engage civil society organizations in advocating for UTP rights.

**8.3 Conclusion**

Addressing the issue of undertrial prisoners requires a concerted and multi-faceted approach that focuses on ensuring access to justice, upholding fundamental rights, and promoting efficiency within the criminal justice system. The implementation of the recommendations outlined in this chapter, driven by a spirit of collaboration and accountability, holds the key to reducing the burden of prolonged pre-trial detention and

fostering a more equitable and humane system for all individuals awaiting trial in India. Continuous monitoring and evaluation of these reforms will be essential to ensure their effectiveness and to adapt strategies as needed.

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  - Information received from NALSA
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  - Information received from the High Courts
  - Information received from High Court of Himachal Pradesh
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  - Literature review in Bail Study Report
  - Comparative analysis of other jurisdictions (U.K., Australia, U.S.A, Netherlands) in Bail Study Report
  - Opinions of stakeholders (Judicial Officers, legal aid counsels, undertrial prisoners, Jail Officers, Jail visiting advocates, para legal volunteers, regulators)
  - Primary and secondary data sources
  - Aditi Banerjee (for research work)
  - Ralph Gaebler (for library assistance)
  - Lawyers, civil society activists, judges, and law enforcement officials (assisted with research in IVIDelay)
  - Amsterdam's article
  - Amar's piece
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- *Member Secretary DLSA*
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