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### **Prison Reform and Alternatives to Imprisonment: Socio-Legal Challenges across Nations**

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#### **Abstract**

“It is not the prisoners who need reformation, it is the prisons.”

---- Oscar Wilde

In relation to the prison reform and alternatives to imprisonment, it has been developed that the aim of investigation lies behind the social legal challenges that India has been facing because of the growing number of undertrial prisoners and also focusing on prison reforms in India. This research paper has been aimed by undertaking the secondary qualitative method, for which a number of journals and reports have been accessed. The detrimental effect of imprisonment is not only seen on the respective individuals but also their clans, community, and economic factors. In this respect, the upgradation of prison reforms has been upheld by looking at the current situations of the individual who is subject to imprisonment. Inferring from compiled data, it has been found that there are enumerate under trials who are spending over one year in prisons and have languished in prisons. Therefore, intervening in alternatives of imprisonment has become one of the significant needs of India in order to comply with the United Nations standards. The researcher envisages the socio-legal challenges faced by the under trial prisoners and also comprehend the conditions connected with the detainment.

#### **Keywords**

Prison, Reforms, Crime, Imprisonment, Convicted, Poverty, Challenges

## **Introduction**

Prison reform has been known as an attempt to improve the present internal conditions of prisons. The process also comprises improving the effectiveness of the penal system and implementing incarceration and alternatives of imprisonment. The most basic alternatives of imprisonment have been known to be restitution, probation, rehabilitative services, fines, suspended sentences, and/or community services<sup>1</sup>. This assessment is going to focus on the scenario in India regarding the socio-legal challenges that the nation has been facing related to imprisonment. As it has been known that India is a developing country, the number of undertrial prisoners have been increasing across the nation. Specifically, people belonging to poverty have been facing large-scale issues because of the lack of legal provisions for undertrial prisoners<sup>2</sup>. In India, the number of convicted prisoners has been found comparatively lower and the number of pending criminal cases are comparatively higher in India.

## **Research problem and objectives**

The problem related to this paper is that the number of undertrial prisoners are increasing in India due to the lack of government's hindrance in leading them towards conviction. The study is, therefore, aimed at investigating the main reasons behind the social-legal challenges that India has been facing because of the growing number of undertrial prisoners. Along with that, the paper is also going to focus on prison reforms in India.

The relevant objectives regarding this study are as follows:

- To scrutinize the reasons related to the increasing rate of under trials in India
- To address and evaluate social-legal challenges oriented to prison reforms and its impacts
- To understand the current condition related to imprisonment and undertrials in India
- To identify alternatives of imprisonment available in India
- To recommend a set of strategies in order to reduce the number of undertrials in India

## **Methods**

This research paper has been aimed by undertaking the secondary qualitative method, for which a number of journals and reports have been accessed. The descriptive research design has been incorporated in the study in an

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<sup>1</sup> Dalal, Rajbir, and Rekha Chauhan. "Prison reforms in India: Emerging issues." *Asian Journal of Multidimensional Research (AJMR)* 8, no. 6 (2019): 243-254.

<sup>2</sup> Amrit, Pratyay, Anshika Jaiswal, Vaibhav Uniyal, Radhey Shyam Jha, and Ambar Srivastava. "Prisoner's rights and prison reform in India: A legal critique." *International Journal of Health Sciences* 6, no. 3 (2022): 10933-10943.

argumentative manner, which depicts the depth of knowledge related to prison reforms and alternative of imprisonment throughout the study. The deductive approach has been maintained in this paper in order to ensure that the specificness of this study is followed across all areas of research. The interpretivism philosophy has been established in order to support the qualitative method of this paper. With the assistance of these methodological aspects, extensive research has been conducted in order to reach the aim of this paper and meet research objectives. The secondary methodology of this paper has helped in identifying related facts and figures that have been playing key roles for a longer period of time in the concentric area.

### **Key results and/or arguments**

Looking at the centre of the argument, it has been identified that the promotion of prison reforms is subjected to the argument on human rights. The congruent premise refers to a number of UN standards along with relative norms that have been developed to promote prison reforms. However, the argument is often found to be insufficient for encouraging programs related to prison reforms in several countries that have scarcity of financial and human resources<sup>3</sup>. The detrimental effect of imprisonment is not only seen on the respective individuals but also their families, community, economic factors, and social statuses. In this respect, the promotion of prison reforms has been upheld by looking at the current situations of the individual who is subject to imprisonment. The sentence of imprisonment only comprises deprivation of the common human rights to liberty. Hence, this does not entail the limitation of other human rights including the expectation of them who are naturally prohibited by the very fact to be a subject to imprisonment<sup>4</sup>. Prison reforms have been found essential in order to ensure that the underlying principle is respected to a greater extent. With this hindrance, the human rights of imprisoned individuals can be protected as well as their prospects related to social reintegration can be enhanced. In order to promote prison reforms to a larger exposure, the respective governments may need to comply with relevant UN norms and standards. Imprisonment has substantial consequences on families of imprisoned individuals who have been living below the poverty line. This is because when the number of generating income of a family is being imprisoned, the rest of the family comes to the urge of adjusting with the loss of income and compromising their living patterns<sup>5</sup>. In the context of developing countries, such as India, the impact of imprisonment is comparatively severe, as the state governments of a developing country do not provide financial security to the indigent even when it is not usual for sole bread-earners to provide financial

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<sup>3</sup> Bhutta, Mazhar Hussain, and Muhammad Siddiqu. "Situation of prisons in India and Pakistan: shared legacy, same challenges." *South Asian Studies* 27, no. 1 (2020).

<sup>4</sup> Das, Dimpy, and Barnali Sarma. "Prison labour in colonial India: A case study of Assam." *Space and Culture, India* 8, no. 1 (2020): 91-100.

<sup>5</sup> Drake, Deborah. "Prisons and state building: Promoting 'the fiasco of the prison' in a global context." *International Journal for Crime, Justice and Social Democracy* 7, no. 4 (2018): 1.

support for the extended network of the family. Apart from that, when the imprisoned individual is released there has been no prospect to be employed, as an imprisoned individual is commonly subject to social economic inclusion<sup>6</sup>. As a result, the respective individuals become vulnerable to an endless cycle of marginalisation, poverty, criminality, and further imprisonment. Therefore, it can be stated that imprisonment has direct, adverse impacts on a reduced rate of gross domestic income. This is because imprisonment directly contributes to impoverishment of the former prisoners, of their families, as well as of society to be subjected to creating new victims in the future and reducing the potential of economic performance.

### **The rate of undertrials has been increasing**

The amount of individuals wedged in Indian prisons in terms of undertrials amplified at a speedy pace from 2001 to 2019 as compared to the number of those who were convicted. At the end of 2019, it was seen that there were 3.28 lakh undertrial prison inmates, whereas only 1.42 lakh prison inmates were convicted<sup>7</sup>. In accordance with the current statistics, approximately 1.6 crore cases that are subject to imprisonment were unresolved and prolonged through all taluka and district courts across India. Out of them, around 22 lakh criminal cases were there with extended judgement for more than 10 years. Up to the end of 2019, 90% and more of undertrial prison inmates had not graduated and nearly 28% were completely illiterate. Due to the high rate of pendency across Indian courts, the tenure of undertrial prison inmates is confined in prison for at least more than 1, 3, and 5 years, which increased from 2000 to 2019. Over 75% of jail inmates in India have been identified as undertrial prisoners, as confirmed by the National Crime Records Bureau (NCRB). Out of the 554034 prisoners, 77% (427165 prisoners) were found to be undertrial prison inmates in 2021<sup>8</sup>. This showed an increase of 14.9% from 2020 when the number of undertrial prison inmates were 371848. Therefore, district jails had the largest number of incarcerated undertrials, which accounted for 51% of the total number of trials. In this case, the allotment of central prisons in 2021 was 36.2% and the allotment of sub-prisons was 10%. Not only has the number of under-trials increased, but so has the capacity of prisons to hold prisoners. According to various experts, the number of remand prisoners in prisons can be minimized if the competent authorities follow the order of the Supreme Court of the country.

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<sup>6</sup> Okun, Peter. *Crime and the Nation: Prison Reform and Popular Fiction In Philadelphia, 1786—1800*. Routledge, 2018.

<sup>7</sup> Bansal, Rolika, Bruce E. Spivey, and Santosh G. Honavar. "The woman of the firsts—Isabel Hayes Chapin Barrows." *Indian Journal of Ophthalmology* 70, no. 1 (2022): 7.

<sup>8</sup> Nanduri, Venkata Satyanarayana, and R. Revathi. "Effects of Yoga Prana Vidya intervention on psychological wellbeing and criminal attitude of under-trial prisoners." *Ind J Psychiatric Social Work* 11, no. 2 (2020): 1-9.

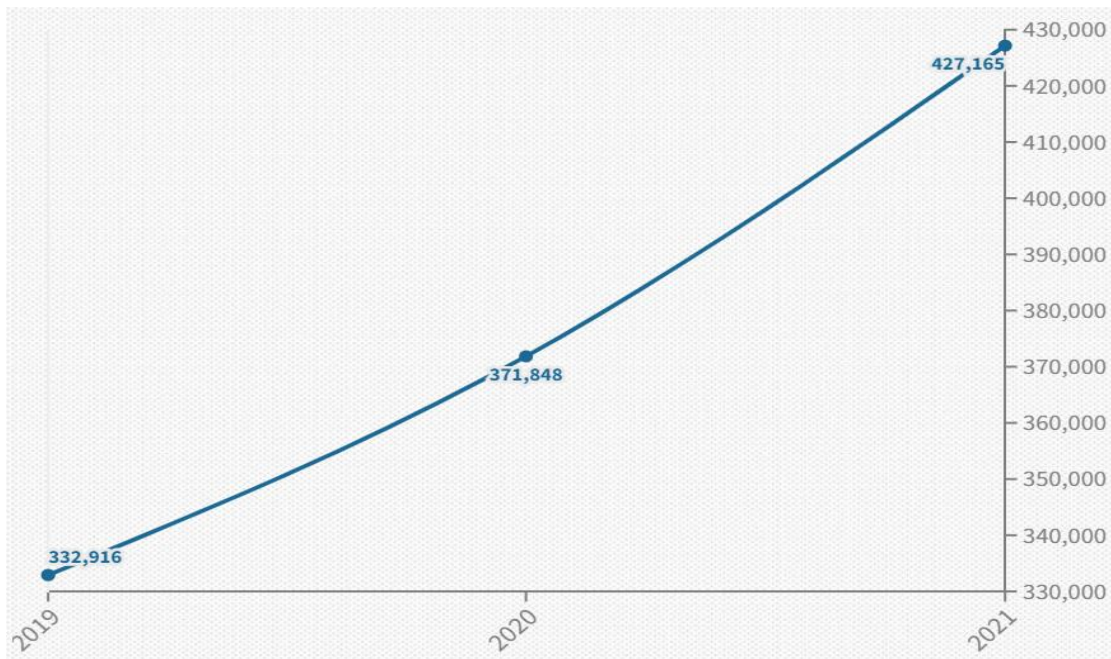


Figure 1: The number of undertrial prisoners in India<sup>9</sup>

The Supreme Court has clarified that criminal proceedings are enduring and arrests cannot be made unless sentenced to seven years or more. But while this has been overlooked, police across India continue to make arrests on flimsy charges. By the enforcement of this order within the court itself, it would be able to minimise the number of prison inmates in India by at least 50%. The pendency of a huge number of criminal cases has, therefore, been known to be the main reason behind undertrials are still in prisons. Inferring from the statistics of 2021, it has been seen that approximately more than 14.4 million criminal cases are still pending. As per this reason, the courts in India experienced an global pendency of 91.2% in 2021<sup>10</sup>. Several delays in the context of the judiciary have been considered to be the core factors that have been influencing the mounting shares of undertrials in India. A huge integer of criminal cases has further remained left unresolved for a longer period. The apex court has recently recommended that there has been a law to be introduced by the Union government in order to streamline the approval of bail; however, experts have been found to be sceptical regarding the sway of relative statute. There are adequate provisions for bail that are existing in the Code of Criminal Procedure (CrPC)<sup>11</sup>. The majority of issues that undertrials have been facing nowadays are borne out of insensitivity within the judiciary, the lack of proper legal help, and poverty. Developing a new Act for bail and imposing it into real effects without encountering and resolving these issues would not create much positive impact.

<sup>9</sup> Amrit, Pratyay, Anshika Jaiswal, Vaibhav Uniyal, Radhey Shyam Jha, and Ambar Srivastava. "Prisoner's rights and prison reform in India: A legal critique." *International Journal of Health Sciences* 6, no. 3 (2022): 10933-10943.

<sup>10</sup> Okun, Peter. *Crime and the Nation: Prison Reform and Popular Fiction In Philadelphia, 1786—1800*. Routledge, 2018.

<sup>11</sup> Drake, Deborah. "Prisons and state building: Promoting 'the fiasco of the prison' in a global context." *International Journal for Crime, Justice and Social Democracy* 7, no. 4 (2018): 1.

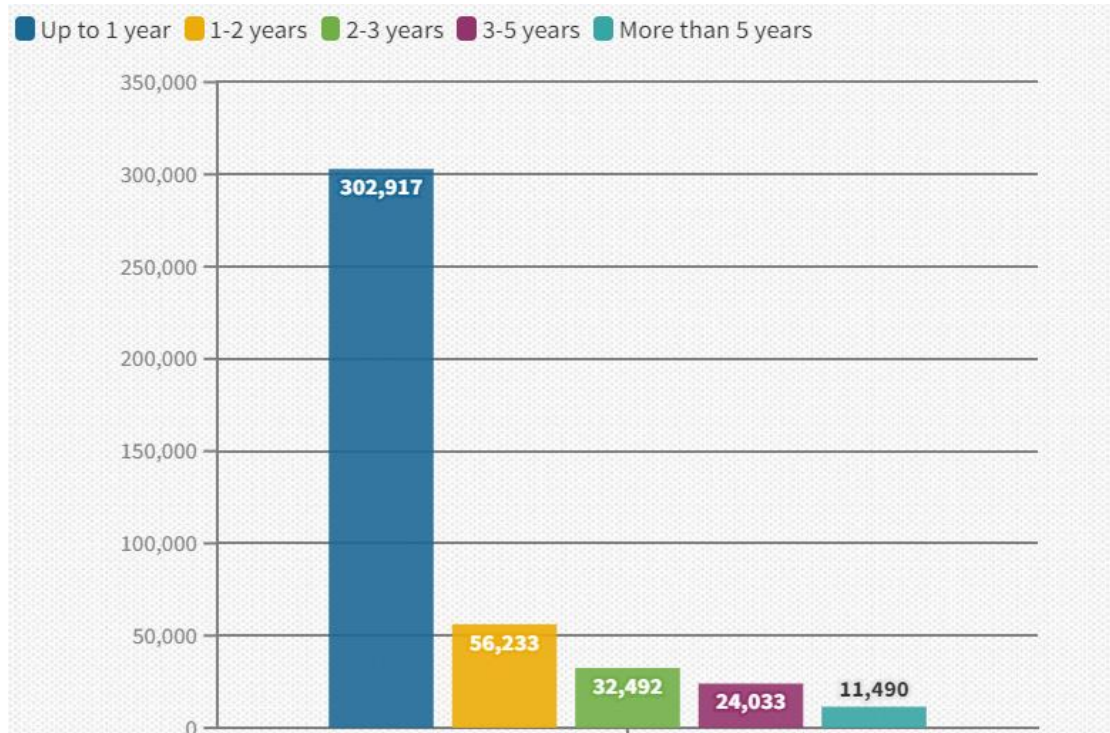


Figure 2: Years that undertrials have spent in jails<sup>12</sup>

Inferring from compiled data, it has been found that as many as 124248 undertrials are spending over one year in prisons. On the other hand, 24033 undertrial prisoners have languished in prisons for more than 3 or 5 years, as per the data of 2021, whereas 11490 prisoners had spent over 5 years throughout confinement, but conviction was not proceeded<sup>13</sup>. Considering the report of Prison Statistics India 2020, statistical insights of the increasing number of undertrial prisoners in India have been demonstrated as follows<sup>14</sup>:

- The share of undertrials increased to 371848 in 2020, which was 332916 in 2019 (as of the 31st of December of every year). This was an increase of 11.7% between 2019 and 2020.
- Amongst the 371848 undertrials, only 10 were found to be civil prisoner convicts.
- Uttar Pradesh reported the highest number of undertrial prisoners (80,557 undertrials, 21.7%) in India followed by Bihar (11.9%, 44,187 undertrials) along with Madhya Pradesh (31712 undertrials, 8.5%) at the end of 2020.
- Amongst the 371848 undertrials, the largest share of undertrials was lodged in District prisons (186089 undertrials, 50.0%) and the second and third ranks were of Central Jails (134322 undertrials, 36.1%) and Sub Jails (44402 undertrials, 11.9%) as of 31 December, 2020.

<sup>12</sup> Bansal, Rolika, Bruce E. Spivey, and Santosh G. Honavar. "The woman of the firsts—Isabel Hayes Chapin Barrows." *Indian Journal of Ophthalmology* 70, no. 1 (2022): 7.

<sup>13</sup> Nanduri, Venkata Satyanarayana, and R. Revathi. "Effects of Yoga Prana Vidya intervention on psychological wellbeing and criminal attitude of under-trial prisoners." *Ind J Psychiatric Social Work* 11, no. 2 (2020): 1-9.

<sup>14</sup> Nanduri, Venkata Satyanarayana, and R. Revathi. "Effects of Yoga Prana Vidya intervention on psychological wellbeing and criminal attitude of under-trial prisoners." *Ind J Psychiatric Social Work* 11, no. 2 (2020): 1-9.

### **The curse of poverty**

A number of experts have argued that being deprived can be an expletive for undertrial prisoners, especially when they have been living in a developing or a poor country, like India. Deprived ones often cannot afford bail due to monetary reasons as a result, they remain incarcerated in prison. The Legal Aid Commission, which is supposed to provide legal aid to the poor, has become a sham and counterfeited. The country's reformatories are mostly occupied by prisoners awaiting trial, resulting in overcrowded prisons with an overall prison occupancy rate of 130.2%. Although the legal aid system is in place, lawyers are not interested in such cases because they are poorly waged. The data show that county jails had the highest occupancy rate (155. %). District jails also had the highest number of lower court inmates, with the central and auxiliary prisons enlisting second and third respectively.

Inferring from the statistics released from Mumbai, it has been seen that 3 out of 4 inmates in Indian prisons are on trial, according to government data received in the year of 2020. While the total number of prisoners increased by 1% compared to the previous year, the number of inmates increased by almost 12%, according to the India Prison Statistics 2020 report. This is the highest proportion of prison inmates in prison since at least 1995, the earliest year for which such data is available. More than half of the inmates were in district jails, which are overcrowded.

### **The rate of occupancy across prisons in India**

Speculating the Prison Statistics of India 2020, it has been found that there is a marginal reduction in prison occupancy from 120% to 118% during the period from 2019 to 2020. During the pandemic period, India witnessed nearly more than 900,000 arrests in 2020<sup>15</sup>. As compared to 2019, approximately 7124 more people are imprisoned up to December 2020. In India, prisons have been understaffed by approximately 33% with the highest volume of vacancies. Inferring from the nationwide rate of prison occupancy was found to be 114% in 2016. The reason behind overcrowding is the existence of undertrials where people under custody waiting for the investigation, trial, and inquiry who constitute approximately 68% of the entire number of prison inmates<sup>16</sup>. At the end of 2019, more than 100,000 people had been held in Indian prisons for less than a year. An under trial is a pre-emptive who is undergoing legal proceedings in a court of law. The proportion of cases pending in prisons for more than a year has increased over time, while the proportion of cases pending in court has also grown rapidly. Looking at the current statistical report, Uttarakhand had the highest prison occupancy at 185%, followed

<sup>15</sup> Fritz, Jan Marie. "Environmental injustice and incarceration: Notes from the United States." In *Environment and Sustainable Development*, pp. 121-139. Routledge India, 2021.

<sup>16</sup> Nanduri, Venkata Satyanarayana, and R. Revathi. "Effects of Yoga Prana Vidya intervention on psychological wellbeing and criminal attitude of under-trial prisoners." *Ind J Psychiatric Social Work* 11, no. 2 (2020): 1-9.

by Uttar Pradesh (18.8%) and Sikkim (166.9%); however, Indian prisons have the capacity for 425,609 inmates, which is 128,425 shorts of the requirement based on the number of prisoners in the country.

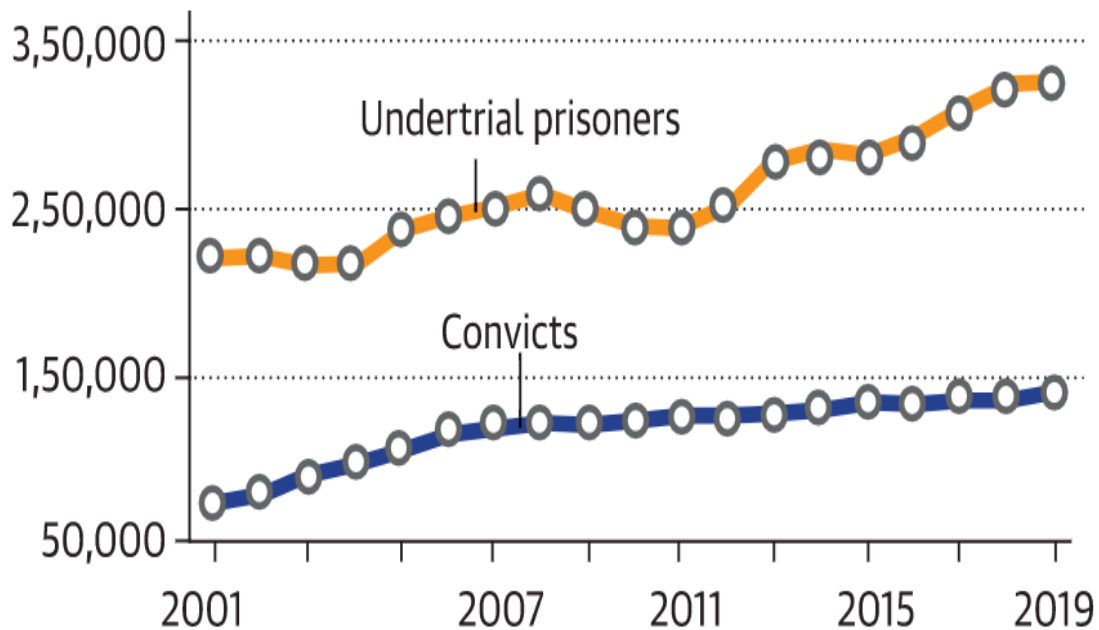


Figure 3: Number of undertrial prisoners and convicts in India (2001 to 2019)<sup>17</sup>

The focal reasons for the high integer of undertrials in prison across India have been identified as follows<sup>18</sup>:

#### **Low capacity of the Judicial system**

India has 21.03 judges per million population, while the Law commission recommends 50 per million. This along with lack of infrastructure results in large pendency of cases which now has reached over 4 crore cases.

#### **Poor education and economic levels**

An enormous number of under trials are underprivileged, uneducated, belonging to the marginalised societies. This along with lack of financial resources leads to inability to get legal aid and pay the bail amount.

#### **Unnecessary arrests and issues of the bail system**

According to the 268th Law Commission Report it has been observed that over 60% of arrests are unnecessary. The Commission report also emphasized the fact that salvation is easy for the rich and wealthy. However, poverty becomes the reason many prisoners are incarcerated because they cannot afford bail or bonds.

<sup>17</sup> Shankardass, Rani Dhavan. *Of Women'inside': Prison Voices from India*. Taylor & Francis, 2020.

<sup>18</sup> Rabiya, Syed, and Vijaya Raghavan. "Prison mental health in India." *Indian Journal of Social Psychiatry* 34, no. 3 (2018): 193.



### Several delays in investigation

The investigation and trials are often delayed by police and tribunal functionaries, one of the core reasons behind this practice is low 'Police- Population' ratio.

### The slow turn of the wheels of justice

This enormous part of the incarcerated undertrials is not a new phenomenon, but has been going on for decades. The 1979 report of the Law Commission stated that the detention population was 57.6% on 1 January 1975, and the Commission complained that prisons should be used primarily for the convicted, and not for the under trials<sup>19</sup>. While Indian judicial processes have long been known for slow processing of cases, the COVID-19 pandemic has further slowed down trials. Restrictions imposed to preclude the binge of the syndrome and social distancing requirements have severely limited the functioning of Indian courts. After the imposition of a nationwide lockdown on March 25, 2020, India's courts have been operating at a reduced capacity for months, curtailing the trials and tribulations of thousands of Indians. Although the number of prisoners increased, in 2020 the number and proportion of prisoners decreased. Under these, the number of undertrials continued to increase. This happened despite efforts by the Supreme Court to dismantle prisons at the beginning of the pandemic to prevent the disease from spreading among inmates. The wheels of Indian courts turn slowly and those awaiting trial spend years in jail elongated. In 2011, 0.1 percent of those on trial had been in prison for less than three months, while nearly 22 percent had been in prison for a year or more. By 2021, 29.1 percent of people sentenced had been in prison for more than a year<sup>20</sup>.

Those awaiting trial are spending longer time in prison over the years

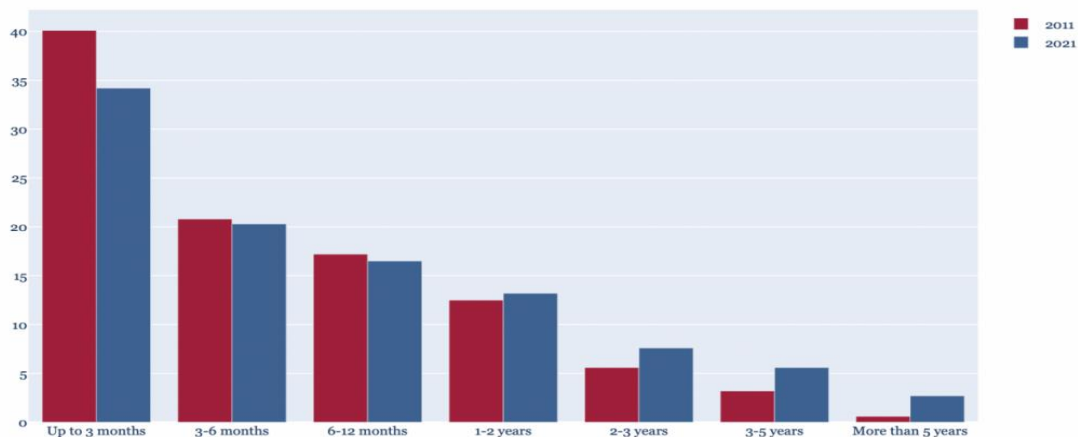


Figure 4: Awaiting undertrials<sup>21</sup>

<sup>19</sup> Waits, M. R. (2018). Imperial Vison: Colonial Prison: British jails in Bengal, 1823-73. *Journal of the Society of Architectural Historians*, 146-167.

<sup>20</sup> Sivakumar, Vineetha. "Prison research: Challenges in securing permission and data collection." *Sociological methods & research* 50, no. 1 (2021): 348-364.

<sup>21</sup> Maruna, Shadd, Gillian McNaull, and Nina O'Neill. "The COVID-19 Pandemic and the Future of the Prison." *Crime and Justice* 51, no. 1 (2022): 000-000.

Prolonged detention of unpunished prisoners stems from two common phenomena, notes Human Rights Watch: "the denial of pre-trial detention to the accused and the excessively long duration of criminal trials."<sup>22</sup> And both of these violate international standards on human rights and "together they constitute a gross violation of the law", notes the international organization. In addition, the inability of many inmates to post bail means they end up languishing in jail. According to Amnesty International's report of 2017, long pre-trial detention creates a number of complications<sup>23</sup>. Such detention may violate the right to liberty and fair trial and anguish the lives and livelihoods of detainees. Prolonged pre-trial detention also increased the risk of torture or other ill-treatment. These cautionary findings must be seen against the backdrop that trials in India are overwhelmingly from marginalized backgrounds, with Dalits, Adivasis and religious minorities, particularly Muslims and Sikhs, overrepresented among prisoners.

### **Plea Bargaining: Nolo Contendere**

The plea structure was announced in India by the Criminal Procedure (Amendment) Act, 2005. In an abridged form, plea bargaining means negotiation for a condensed sentence. Even though it is not a perfect alternative to detention, it is a start to a more reformed penal structure. During negotiations, the accused and the prosecutor negotiate, in which case the accused does not submit content for a lighter sentence. For both the prosecutor and the courts, this procedure saves time. The Law Commission of India suggested including the idea of plea bargaining in the Code of Criminal Procedure in its 154th Report<sup>24</sup>. At the outset, legal experts and judges were against the concept of settlement. However, with its inclusion in criminal law, the avoidance of trial was recognized as extremely important in criminal law. The sections 265A to 265L provide plea negotiations under specific circumstances. The clause states that the bargaining technique is only used in criminal cases where the sentence is less than seven years; it is not used in cases where the defendant is a woman or a child. Plea negotiations have their origins in American criminal law, where they have been used for more than a century. The United States Supreme Court in *Brady v. The United States* supported the legitimacy of the Constitution and recognized the accountabilities of negotiation in effective case management. One of the main arguments in approbation of negotiation is that it ushers to quick removal of the pile of cases and thus speeds up the dissemination of justice<sup>25</sup>. The idea of plea bargaining was first introduced in India in the case of *State of Gujarat v. Natwar Harchanji Thakor*, where the Gujarat High Court Division Bench concluded that the Act's intention is to provide

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<sup>22</sup> Kallman, Meghan Elizabeth. "Living More Through Knowing More": College Education in Prison Classrooms." *Adult Education Quarterly* 70, no. 4 (2020): 321-339.

<sup>23</sup> Morgan, Jamelia N. "Reflections on Representing Incarcerated People with Disabilities: Ableism in Prison Reform Litigation." *DENV. L. REV.* 96 (2018): 973.

<sup>24</sup> Leipold, Andrew D. "Is mass incarceration inevitable." *Am. Crim. L. Rev.* 56 (2019): 1579.

<sup>25</sup> Sivakumar, Vineetha. "Prison research: Challenges in securing permission and data collection." *Sociological methods & research* 50, no. 1 (2021): 348-364.

simple, affordable, and quick administration of justice. Thus, significant changes like bargaining are expected and unavoidable.

### **Compounding of Offences**

Compounding of offences is permitted by Section 320 of the Criminal Procedure Code, which effectively states that the court will permit the parties to resolve their issues in exchange for reparation. There are other misdemeanour categories that can be added without the court's approval and between the parties, such as vandalism, criminal trespass, and assault. However, before they can be added, some more serious offences, such as theft, fraud, criminal breach of trust, etc., need precedent authorisation. In the case of Gian Singh, the Supreme Court held that the jurisdiction would decide criminal proceedings when the matter to be linked is civil in nature or apprehended the parties individually<sup>26</sup>. The court further emphasised that this principle is founded on the idea that cooperation between the parties should be encouraged and that peaceful resolutions should be employed when offences are not extremely significant. The Supreme Court of India recently demonstrated the pinnacle of judicial activism by ruling on the compounding of non-compoundable offences.

### **Absolute or Conditional Discharge**

An acquittal, in its most elementary sense, means that the court acquits the criminal and finds him culpable. Unconditional and conditional discharge of liability is regulated in Section 360 of the Act. According to this clause, the court may instruct him to be relieved of his official responsibilities instead of penalizing him criminally. If the defendant does not represent a threat or risk to public, the court will take this action. This clause's principal goal is to stop convicted criminals from associating established criminals in prisons where they might engage in illicit activity.

### **Fines and Compensation**

An individual who has committed a crime may be given a fine as a preliminary penalty. The use of fines as a form of punishment for small offences was a more recent development of criminal law. However, this type of punishment obtains very little attention. Even if a fine is levied, but the criminal cannot pay it, he will be sent to prison. Linking fines with sanctions has many advantages, because courts can avoid overcrowding in prisons, fines are state revenue, fines are adjustable according to the capabilities of the criminal, the guilty avoids prison, which further contributes to the rehabilitation of society<sup>27</sup>. The court has the power

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<sup>26</sup> Byrne, James, Sabrina S. Rapisarda, Don Hummer, and Kimberly R. Kras. "An imperfect storm: Identifying the root causes of COVID-19 outbreaks in the world's largest corrections systems." *Victims & Offenders* 15, no. 7-8 (2020): 862-909.

<sup>27</sup> Sengupta, Tania. "Indian Subcontinent, 1750–1947." Bloomsbury, 2019.

to sentence violators to prison. This is a terribly retrograde way to deal with the prospect of incarceration. Instead, it should be decided that penalties can be used to pay for transfers in order to accomplish the fundamental purpose of minimizing prison sentences.

The path to active use of alternatives to imprisonment has recently been established in the Indian criminal justice system. The contemporary apparatus is far-flung from perfect for the successful deployment of marginal reprimand methods. Some suggestions to achieve the goal of providing effective alternatives to detention are as follows<sup>28</sup>:

- Courts should use release orders more spontaneously and frequently under section 360 of the Act. The main cause of overcrowding in prisons is short-term offenders convicted of petty crimes. This can be avoided if these criminals are released under Section 360.
- In India, probation is underused and the offender is often released without supervision. Therefore, in India, parole has become "liberation", which it should not be. A proper mechanism must be established to trace suspected criminals.
- There is no community overhaul in India. If a criminal is convicted of a petty crime in the United States, he or she may be sentenced to community service, which benefits society and also contributes to the criminal's rehabilitation. Therefore, relevant legislation should be drafted and established regarding community service as a form of punishment.

### **Alternatives to punishments**

The fundamental goal of criminal law and policy is to punish criminals. It is challenging for judges to uphold the standards of proportionality, consistency, and fairness in sentencing given their discretion and the diversity of sanctions that are available. Sentence objectives have only partially been met in India as a result of this inequality in sentencing. The Indian Penal Code's (IPC) Section 53 addresses the standard sentences for crimes committed in India. The administration of crimes and related punishments is governed by a mind-set of generating fear and controlling the indigenous population as part of the colonial framework. The use of incarceration as a form of punishment for criminal behaviour emerged as the most merciful option during the era of brutal public rites. Incapacitation, retribution, deterrent, rehabilitation, and correction, according to proponents of confinement as a mode of punishment, are all objectives of imprisonment<sup>29</sup>. There are differences of opinion regarding the relative burden of this form of punishment, and jail precedent has led to reforms in international law that prioritise reintegration and rehabilitation as the primary goals of punishment. But reports of prison

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<sup>28</sup> Kallman, Meghan Elizabeth. "Living More Through Knowing More": College Education in Prison Classrooms." *Adult Education Quarterly* 70, no. 4 (2020): 321-339.

<sup>29</sup> Sivakumar, Vineetha. "Prison research: Challenges in securing permission and data collection." *Sociological methods & research* 50, no. 1 (2021): 348-364.

conditions around the world have also led penal reformers to realize that punishment has led to a scenario no less oppressive than the old regime's corporal punishment. The overrepresentation of people from a particular class, caste, religion, or economic standing is another issue that plagues jails all over the world. Such information also demonstrates the unfairness in laws, which "penalise" certain people while protecting others.

The Indian Supreme Court has called attention to a number of significant problems with the jail system that result in infringement of prisoners' human rights. These issues include jail vices, lack of communication, overcrowding, delays in trials, torture and ill-treatment, disregard for health and hygiene, inadequate food and clothing, and management of field prisons<sup>30</sup>. The basic right to safety or a reasonable quality of life, including access to adequate beverages, a place to live, sanitary conditions, enough ventilation, clothing, a bed, and freedom to move around, must be recognised by those in charge of the criminal justice system. This implies that maintaining security for such a sizable population in prisons requires a lot of resources, and a lack of resources results in the violation of prisoners' human rights. The use of alternate types of punishment in this situation is essential.

### **Conclusion**

The study strives to develop an investigation on the growing rate of socio-legal challenges caused by the increasing number of undertrials. The sentence of imprisonment only comprises deprivation of the common human rights to liberty. Prison reforms have been found essential in order to ensure that the underlying principle is respected to a greater extent. With this assistance, the human rights of imprisoned individuals can be protected as well as their prospects related to social reintegration can be enhanced. In order to promote prison reforms to a larger exposure, the respective governments may need to comply with relevant UN norms and standards. However, the argument is often found to be insufficient for encouraging programs related to prison reforms in several countries that have scarcity of financial and human resources. The detrimental effect of imprisonment is not only seen on the respective individuals but also their families, community, economic factors, and social statuses. Incapacitation, retaliation, deterrence, rehabilitation, and correction, according to proponents of jail as a form of punishment, are all objectives of imprisonment. The current system is ideal for the effective implementation of alternative forms of punishment. The Law Commission of India suggested including the idea of plea bargaining in the Code of Criminal Procedure in its 154th Report. Initially, legal experts and judges were against the concept of settlement. The reason behind overcrowding is the existence of undertrials where people under custody waits for the investigation, trial, and inquiry who constitute approximately 68% of the entire number of prison inmates.

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<sup>30</sup> Leipold, Andrew D. "Is mass incarceration inevitable." *Am. Crim. L. Rev.* 56 (2019): 1579.

## **Recommendation**

Looking at the increasing shares of undertrial prison inmates in India, it has been seen that the number of social and legal challenges are increasing for undertrials. Therefore, the legal system of India can be provided with the following recommendations:

### **Improving capacity of the criminal justice system**

Improving capacity of the system by increasing the number of functionaries and providing the required infrastructure. Police responsibilities should be separated into investigative and constabulary errands.

### **Amendments to bail provisions**

The bail provisions in the Criminal Procedure Code shall be amended with emphasis on the early release on bail of under trials as recommended by The Law Commission. The Supreme Court has also observed that "Bail is a rule, jail is an exception".

### **Avoiding unnecessary arrests**

Creation of Standard operating procedures and relevant training of police personnel to avoid unnecessary arrests.

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