

Exploring the Nexus of the Rights of Undertrial Prisoners in India with Emphasis on the BNSS(Bharatiya Nagarik Suraksha Sanhita) 2023, and the United Nations' Role

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Abstract

In India persons who are detained in jail while awaiting trial on criminal charges are referred to as under-trial prisoners.. How does a system that claims to be equitable and justifiable explain denying freedom to its people based on the presumption of ‘innocent until proven guilty’? An efficient criminal justice system must unavoidably guarantee that those who are accused get a fair trial for the crimes they are allegedly guilty of. This article looks forward to embracing the adaptation of a new approach towards prolonged incarceration in jails to recognize the rights of undertrials by analyzing the proposed changes under the *Bharatiya Nagarik Suraksha Sanhita 2023*. In a comparable situation to the indigents wealthy people are impoverished to secure their freedom so why does the system of bail create prejudice based on economic discrimination? This article highlights the rights of undertrial prisoners mainly on humanitarian grounds internationally on the roles of the United Nations that enshrined the Right to personal liberty and the right to equality related to non-discrimination based on economic grounds. Because different groups have objectively different social ideals and social behaviours, the poorest and least fortunate members of society typically pay a disproportionate part of the socioeconomic consequences of crime.¹

Keywords: undertrial prisoner, criminal justice system, economic discrimination, right to justice, personal Liberty, United Nations.

1. Introduction to Undertrial Prisoners' Rights:

As rightly said by Fyodor Dostoevsky, “*The best way to keep a prisoner from escaping is to make sure he never knows he’s in prison.*”

In India persons who are detained in jail while awaiting trial on criminal charges are referred to as under-trial prisoners. These persons are housed together with and treated much the same as convicted offenders, although a large percentage (about 40 percent) are eventually acquitted, discharged, or otherwise released. It can take months or even years for a detainee's case to come to trial. The plight of the accused in India has long been a matter of concern; the Indian jails committee of 1919-1920 considered the problem.

¹ [Vol. 35, No. 4 \(OCTOBER-DECEMBER 1993\)](#) pp. 183-232 (50 pages) , K.D. Gaur, POOR VICTIM OF USES AND ABUSES OF CRIMINAL LAW AND PROCESS IN INDIA, Published By: Indian Law Institute , Available at : <https://www.jstor.org/stable/43953211> (last visited on 05-05-2024).

The well-known legal presumption "innocent unless proven guilty" appears to be denied to people who are detained due to financial constraints or because they cannot obtain legal representation in court or "locus standi," and thus are referred to as "undertrial prisoners."

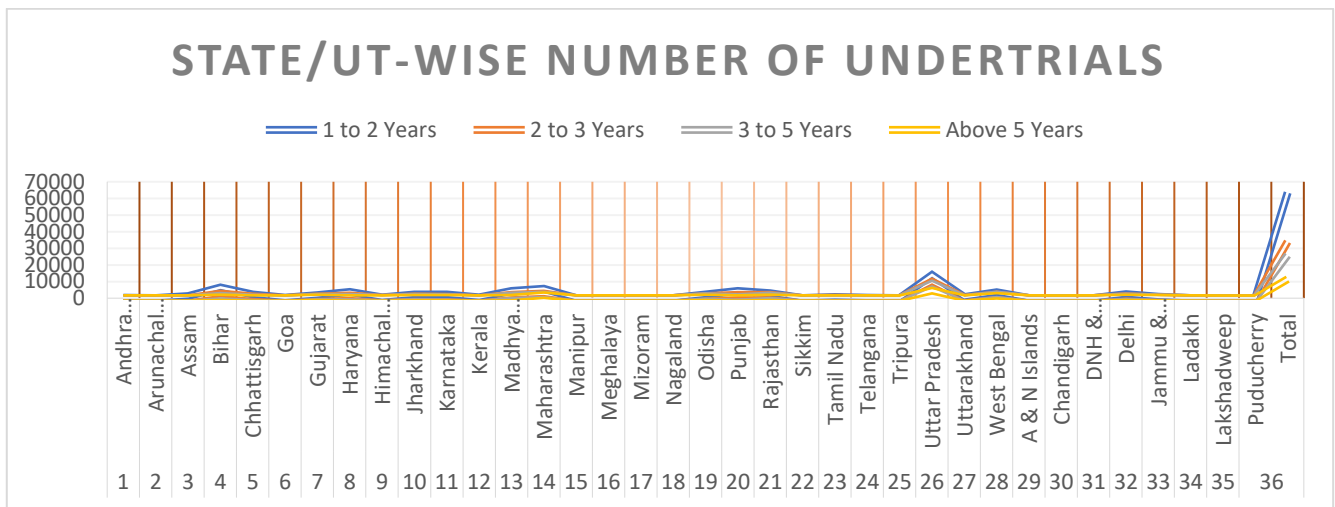
The shocking nature of the issue caused by the strain of a substantial number of undertrial inmates in jails and the disproportionately lengthy period they have to spend before the conclusion of the trial was determined by a preliminary inquiry by the 78th Law Commission report.²

In 1977, the Janata Government requested that the Law Commission (78th) conduct a thorough analysis of the case and recommend reform initiatives and policy frameworks in response to the increasing number of undertrials. Consequently, the problem of the undertrials was taken up by the Mulla Committee³ on Prison Reforms, which was established by the Indian government in 1980. Recognizing the problem, the Committee noted that "the majority of prisoners are from economically disadvantaged backgrounds, which may be related to their incapacity to secure a bail bond."⁴

States and union territories (UTs) provide jail data to the National Crime Records Bureau (NCRB), which compiles the information and publishes the findings in its yearly publication, "Prison Statistics India."

List II, Entry 4, Seventh Schedule⁵ to the Indian Constitution states that "prisons" and "persons detained therein" are included in the "State List"⁶. The management and administration of each state government's jails and prisoners falls under its purview. The NCRB has provided the following statistics:⁷

State/UT-wise number of undertrial prisoners who were confined for more than 1 year in the jails of the country as of 31.12.2022⁸



² 78th no. of report by Law Commission of India, Congestion of Under-Trial Prisoners in Jails, February 1979, Available at: https://lawcommissionofindia.nic.in/cat_prisoners/ (last visited on 05-05-2024).

³ VOLUME I, Prepared By Bureau Of Police Research & Development Ministry Of Home Affairs New Delhi 2003, Implementation Of The Recommendations Of The All-India Committee On Jail Reform (1980-83), Available at : <https://www.mha.gov.in/sites/default/files/Mulla%20Committee%20implementation%20of%20recommendations%20-Vol%20I.pdf> (last visited on 05-05-2024).

⁴ IBID

⁵ SEVENTH SCHEDULE (Article 246) List II—State List, sub-clause 4, The Constitution of India.

⁶ IBID

⁷ National Crime Records Bureau (NCRB), Annual publication on Undertrial Prisoners, 06 FEB 2024 5:48 PM by PIB Delhi, Ministry of Home Affairs, Available at: [https://pib.gov.in/PressReleasePage.aspx?PRID=2003162#:~:text=\(iv\)%20The%20Model%20Prison%20Manual,lawyers%2C%20application%20to%20Courts%20for.](https://pib.gov.in/PressReleasePage.aspx?PRID=2003162#:~:text=(iv)%20The%20Model%20Prison%20Manual,lawyers%2C%20application%20to%20Courts%20for.) (last visited on 05-05-2024).

⁸ Supra note 7.

1.1. Meaning Of Prison And Prisoner :

As said by Louis Brandeis, “To declare that in the administration of criminal law, the end justifies the means, to declare that the government may commit crimes to secure the conviction of a private criminal would bring terrible retribution.” The Old French word "prisonnier,"⁹ which signified "convict" or "a person serving a sentence for a crime," is where the word "prisoner" first appeared. This term is where the English word "prisoner" originates. The French word "prison" comes from the same Latin root as the English word "prison."

In India, the terms "prison" and "jail" are indistinguishable and both prisoners and those awaiting trial are referred to as prisoners. According to the 2016 Model Prison Manual¹⁰, a prisoner is any individual who is detained in a facility by a duly authorized official. According to this definition, a prisoner is someone who is detained in a jail or prison due to an offense against the law in the nation at large.

A person who has been lawfully committed to prison as a punishment for a crime or while awaiting trial is known as a prisoner. A person who is incarcerated as a result of a crime they have committed is known as a prisoner.¹¹

People who have been found guilty of a crime and sentenced to serve their time in jail are housed in a facility known as a prison. Prisons are typically built to protect society from those who have committed serious crimes and to act as a kind of punishment for illegal behavior. The whole Indian criminal justice system is adversary and the punishment is solely based on reformatory theory. Prisoners are individuals who are detained in a jail or other kind of correctional facility. They are presently serving a prison sentence after it was determined that they committed a crime. A person may be imprisoned for a wide range of offenses, such as drug offenses, violent crimes, property offenses, and white-collar offenses. In order to help them prepare for their release from prison and their eventual reintegration into society, prisoners may be required to participate in educational and vocational programs, counseling, and rehabilitation services while they are behind bars. The landmark case of *Sunil Batra v. Delhi Administrative*¹² is one notable ruling that defines prisons and inmates. The definition of a jail given by the Indian Apex Court is "a place where individuals are involuntarily detained by the state, deprived of their liberty, and kept in custody."¹³ In addition, the court defined prisoners as "persons who are detained in custody, whether they are under trial prisoners, convicts, or detenus, and who are, therefore, unable to move freely and have restrictions placed upon their rights and liberties."

The Basic Principles for the Treatment of Convicts, approved by the UN General Assembly in 1990¹⁴, defines inmates under its purview. By Principle 1, "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."¹⁵ In addition, Principle 4

⁹Translation of prisonnier from the Cambridge dictionary, Available at [Cambridge French–English Dictionary: Translate from French to English](https://www.dictionary.com/browse/prisonnier). (last visited on 05-05-2024).

¹⁰ By Niranjana Sahoo and Vivek Jain, August 2015, Justice System in Crisis: The Case of India's Undertrial Prisoners https://www.orfonline.org/wp-content/uploads/2015/08/IssueBrief_103.pdf, (last visited on 04-05-2024).

¹¹ Collins English Dictionary, available at <https://www.collinsdictionary.com/dictionary/english/prisoner> (last visited on 05-05-2024);

¹² 1980 AIR 1579;

¹³ *Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494: 1979 SCC (Cri) 155: AIR 1978 SC 1675: 1978 Cri LJ 1741.

¹⁴ Basic Principles for the Treatment of Prisoners, Human Rights Instrument, Universal Instrument, United Nations Human Rights, Office of the High Commissioner, Adopted 14 December 1990, by General Assembly, Available at: [Basic Principles for the Treatment of Prisoners | OHCHR](https://www.unhcr.org/refugees/43c40aa9.html) (last visited on 05-05-2024);

¹⁵ Supra note 12;

specifies that "all prisons shall ensure that the purpose for which they are established and their nature are clearly defined and that the purposes and nature of imprisonment are communicated to prisoners."¹⁶

1.2. Definition of undertrial prisoners

Undertrial prisoners have been the most popular topic in India since the British reign and post-independence it is been scrutinized several times in the last seventy years or so¹⁷. Jails should primarily be meant for lodging convicts and not for incarcerating undertrials for decades.

Undertrial inmates who have been placed in judicial custody while awaiting trial by a qualified authority are described in the Model Prison Manual of 2016.¹⁸ However, the distinction between those convicted and those awaiting trial is not very clear. Any prisoner under sentence of a court exercising criminal jurisdiction, confined in jail under the terms of chapter viii of the CRPC 1973¹⁹ and the Prisoners Act of 1900²⁰, is considered a convict in 2016, according to the Model Jail Manual.²⁰

In simple words, an undertrial is defined as a person who is detained pending the filing of charges against them or in the course of an impending trial in contrast, a convict is someone who has already been found guilty but an undertrial inmate is still not being tried in the court of law. Thus, the question of what distinguishes the accused from the undertrial prisoner while they are both housed in jails emerges. Although it is explicitly stated in the prison manual that no convicted person is to be kept in a facility used to keep undertrial prisoners, they are both held there. The legal principle of "innocent until proven guilty" is supposed to apply, however, in the situations of convicts awaiting trial, this tends to be ignored.

1.3. Categories and classification of undertrial prisoners in India :

Undertrial prisoners can be categorized into three categories –

1. Persons who are convicted for non-bailable offenses but granted bail and for not being able to pay bail bond are still in prison.
2. Persons convicted for bailable offense and not able to pay bail bond or no surety.
3. Persons convicted for non-bailable offense but in prison for pending trial or in remand.

The classification of prisoners In India is determined by several characteristics, such as gender, age, and the nature of the sentence they have been given. Inmates who are contagious are not housed with other inmates. Based on their age, occupation, behavior, and level of conviction, female convicts are categorized. Female inmates are subject to additional precautions, including being confined to specified locations and not being permitted to leave until authorized circumstances, such as release, transfer, court attendance, or superintendent's order. The classification of female inmates is likewise required by the Prisoners Act of 1900.²¹

2. New approach in the Bharatiya Naya Suraksha Sanhita on Undertrials:

The BNSS or Bharatiya Naya Suraksha Sanhita made an effort to provide much-needed clarification regarding the differences between bail with and without surety. The subsequent provisions in the chapter

¹⁶ Supra note 12;

¹⁷ 77th no. of Report , by the Law Commission of India, 1979, Delay and Arrears in Trial Courts, Available at: https://lawcommissionofindia.nic.in/report_eighth/ (last visited on 05-05-2024).

¹⁸ Prepared By Bureau of Police Research and Development Ministry of Home Affairs Government of India New Delhi 2003 , MODEL PRISON MANUAL FOR THE SUPERINTENDENCE AND MANAGEMENT OF PRISONS IN INDIA, Available at: https://www.mha.gov.in/sites/default/files/2022-12/ModelPrisonMan2003_14112022%5B1%5D.pdf (last visited on 04-05-2024);

¹⁹ Code of Criminal Procedure, 1973;

²⁰ Supra note 18;

²¹ The Prisoners Act 1900;

have also undergone some modifications in compliance with these updated meanings.²² The code appears to have kept part of the terminology from the old CRPC²³, so even with the definition, there is still ambiguity over how to use the terms bail and surety. Section 482(2), for example, makes a distinction between “release on bond without surety” and “release on bail.”²⁴

While bail has always been considered to mean release with or without surety, there is still significant ambiguity in jurisprudence about how the terms bail and bond are used in the text. The confusion results from the fact that many CRPC provisions define “bail” to mean release on both surety and non-surety terms, while other provisions distinguish between release on surety bail and release on a personal bond without surety.²⁵

By permitting prompt bail and taking into account first-time offenders, Section 479 of the BNSS provides a possible remedy to jail overpopulation while also demonstrating a humane and just judicial system. Section 479 of the BNSS²⁶ addresses the matter of prisoners awaiting trial. This clause applies to crimes under any law, except for those that entail a life sentence or the death penalty, during an investigation, inquiry, or trial. It is significant to remember that this provision is different from Crpc 436A²⁷, which only includes crimes that carry a death penalty.

Release on bail for those who have been detained for up to half of the maximum sentence stipulated for the offense. The judge has the authority to decide whether to release the defendant on bond or to extend their incarceration beyond one-half time after taking into account the Public Prosecutor’s arguments.

The entire time that the accused was detained during the legal process, which does not include delay caused by the accused in the calculation of the bail-out period.²⁸

2.1. FIRST-TIME OFFENDERS {Sec 479(2)}:

BNSS permits bond release if the length of incarceration is up to one-third of the entirety of the sentence. Moreover, Section 479 stipulates that those who are accused of several offenses shall not be discharged on bond. A similar classification within this clause was suggested in the Law Commission of India’s 268th Report of 2017 that undertrials accused of offenses punishable by less than seven years in prison could be released on bail after serving a third of the maximum sentence authorized.

2.2. NEW FUNCTION OF THE JAIL SUPERINTENDENT {SEC 479(3)}:

The Superintendent of the Jail shall quickly file a written application to the Court to proceed under section 479(1) for the release of the individual on bail upon the completion of one-half or one-third of the prescribed period of imprisonment.

2.3. Exclusion of a person against whom Inquiry/Trial is Pending:

A notable exception to this rule is the case of an individual charged with offenses involving a life sentence. Thus far, the s. 436A clause has not applied to those who are charged with an offense involving the death penalty. The proposed Section 481, however, broadens this definition by eliminating anyone who is charged with a crime that carries a life sentence in jail.

²² Bharatiya Naya Suraksha Sanhita, 2023, Section 480 and 481;

²³ Code of Criminal Procedure 1973 Section 436;

²⁴ Bharatiya Naya Suraksha Sanhita, 2023, Section 479;

²⁵ Project 39A, National Law University Delhi, Criminal Law Bills 2023 Decoded #22: Provisions Pertaining to Bail and Bonds, November 15, 2023, Available at [Criminal Law Bills 2023 Decoded #22: Provisions Pertaining to Bail and Bonds - P39A Criminal Law Blog \(p39ablog.com\)](https://www.p39ablog.com) (last visited on 04-05-2024);

²⁶ Bharatiya Naya Suraksha Sanhita, 2023;

²⁷ Code of Criminal Procedure 1973, Section 436A;

²⁸ Bureau of Police Research And Development, Undertrial I. Applicability: In the Bharatiya Nagarik Suraksha Sanhita, 2023, Available at: [202401261019586284086Undertrial.pdf \(bprd.nic.in\)](https://www.bprd.nic.in) (last visited on 04-05-2024);

Consequently, this provision's application has been narrowed, and it no longer applies to people who have been arrested for a variety of offenses for which the maximum penalty is either life in prison or life in prison for the duration of one's natural life.²⁹ The language of the Section is "Notwithstanding anything in Sub-Section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offense or multiple cases are pending against a person, he shall not be released on bail by the court."³⁰ To begin with, the provision's literal phraseology is incredibly broad. Given that it differs from "multiple cases," an investigation, inquiry, or trial about "more than one offense" may also encompass a scenario in which an individual is charged under numerous sections for a sequence of activities that constitute a single transaction.

Furthermore, the wording of Section 482 states that such individuals would not be eligible for bail if there is a reasonable suspicion that they had committed an offense for which they could face life imprisonment or the death penalty. In contrast to Section 481, this enables a court to take into account the accused's prima facie case while determining whether to grant bail. This negates the goal of this section that was added for the release of undertrials who had been detained for extended periods without being given a chance to defend themselves and to stop future violations of their rights under Article 21 and to a prompt trial.³¹

As a result, a significant number of individuals have been disqualified from benefiting from the provisions provided by this subclause. Second, this subclause fails to take into consideration the circumstances of the other instances, which means that it does not take into account the likelihood that the person accused of the other offense may be eligible for bail or may not be recognized. In other cases, the individual might not need to be detained pending the outcome of the investigation, questioning, or prosecution of the other offense. Thirdly, even in cases when an individual charged with several offenses has completed half of the maximum sentence stipulated for each offense, this section renders this provision inapplicable.

The Supreme Court addressed measures implemented by the government to guarantee adherence to s.436A CrPC in the case of *In Re: Inhuman Conditions In 1382 Prisons*.³²

A recommendation for the formation of an undertrial review committee in each district, which would convene every three months to assess cases about undertrials, was one of the actions taken. It's interesting to note that the legal services authorities were given this role of determining eligibility for release rather than the jail authorities in the standard operating procedure of the Undertrial Review Committee.³³

The Supreme Court assigned the Magistrates and Sessions Judges the task of determining their eligibility under art. 436A in the *Bhim Singh* case.³⁴ Supreme Court directed that jurisdictional Magistrates/Sessions Judges hold a sitting each week in every jail/prison for two months commencing from 1st October 2014 for effective implementation of s.436A CrPC by identifying and passing release orders for prisoners who are eligible for release under the provision.

Section 436A in CRPC specifies the most time that an accused person may be held in custody to protect their right to a speedy trial. Remarkably, the BNSS has in many ways limited bail rather than expanding

²⁹ Section 479(2)

³⁰ IBID

³¹ Supra note 18.

³² (2016) 3 SCC 700 .

³³ Nalsa's Standard Operating Procedure (Sop) For Under Trial Review Committees(Utrcs), Available at: [Standard Operating Procedure \(SOP\) for Undertrial Review Committees \(UTRCs\)](#) (last visited on 04-05-2024);

³⁴ (2015) 13 SCC 605.

its reach as a right, notwithstanding the extensive body of precedent that has grown over time on bail being the rule and jail the exception.³⁵

3. Reasons for prolonged incarceration :

It is a well-known fact that the legal process is sometimes prolonged for years on end when individuals are charged with minor offenses that carry a maximum sentence of three years, or even less, with or without a prison sentence. If they are impoverished and defenseless, they spend a lot of time in jail since no one cares about them or can come to their rescue. Liberty is highly valued, and all criminal justice system authorities should collaborate to effectively realize each person's legal rights while they are incarcerated and to prevent protracted detention and overstays. This is only possible if all parties involved in the justice system acknowledge their respective roles and obligations regarding a person who conflicts with the law and holds each other accountable for providing checks and balances.³⁶

In the case of undertrial inmates incarceration happens due to an arrest for an alleged offense that has not been subsequently followed by the granting of bail. Therefore, it becomes important to take a close look at the legislation about the granting of bail. As the apex court in the case of Sunil Batra (Sunil Batra v. Delhi Administration, 1980) observed, "It is no more open to debate that convicts are not wholly denuded of their fundamental rights. Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed. However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is all the more substantial and his rights are not subjected to the whims of the prison administration. Therefore, any imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards. However, they are not in a position to enjoy the full panoply of fundamental rights because these very rights are subject to restrictions imposed by the nature of the regime to which they have been lawfully committed."³⁷ Following are the highlighting issues faced by undertrial prisoners in India:

3.1. Delay in Investigation :

As Justice P.N. Bhagwati rightly stated Poor people have always been on the wrong side of the law when it comes to their interactions with the judicial system. "*Law for the Poor*" has always been encountered by them instead of "*Law of the Poor*."

A person's right to life or liberty may only be taken away on "reasonable, fair, and just" grounds. An integral part of any "reasonable fair and just" approach is providing free legal services to the underprivileged and destitute. A prisoner should have access to legal services if he seeks to use the judicial system to seek his release.³⁸ They view the law as a peculiar and oppressive entity that constantly takes something away from them, rather than as an effective tool for improving their predicament in life and altering the socioeconomic system by granting them rights and advantages. As a result, the less fortunate members of the community no longer trust the legal system. Therefore, equal justice must be infused into legality, and only an active and dynamic legal services system can accomplish this. Deprivation of the speedy trial means that If the process becomes an expedited trial, it is what makes the criminal justice system work but that does not mean that Justice might be buried in the hastiness.

³⁵. (2021) 10 SCC 773;

³⁶ By Shankar Sugandha , CHRI 2011 UNDERTRIALS A LONG WAIT TO JUSTICE A REPORT O Rajasthan's Periodic Review Committees Report , Available at: [As-UndertrialsPRCReportFinal_13_09_12.indd \(humanrightsinitiative.org\)](http://As-UndertrialsPRCReportFinal_13_09_12.indd_(humanrightsinitiative.org)) (last visited on 04-05-2024);

³⁷ 1980 AIR 1579;

³⁸ 1979 AIR 1369, 1979 SCR (3) 532;

A matter of great concern is the reduction of delays and arrears in trial courts. Justice delayed justice denied is essential to the administration of justice. It is indisputable that India's Constitution requires justice to be served promptly. A constitutional fundamental right of Indian citizens, upheld by the Indian State, is the timely administration of justice. Justice P.N. Bhagwati observed that the Indian Constitution, unlike the US Constitution, does not explicitly list a speedy trial as a fundamental right. However, it is implied in the broad interpretation of Article 21 in *Maneka Gandhi v. Union of India*,³⁹ and it was decided that a procedure that does not guarantee a reasonable speedy trial cannot be considered a reasonable, just, and fair procedure. The Apex Court added that "there can, therefore, be no doubt that speedy trial, and by speedy trial we mean a reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21" (*Maneka Gandhi v. Union of India*, 1978).

The learned Judge adopted the following words to highlight the crucial relationship between Articles 14 and 21: "Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. The principles of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21⁴⁰ must answer the test of reasonableness to conform with Article 14⁴¹. It must be "right, just and fair and not arbitrary, fanciful or oppressive, otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."⁴²

In *Rhem v. Malcolm*,⁴³ By leveraging the activist nature of the Eighth Amendment, American courts have taken a proactive and positive stance toward prison reform. Through its rulings, the courts have mandated significant upgrades to be undertaken in several outdated jails and prisons. But for the court to carry out its constitutional role, it must have the relevant information at hand.

As, CJI DY Chandrachud stated,

*"We have not created a footing of equality between the High Courts and the District Judges."*⁴⁴

This discloses a shocking state of affairs and betrays a complete lack of concern for human values. It exposes the callousness of our legal and judicial system which can remain unmoved by such enormous misery and suffering resulting from totally unjustified deprivation of personal liberty. It is indeed difficult for us to understand how the State Government could remain oblivious to the continued incarceration of these undertrial prisoners for years without even their trial having commenced. The judiciary in the State of Bihar also cannot escape its share of the blame because it could not have been unaware of the fact that thousands of under-trial prisoners are languishing in jail awaiting trial which never seems to commence as Justice Bhagwati rightly observed in the case of *Hussainara Khatoon*. (*Hussainara Khatoon (1) v. State of Bihar*, 1980). Recently the rise of not getting bail cases disposed of in the district judiciary and coming to the apex court has been noticed by the CJI and he reiterated that the idea of "bail as a rule, jail an exception" was losing ground in trial courts and stated that district judges needed to change public opinion by placing a proper value on the rights of individual persons.

³⁹ 1978 AIR 597, 1978 SCR (2) 621;

⁴⁰ The Constitution of India, Article 21;

⁴¹ The Constitution of India, Article 14;

⁴² *Hussainara Khatoon & Ors. Vs. Respondent: Home Secretary, State Of Bihar, Patna*, 1979 Air 1369;

⁴³ 377 F. Supp. 995 (S.D.N.Y. 1974);

⁴⁴ District Judiciary Fearful About Granting Bail To Undertrials Due To Subordination Culture Existing B/W HCs & District Judges: CJI DY Chandrachud, Live Laws Network,

<https://www.livelaw.in/top-stories/subordination-culture-district-judiciary-creates-fear-psychosis-judges-mind-granting-bail-undertrials-cji-dy-chandrachud-249767>, (last visited on 04-05-2024);

The low police-to-population ratio of 29 (182 per 1,000 people)⁴⁵ is one factor, but it is exacerbated by widespread corruption among police rank and file, which has been determined to be the main cause of unwarranted arrests and delays in prosecution. Police officers frequently use the excuse of "unjustified or unnecessary" arrests to show the investigation's progress in high-profile cases. One trustworthy estimate states that a staggering 60–30% of all arrests are unwarranted.⁴⁶

Black, J., observed in *Gideon v. Wainwright*⁴⁷: "Not only those precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.

from the judgment of Douglas, J. in *Jon Richard Argersinger v. Raymond Hamlin*⁴⁸ "The right to be heard would be, in many cases of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law, if charged with a crime, he is incapable, generally of determining for himself whether the indictment is good or bad. The social ecology of delayed trials has been further probed by courts in several cases⁴⁹ with the help of articles 14, 19, and 21. For example, Justice Krishna Iyer in *Nimeon Sangama v. Home Secretary, Govt. of Meghalaya*⁵⁰ emphasized expeditious trials and investigation as components of personal liberty. In *Kadra Pahadiya v. State of Bihar*⁵¹ the court reemphasized that the right to a speedy trial was a fundamental right and the aggrieved person may approach the court for necessary directions to the state government and other appropriate authorities for enforcement of the right of the person.

3.2. Economic discrimination -financial disability :

The Indian Constitution's Preamble mandates the government to ensure social, economic, and political justice for all of its residents.

In addition, the Indian State is required by the Constitution to ensure the prompt delivery of justice by the Directive Principles of State Policy stated in Articles 38(1), 39, and 39-A⁵². This obligation stems from India's legal responsibilities under international law.

According to Article 38(1), the State should work toward a social order in which fairness permeates all of the institutions that make up the national life.

In interpreting this provision in *Babu Ram L. v. Raghunathji Maharaj*⁵³, the Supreme Court determined that "social justice" would encompass "legal justice," meaning that the legal system must offer an economical, quick, and efficient tool for achieving justice for all groups of people, regardless of their financial or social standing.

The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and

⁴⁵ For example, India has one of the lowest police-population ratios, with 182 officers per 1,00,000 population against the UN norm of 222. See the Report of the Bureau of Police Research and Development (BPRD), Government of India. <http://bprd.nic.in/showfile.asp?lid=1216> (last visited on 04-05-2024);

⁴⁶ The 120th Report of the Law Commission of India (1987), <http://lawcommissionofindia.nic.in/reports/177rpt2.pdf> (last visited on 04-05-2024);

⁴⁷ 372 U.S. 335 (1963);

⁴⁸ 236 So. 2d 442 (1970);

⁴⁹ *Mantoo Majumdar v. State of Bihar*, (1980) 2 SCC 406; *Khatri v. State of Bihar*, (1981) 1 SCC 627; *Hussainara Khaton v. Home Secretary, State of Bihar*, (1980) 1 SCC 81; *Veena Sethi v. State of Bihar*, A.I.R. 1983 S.C. 339.

⁵⁰ (1980) 1 SCC 700;

⁵¹ A.I.R. 1982 S.C. 1167;

⁵² The Constitution of India;

⁵³ (1976) 3 SCC 492;

whatever is necessary for this purpose has to be done by the State.⁵⁴ It reveals the callousness of our legal and judicial systems, which can stand by in the face of such extreme pain brought on by the utterly unjustifiable denial of personal freedom. We find it extremely difficult to comprehend how the State Government could have been unaware for years that these inmates were being held in detention without even having a trial started.

The philosophy of free legal service as an essential element of fair procedure is also to be found in the following passage from the judgment of Douglas, J. in *Jon Richard Argersinger v. Raymond Hamlin* that if the right to be heard did not include the right to have legal representation, it would frequently be of little use. Even the most intellectual and educated layperson has little to no expertise in the science of law; if they are accused of a crime, they are typically unable to judge whether the indictment is strong or weak on their own. He does not know the laws of evidence. Without legal representation, he runs the risk of being tried without a proper charge, found guilty based on poor testimony, irrelevant evidence, or other inadmissible evidence.⁵⁵

Also, Article 39⁵⁶ reminds of that free legal aid is fundamental to the Constitution. This article also emphasizes how the provision of free legal services is a necessary component of "reasonable, fair, and just" procedures because, in the absence of it, those with financial or other limitations would not have the chance to obtain justice.

Every accused person has the constitutional right to obtain legal representation if they are unable to do so due to circumstances such as poverty, indigence, or being placed incommunicado. The State is required to provide an accused person with legal representation if the case's circumstances and the needs of justice so demand, provided that the accused person does not object.

The justice system in India which is based on the adversarial model of common law is known for being cumbersome, expensive, and cumulatively disastrous. The poor can never reach the temple of justice because of the heavy cost of its process and the mystique of legal ethos. The hierarchy of courts, with appeals after appeals puts legal justice beyond the reach of the poor. Professional service is the monopoly of a few rich professionals (lawyers), who are too dear to be fed for the poor. Making the legal process costlier is an indirect denial of justice to the people and this hits hard on the lowest of the low in the society. As a result the poor are losing faith in the capacity of the legal system to bring about changes in their life conditions and to deliver justice to them. The law is regarded by the poor as something mysterious and forbidding- always taking something away from them and not as a positive and constructive social device for changing the socio-economic order and improving their lot. [*Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 98: A.I.R. 1979 S.C. 1369.]⁵⁷

3.3. Inadequate Regulatory System:

The suffering of inmates awaiting trial is further made worse by significant problems with the current jail administration system and prosecutors. Both prison administration and the nation's judicial workforce are egregiously underfunded and neglected.⁵⁸

⁵⁴ *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 81;

⁵⁵ *Jon Richard ARGERSINGER, Petitioner v. Raymond HAMLIN, Sheriff, Leon County, Florida*, No. 70—5015. Argued Dec. 6, 1971, Available at: <https://www.law.cornell.edu/supremecourt/text/407/25> (last visited on 04-05-2024);

⁵⁶ The Constitution of India, Article 39;

⁵⁷ *Supra* note 52

⁵⁸ Niranjana Sahoo and Vivek Jain, *Justice System in Crisis: The Case of India's Undertrial Prisoners*, August 2015, Available at: https://www.orfonline.org/wp-content/uploads/2015/08/IssueBrief_103.pdf. (last visited on 04-05-2024);

4. Legal rights and human rights to the under trials in India

The consortium of host government institutions that collectively make up the Indian criminal justice system is in charge of deterring and prosecuting criminal activity. Fundamentally, the system protects each citizen's human rights while enforcing regulations that aim to sustain the rule of law and preserve public peace and equality.

Indian criminal justice system is primarily based on the principle of retribution, and any crime committed is held to be against the interest of the state. India has an adversarial justice system where the state is the recognized adversary in matters of crime. It is a well-established legal principle that human rights are inextricably linked to an individual. The public authorities' becoming aware that both victims and offenders are the transmitters of their human rights, and that despite the state may be the main player in the legal proceedings, the grievances and interests of the actual victims should take precedence, is typically what is found to be erroneous.

4.1. Rights of the prisoners under the constitution of India

The constitution of India guarantees the fundamental rights of all the prisoners. In the case of the *state of A.P. v. Challa Ramkrishna Reddy & ors.*⁵⁹, the Supreme Court held that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. Further held that whether a convict or undertrial, does not cease to be a human being, and while lodged in jail, he enjoys all his fundamental rights guaranteed by the constitution of India including the right to life guaranteed by the constitution.

The greatness of Article 14,19,21 of the constitution of India guarantees basic fundamental rights to every citizen of India. these rights extend to the prisoners as well.

The Hon'ble Supreme Court in the case of *T.N. Vatheeswaran V. State Of Tamil Nadu*⁶⁰, held that fundamental rights under Articles 14,19,21 of the constitution of India are available to the prisoners as well as freemen.

Article 14 guarantees that no person shall be denied equality before the law or the equal protection of the law within the territory of India. The greatness of the article is that it provides rights should be treated alike.

Article 19 provides six freedoms that are guaranteed to all the citizens of India but in the case of prisoners for the protection of the free citizens, some of the rights are curtailed.

But Article 21 has a wider reach. it states that no person shall be deprived of his personal life or liberty except according to procedure established by law.

4.2. Right of inmates to live in humane and good conditions :

The Supreme Court issued several directives in the *UPENDRA BAXI v. STATE OF U.P.*⁶¹ case to guarantee that the prisoners at the Agra protective home did not continue to live in cruel or degrading conditions and that their right to a dignified life, as guaranteed by Article 21 of the Constitution, was made tangible and significant for them.

4.3. Right against solitary confinement and bar fetters:

"solitary confinement" involves keeping a prisoner isolated from other detainees and housed in a single cell. The person has restricted social skills, and their actions and daily schedule are constantly observed. The primary objective of this kind of incarceration is to enforce discipline, particularly when handling

⁵⁹ (2000)5 SCC 712

⁶⁰ (1983) 2 SCC 68;

⁶¹ (1983) 2SCC 308;

known offenders and shielding other inmates from them. Plaintive detention significantly restricts the personal freedom of the jailed person. In preventive detention, it is even restricted. The unspoken belief that every prisoner, including those serving death sentences, is aggressive or dangerous by nature and has to be housed in a separate facility is unfounded. In the Supreme Court's landmark decision in the Sunil Batra v. Delhi Administration case, the admissibility of isolation was questioned. The court held in its ruling that instances where an inmate is extremely violent or dangerous and separation is necessary should be the only time solitary confinement is used. The court further argued that prisoners' continual confinement turns them into animals and hurts their mental health. As a result, Indian courts have strongly objected to the use of solitary confinement, considering it to be an extremely demeaning and disparaging practice. They have further argued that the principles included in the Indian Constitution are violated by this type of incarceration. Right against custodial valance and solitary confinement: In the absence of any justifiable reasons, handcuffing an arrested individual or someone in an undertrial prison is a violation of Article 21 of the right to life and a violation of human rights. The Supreme Court ruled that handcuffing is harsh and unfair since it is inhumane. It must be crucial to stop the escape of untried prisoners or anyone accused of a crime, but it is equivalent to torture and breaking human rights rules to bind a man with iron or ropes, fetter his limbs with steel hoops, and make him stand in court for hours. Although Section 43(3) of the new Criminal Code allows for the handcuffing of an accused in certain circumstances⁶²

4.4. Right to life and personal liberty :

The Indian Supreme Court has affirmed the importance of Article 21 on multiple occasions and has put its rulings into practice. The term "life" was interpreted more broadly by Field J. in the landmark Kharak Singh v. State of UP case. The court found that the term "life" refers to all of the senses and abilities that allow one to enjoy life, not just the ability of animals to survive. Furthermore, the clause prohibits the removal of bodily components that are used as a means of contact with the afterlife. As a result, a person's right to life transcends their bodily existence. The Constitution makes no mention of "due process." The primary cause is the inconsistent nature of judicial rulings. The notion of reasonableness is subject to variation among judges. Therefore, rather than using the term "due process," the word "procedures" prescribed by law has been utilized. The Maneka Gandhi Case⁶³ established that a right need not be expressly mentioned in Article 19(1); rather, it can be considered a fundamental right under any provision of Article 19⁶⁴ if it is a fundamental part of a named fundamental right or shares the same fundamental nature and character with that named fundamental right.

4.5. The right to live with human dignity:

The Indian Constitution protects everyone's right to life, including convicts, and one of its most important components is the right to live with dignity. Prisoners have the same right to dignity as everyone else, even though their captivity does not lessen their humanity. This basic right is a crucial component of the right to life guaranteed by the Indian Constitution, and the court has broadened its jurisdiction under Article 21 by applying it to instances. The Supreme Court of India reinterpreted the "right to life or live" in the Maneka Gandhi v. Union of India⁶⁵ decision to include a person's right to a dignified existence in addition to their physical existence.

⁶² BNSS , Seection 43(3);

⁶³ 1978 AIR 597, 1978 SCR (2) 621;

⁶⁴ The Constitution of India, Article 19;

⁶⁵ Supra note 61;

4.6. Right to health and medical treatment:

As guaranteed by the Indian Constitution, everyone has the fundamental right to good health, which includes access to the greatest mental and medical care. The nation's highest court has ruled on multiple occasions that access to healthcare is a fundamental component of Article 21. Under this clause, the State is required to protect each person's life.⁶⁶

4.7. Right to a speedy trial:

It is completely true that the saying "justice delayed is justice denied" Every prisoner has the right to a speedy trial, regardless of the crime for which they were found guilty. Trials that are completed quickly are considered to be essential to the administration of criminal justice. When someone is suspected of committing a crime, they must go through swift trials to be found guilty or exonerated of the charge. Protracted trials shouldn't ever be required of anyone because they are illegal and violate the rights of the defendant. Everyone now acknowledges that everyone is entitled to a speedy trial as a result. In addition, Section 309⁶⁷ of the Code of Criminal Procedure guarantees the right to a speedy trial.⁶⁸ The accused has a right to a fair and quick trial; this is also crucial so that, if bail is denied, the accused does not have to spend more time in jail than is necessary. The goal is to spare the accused party from needless suffering and time loss (State of Maharashtra - Vs. Rasiklal (1978) Cr. L.J. 809 (Bom) D.B.

The Supreme Court noted in *Hussainara Khatoon v. State of Bihar* A.I.R. 1979 SC 1360 that a legal process for removing someone from their freedom cannot be "reasonable," "fair," or "just"¹⁰⁹ unless it guarantees a prompt trial to determine the person's guilt.

4.8. PROTECTION AGAINST SELF INCRIMINATION Article 20(3):

According to Article 20(3), no one who has been charged with a crime may be forced to testify against himself. There is a safeguard against self-incrimination in Article 20(3). "Evidence obtained by measures other than physical threats or violence, such as psychological torture, atmospheric pressure, environmental coercion, timing of interrogation, proximity, overbearing and intimidating techniques, etc., is referred to as compelled testimony. It is not permissible to make an accused individual respond to inquiries. He has the right to remain silent. Anyone who is arrested has the right to counsel with any advocate of their choosing.

4.9. Right to legal aid :

An accused person is entitled to free legal help if they do not have the resources to pay for an attorney. The Supreme Court ruled in *Haskot v. State of Maharashtra*, A.I.R. 1978 SC 1548 that providing free legal service to the impoverished and needy is a necessary component of any reasonable, fair, and just process. The Model Prison Manual 2016⁶⁹ circulated to all States/ Union Territories has specific chapters on "Legal Aid" and "Undertrial Prisoners", etc, which provide detailed guidelines on the facilities that may be provided to undertrial inmates, namely legal defense to Courts for legal aid at Government cost, etc.⁷⁰ To help those in need of legal aid, the State Legal Services Authorities set up Legal Service Clinics in jails. Empanelled Legal Services Advocates and qualified paralegal volunteers oversee these legal clinics. These clinics were set up to make sure that all prisoners received legal assistance and guidance and that none went unrepresented. To raise public knowledge of the provision of free legal aid, plea bargaining, Lok Adalats, and the legal rights of prisoners, including the right to bail, the National Legal Services Authority organizes awareness generation camps inside jails.

⁶⁶ Indian Constitution of 1950;

⁶⁷ Code of Criminal Procedure;

⁶⁸ No. 23/RN/Ref/July/2017, Development Of Prison Reforms In India. Arya Gaddam (2022) (last visited on 05-05-2024);

⁶⁹Supra note 18;

⁷⁰Supra note 8;

4.10. Right to free legal aid :

Everyone who is taken into custody is entitled to legal representation. This is both a fundamental right and a guarantee under the Constitution. The Supreme Court ruled in *Madhav Hayawadanrao Hoskot Vs. Respondent: State Of Maharashtra*⁷¹, that access to legal aid is a necessary component of a fair trial. In compliance with Article 21 and Article 39-A of the constitution, the court may assign a lawyer to a prisoner who has been condemned to jail if the prisoner is unable to defend or appeal before the court due to a lack of legal representation. This allows the court to ensure that the prisoner receives full justice. The Indian Constitution's Article 22(1) protects the right to register a complaint and to the counsel of one's choice for legal representation. In addition, Article 39-A gives the state the authority to provide free legal aid to the underprivileged, including those who are incarcerated. The state will cover the impoverished accused person's legal expenses. This is the sole explanation for why economic discrimination has led to the greatest number of undertrial inmates in India, who are detained for years without being allowed to face trial.

According to the Legal Service Authority Act (LSAA) of 1987, everyone detained has the right to legal assistance. In *Hussainara Khatoun v. State of Bihar*⁷², the Apex Court also concluded that the right to free legal services is a necessary component of the reasonable, fair, and just process that is granted under Article 21 of the Constitution for someone who is being accused of a crime. Denial of legal aid to an accused who cannot afford a bail bond is a grave injustice to the Indian judiciary system that will amount to the right to equality and result in the rights of a poor accused being violated. The highest court of the country further directed in the case of *Sheela Barse v. State of Maharashtra*⁷³ "Whenever a person is arrested by the police and taken to the police lock-up the police immediately give an intimation of the fact of such arrested person to the nearest legal aid committee such legal aid committee will take immediate steps for providing legal assistance to the arrested person at cost of the state, provided he is willing to accept such legal assistance."

5. UN treaties and conventions about undertrial prisoners' rights:

"Human Rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings," according to the United Nations. Human rights are "the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India," according to Section 2(d) of the Protection of Human Rights Act, 1993 in India. Understanding the relationship between the ideas of human rights and human dignity is crucial.⁷⁴ Human rights are a special kind of moral rights that cannot be taken away. They apply to everyone because of their common humanity, irrespective of race, nationality, or membership in a particular social or ethnic group. Human rights are an inevitable byproduct of being a person.⁷⁵ Since human rights are inalienable and interconnected, it is impossible for there to exist distinct categories of human rights. All people are born with the intrinsic right to human rights, which are all equally important.⁷⁶

⁷¹ (1978) 3 SCC 544;

⁷² Supra note 52;

⁷³ AIR 1983 SC 378 43;

⁷⁴ Dr. H.O. Agarwal, *International Law and Human Rights* 754 (Central Law Publications, Allahabad, 20th ed., 2014).

⁷⁵ Available on : <http://www.abysinnialaw.com/study-on-line/item/942-nature-and-definition-of-human-rights>, (last visited on 05-05-2024);

⁷⁶ IBID;

Human rights are defined as "the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India" in India under the Protection of Human Rights Act, 1993. The Protection of Human Rights Act, of 1993, which was passed by the Indian Parliament, established the Human Rights Courts, State Human Rights Commissions, and the National Human Rights Commission to better safeguard human rights. This made it possible to safeguard each person's inalienable rights. One important topic that arose throughout our discussion of human rights is whether or not they are legally protected.

Since human rights belong to the people, it is the State's responsibility to protect them. As a result, the response is affirmative. According to international instruments such as the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social, and Cultural Rights (1966), states commit to promoting universal veneration as well as observance of human rights and freedoms. Similarly, the UN General Assembly issued the Declaration of the Human Rights Protectors on December 9, 1998, which states that each State has the primary responsibility and duty to safeguard, promote, and implement all human rights by adopting required measures. Therefore, one may contend that a human right is safeguarded.

Thus, a prisoner is always entitled to human rights, and undertrial inmates, who are presumed innocent until and unless proven guilty, are entitled to their human rights as well as the dignity to exist and support themselves.

A multitude of international conventions and treaties have been developed to guarantee the safeguarding and preservation of prisoners' rights across the globe. It should be easier for the authorities to distinguish between the accused both before and after the trial. The main goals of these treaties and agreements are to stop torture and the cruel, inhumane, or humiliating treatment of prisoners. The following is a summary of some of the most significant accords and treaties about prisoners' rights:

1) The Universal Declaration of Human Rights⁷⁷ (UDHR):

On December 10, 1948, the Universal Declaration of Human Rights (UDHR) was ratified by the UN General Assembly. It includes fundamental human rights to which everyone, even convicts, is entitled. Every human being is born free and equal and has the same rights, according to Article 1 of the UDHR. They are endowed with reason and conscience, therefore they should treat each other with kindness.

According to Article 2 of the UDHR, everyone is entitled to exercise their freedoms and rights without exception, including those against discrimination based on race, color, sex, language, religion, political opinion, national or social origin, property, place of birth, or any other status. It would seem clear that prisoners fall under the criteria of "everyone" in Article 2 and "all human beings" in Article 1.

Article 3 of the UDHR states that everyone has the right to life, liberty, and personal security. The right to life is an essential human right that encompasses both incarcerated and free individuals. Jails do not use torture or other cruel, inhumane methods to treat their inmates. Torture and other cruel, violent, or humiliating treatment or punishment are forbidden by Article 5 of the UDHR.

2) The International Covenant on Civil and Political Rights (ICCPR) :

The United Nations General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR), also referred to as the Covenant, on December 16, 1966, and it came into force on March 23,

⁷⁷ By [Mj Altman](#) On December 6, 2023, *Global Helath*, The Universal Declaration Of Human Rights Is Turning 75: Here's What You Need To Know Available at: https://unfoundation.org/blog/post/the-universal-declaration-of-human-rights-is-turning-75-heres-what-you-need-to-know/?gad_source=1&gclid=CjwKCAjwrIixBhBbEiwACEqDJcCCKMDKDjKXERIS-QTZRIpyCznpP-Ej20YnT6mVw2f6G0K30OEBhoCWrwQAvD_BwE (last visited on 04-05-2024).

1976. The rights of those who have served time in jail are covered in more depth in this document. According to Article 6(1) of the ICCPR, every human being, whether detained or not, has an intrinsic right to life. This is a legally protected right, and no one will have their life stolen from them without justification.

Furthermore, Article 7 of the ICCPR states that no one shall be the victim of torture or cruel, inhuman, or degrading treatment or punishment. Article 10 of the agreement states that everyone who has their freedom taken away shall be treated with dignity and respect. Regulations also protect the rights to a fair trial, to be free from torture, and to have a comfortable place to live while being held in custody.⁷⁸

3) Convention against Torture and Other Cruel, Inhuman, or humiliating Treatment or Punishment⁷⁹ (CAT):

The Convention against Trauma and Any Bad, Unjust, or Deteriorating Therapy or Penalty (CAT) was passed by the UN General Assembly in 1984. This treaty specifically forbids the practice of questioning as well as any other cruel, inhuman, or degrading punishment or incarceration. It instructs authorities to take all necessary steps to stop such crimes from happening and to compensate victims appropriately. Additionally, states need to make sure that kids are protected from these kinds of actions.

4) United Nations Basic Principles for the Treatment of Prisoners⁸⁰:

The General Assembly of the United Nations adopted the Basic Principles for the Treatment of Prisoners on December 14, 1990. These principles were established in 1984 and clearly state that all prisoners must be treated with respect for their inherent dignity and value as human beings, without any form of discrimination. These are other international instruments about the treatment and rights of prisoners than the ones already mentioned. They should be guaranteed all fundamental liberties and human rights listed in internationally recognized agreements, except freedom of movement.

6. UN interventions under international humanitarian law in addressing undertrial prisoners' rights violations globally:

Making a distinction between people who have been found guilty and those who have not is crucial. It is imperative that those who have been charged be kept away from those who have been found guilty and that they be treated differently based on their innocence. However, under exceptional circumstances, an exception might be made.⁸¹ Similar safeguards are offered to suspects who are adolescents. As soon as it is practical, they must be removed from adults and brought in for decision-making.⁸² Prisoner treatment should prioritize social rehabilitation and reformation.⁸³ As per the Model Code of Criminal Procedure following rights are given to the prisoners and undertrials who are prolonged in jails on humanitarian grounds:

6.1. Right to equality before the law and the courts :

Until someone is proven guilty, they are all equal in the eyes of the law. This right is guaranteed by Article

⁷⁸ The International Covenant on Civil and Political Rights, Article 10, paragraph 1, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last visited on 04-05-2024);

⁷⁹ By General Assembly resolution 39/46, Adopted on 10 December 1984, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (last visited on 04-05-2024).

⁸⁰ Supra note 65.

⁸¹ Supra note 64

⁸² Ibid. Article 10, paragraph 2(a).

⁸³ Ibid. Article 10, paragraph 2(b).

26 of the International Covenant on Civil and Political Rights. The term "equality before the law" describes how individuals are treated equally during the administration and enforcement of the law. Everyone must be treated fairly by public servants, such as judges, prosecutors, and police officers. Having said that, receiving equal treatment does not imply that everyone receives the same treatment. Rather, it implies that people in similar situations ought to be handled similarly.

6.2. Right to freedom from discrimination :

The right to be free from discrimination is applicable outside of the criminal justice system, even if it is related to freedom from discrimination in both criminal law and criminal justice operations. The right to be free from discrimination is guaranteed by both Article 10 of the Universal Declaration of Human Rights and Article 26 of the International Covenant on Civil and Political Rights.

A useful tool for comprehending what constitutes discrimination is the definition of racial discrimination provided in Article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination. The United Nations Human Rights Committee states that discrimination against individuals is acceptable as long as it is "reasonable and objective" and serves a legitimate legal purpose. Furthermore, a "reasonable relationship of proportionality" must exist between the different therapies.

6.3. Presumption of innocence :

Everyone is presumed innocent until and unless proven guilty by the application. The presumption of innocence is mentioned in both Article 11 of the Universal Declaration of Human Rights⁸⁴ and Article 14(2) of the International Covenant on Civil and Political Rights. These are a few instances of regional and global agreements that support this idea. Furthermore, it is stated in Rule 84(2) of the United Nations standard minimum requirements for the treatment of detainees⁸⁵ that the prosecution must prove a charge beyond a reasonable doubt before guilt can be presumed.

6.4. Right to a fair and public hearing:

A public hearing is guaranteed to all parties by Article 62 of the United Nations Model Criminal Procedure. The right to a fair and public hearing is guaranteed by several regional and international human rights instruments, including Article 6[1] of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 10 of the Universal Declaration of Human Rights. The concept of a public hearing encompasses all aspects of the criminal justice system.

A trial may not be deemed fair even though it complies with all other mentioned fair trial requirements outlined by international human rights law if its general layout goes against the fairness principle. The basic minimum of rights are indeed these stated ones. Thus, the right to a fair trial has been deemed to have residual value, encompassing other intangible attributes necessary for the equitable administration of justice.

6.5. Right to trial without undue delay and right of detained persons to train within a reasonable time or release :

Two issues of international human rights law about the duration of an accused person's trial are covered by Article 63 of the United Nations Model Code of Criminal Procedure. The right to a prompt trial is guaranteed by numerous regional and international human rights accords. by Articles 14(3)(c) of the International Covenant on Civil and Political Rights and 8(1) of the European Convention for the

⁸⁴ UDHR , Article 11;

⁸⁵ UNODC, The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Available at: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf (last visited on 04-05-2024);

Protection of Human Rights and Fundamental Freedoms. The right to trial as well as the prompt delivery of a decision are encompassed by the expression "right to a trial without delay".⁸⁶

According to the United Nations Human Rights Committee, the right to a trial without undue delay includes the dates of the trial's commencement, conclusion, and judgment-giving phases; each must happen "without undue delay." The European Court of Human Rights has interpreted this to mean that the clock starts ticking the moment someone is charged with a crime. The right to a prompt trial or, in the absence of one, to one's release is guaranteed by Article 9[3] of the International Covenant on Civil and Political Rights, Article 5(3) of the European Convention on Human Rights, and Principle 38 of the set of guidelines for treating individuals in detention or imprisonment.

Articles 189 and 190 of the MCCP further prohibit the length of pretrial detention to ensure that the trial takes place within a reasonable time frame and that the reasonableness of the time spent in custody is assessed independently by a judge.

6.6. Right to free legal assistance :

In cases when it is necessary for the sake of justice, the accused or the person in custody who is unable to pay for legal representation may be entitled to free legal assistance, as stated in Article 67 of the MCCP. Article 6(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 14(3)(d) of the International Convention on Civil and Political Rights both provide the right to free legal help.

CONCLUSION:

An accused person who is presumed innocent unless and until proven guilty is an undertrial prisoner. His sole purpose for being detained is to make sure he shows up for court or is available to answer inquiries during an investigation. There's no other explanation for his incarceration. His legal and physical well-being are under the jurisdiction of the judiciary at all times while he is under the physical custody of jail officials. If he has legal representation, his attorney's job is to represent him in court and offer the best defense possible. However, does not lessen the court's obligation to care for the prisoner awaiting trial. The court is ultimately in charge.

The State is required by the Constitution to guarantee an expeditious trial, and it must take all necessary steps to achieve this goal. As the guardian of the people's fundamental rights and a sentinel on the quiver, this Court is also required by the Constitution to enforce the accused's fundamental right to a speedy trial. To that end, it may require the State to take appropriate action, such as bolstering and expanding the investigative apparatus, establishing new courts, constructing new courthouses, appointing more judges, and other measures designed to guarantee a speedy trial.⁸⁷

In a report⁸⁸ on the Commonwealth Human Rights Initiative recommended that Each High Court Judge has a supervisory role over all of the state's districts, and the judiciary is required by internal guidelines and directives to closely monitor the implementation of all prisoners' rights and the prevention of prisoner overstay. These measures are taken to ensure that there is no violation of the judge's role in the arrest and

⁸⁶ Model code of criminal procedure, Available at: <https://www.usip.org/sites/default/files/MC2/MC2-4-Ch1.pdf> (last visited on 04-05-2024).

⁸⁷ 1979 AIR 1369, 1979 SCR (3) 532,

⁸⁸ Rajasthan Periodic Review Committees(CHRI 2011) on "Undertrials A Long Wait To Justice" by Sugandha Shankar, available at:https://www.humanrightsinitiative.org/publications/prisons/UndertrialsPRCReport_2013.pdf, (last visited on 04-05-2024).

detention of inmates in prisons in India.⁸⁹ Over the years, the Indian judiciary has worked to uphold prisoners' rights. Through a series of court rulings, the judiciary has acknowledged several inmate rights, such as the right to counsel, the right to a prompt hearing, the right to physical safety and security, the right to freedom of speech, the right to see family, and the right to be free from cruel or abusive jail practices.

The old Criminal law that is Code of Criminal Procedure was the fruit of colonial times and solely discriminated against the economically disabled society to wealthy class citizens in India. Prison management in India falls within the purview of the criminal administration. It's important to remember that social and economic factors might contribute to someone turning criminal. As a result, the prison administration is required to give inmates enough food, housing, and medical care. Prisoners ought to receive humane treatment since the primary goal of incarceration is not punishment but rather the reformation of offenders to enable their successful reintegration into society after serving their terms.

The Indian penal system is similarly based on the reformatory idea; nevertheless, despite numerous reforms, the state of convicts in Indian jails remains appalling, necessitating additional development. This new Bharatiya Naya Suraksha Sanhita has come as a new ray of light in the Indian criminal justice system that ensures the welfare of prisoners in different circumstances where exceptional situations are also explained in the correctional reforms in India.

Going to jail does not mean that the inmates have waived their rights but this is a situation where the state and the judiciary are solely responsible for their rights including human rights. According to the UNODC, prison policies ought to be set by prison officials and improvements to prisons are important. National rules should be in place to ensure compliance, and the provision of proper healthcare services should be linked to the prison system.⁹⁰

A perfect and flawless criminal justice system does not exist though as a country that is established on the reformatory theory of punishment should ensure that justice is delivered and the innocent does not prolong in the darkness of the jails that surely violate their human rights. However, there are provisions regarding the bail system but in reality, those inmates are characterized based on their economic disability which should not be the reason for a human being not being represented in the court or delivered justice.

⁸⁹ Ibid

⁹⁰ By Adv. Ekta Saini, Amity Institute of Advanced Legal studies on "Prisoners' Rights in India And U.K. – A Comparative study, Published on International Journal of Research Publication and Reviews, Vol 4, no 5, pp 4798-4811 May 2023, Available at: <http://www.ijrpr.com/> last visited on 04-05-2024).