



State of Undertrial Prisoners in India

For Prelims: [Constitution Day](#), [Section 479 of the BNSS](#), Section 436A of CrPC, [Supreme Court](#), laws on bail for undertrial prisoners, [Legislature \(Parliament\)](#), [Enforcement \(Police\)](#), [Adjudication \(Court\)](#)

For Mains: Status of Prison Administration in India, Issues Related to Prison in India, Criminal Procedure Code, 1973

[Source: IE](#)

Why in News?

Recently, the Union Home Minister emphasized the need for expediting the release of undertrial prisoners who have served **more than one-third of their maximum sentence by 26th November** ([Constitution Day](#)).

- The initiative also aligns with the recently enacted [Bharatiya Nagarik Suraksha Sanhita \(BNSS\), 2023](#), which introduces provisions for relaxed bail for **first-time offenders**.

Note: An **undertrial prisoner** is an individual **who is in custody while awaiting trial or the conclusion of legal proceedings** against them. This category includes those who have not yet been convicted of a crime and are held in judicial custody during the legal process.

What is the Current State of Undertrial Prisoners in India?

- **High Proportion of Undertrials:** As per the **Prison Statistics India 2022** report by the [National Crime Records Bureau \(NCRB\)](#) undertrials constitute **75.8% of India's prison population** (4,34,302 out of 5,73,220).
 - Among the **23,772 incarcerated women, 76.33% are undertrials**, and **8.6% of all undertrials** have been in prison for over three years.
- **Overcrowding:** According to a report by the **Supreme Court's Centre for Research and Planning**, Indian prisons operate at **131% occupancy**, housing **573,220 inmates** against a capacity of **436,266**.
 - Notably, **75.7% of these inmates are undertrials**, reflecting a substantial judicial backlog.
- **Lack of Legal Representation:** Despite [Article 39A](#) guaranteeing **free legal aid**, many **undertrial prisoners lack access to legal representation** due to an insufficient lawyer-to-prisoner ratio, hindering their ability to defend themselves effectively.

WHAT THE DATA SHOW

5,73,220

Total prisoners

4,34,302

Undertrials

3 OUT OF 4

prisoners (75.8%)
were undertrials

59.7%

of undertrial inmates were from six states — Uttar Pradesh, (21.7%), Bihar (13.2%), Maharashtra (7.6%), Madhya Pradesh (6.2%), Punjab (5.6%), and West Bengal (5.4%)

65.2%

of undertrials were either illiterate (26.2%), or had received education till at most Class X (39.2%)

19.3% of undertrials were Muslim, 4.7% Sikh, more than the communities' respective shares in population (14.2% and 1.7% in 2011 Census)

20.9% of undertrial inmates were SCs, 9.3% were STs. Their shares in population are 16.6% and 8.6% respectively (2011 Census)

14.6% of undertrials had spent for 1-2 years, 7.8% 2-3 years, 6% 3-5 years, and 2.6% more than five years

40.7% increase in the number of undertrials in India since 2017, when their population stood at 3,08,718

Source: NCRB; data till December 31, 2022

What are the Provisions Related to Undertrial Prisoners in India?

- **Section 479 of BNSS:** Aims to reduce prolonged detention, focusing on first-time offenders.
 - **Relaxed Standards for First-Time Offenders:** First-time offenders, defined as those **without prior convictions**, must be released on bond after serving one-third of the maximum sentence.
 - **General Rule for Bail:** Undertrials accused of non-capital offenses (not punishable by death or life imprisonment) are eligible for bail after serving half of the maximum sentence.
 - Builds upon **Section 436A of the CrPC**, which similarly allowed release after serving half the sentence.
 - **Exceptions:** Provisions do not apply to cases involving multiple offenses or ongoing investigations for other crimes.
- **Section 436A of CrPC:**
 - **Eligibility for Bail:** Undertrials who have served half of the maximum imprisonment period for their alleged offense **can be released on personal bond (with or without sureties)**.
 - **Exclusion:** Does not apply to offenses punishable by death or life imprisonment.
- **Directions by the Judiciary:**
 - **Supreme Court's PIL on Prison Conditions (2013):** In **Re: Inhuman Conditions in 1382 Prisons**, the Court highlighted issues like overcrowding, delayed trials, and prolonged detention of undertrials.
 - It directed state governments to ensure timely identification and release of eligible undertrials under **Section 436A CrPC**.
 - **Retrospective Application of Section 479 of BNSS:** The Supreme Court ruled that the relaxed bail provisions under BNSS would apply retrospectively to cases filed before its enactment.

- The court has emphasized that speedy trial is a **fundamental right** under [Article 21 of the Constitution](#), and any unjustified delay in trial could lead to bail being granted.

What are the Implications of the Undertrial Crisis in India?

- **Violation of Fundamental Rights:** Prolonged detention without trial infringes upon several fundamental rights guaranteed by the Indian Constitution, including the right to a **speedy trial (Article 21)** and the presumption of innocence until proven guilty (**Article 20(3)**).
- **Judicial Backlog:** The high number of undertrial prisoners contributes significantly to the backlog of cases in the Indian judicial system. This backlog delays justice for all individuals and undermines public trust in the legal system.
- **Impact of Delayed Justice:** Prolonged detention affects access to justice, rehabilitation, and the socio-economic well-being of undertrial prisoners and their families.
 - Prison overcrowding often leads to **inhumane living conditions, compounding health and psychological challenges**.
- **Mental Health Issues:** Long periods of incarceration without conviction can lead to severe psychological distress among undertrials, including anxiety, depression, and a sense of hopelessness.
- **Erosion of Trust:** The high number of undertrials and the resulting delays erode public confidence in the legal system. When justice is delayed or denied, citizens may lose faith in the ability of the legal system to provide timely and fair outcomes.

How Prisons are Regulated in India?

- **Constitutional Provisions:**
 - **Article 21:** It protects prisoners against torture and inhuman treatment. It also ensures timely trials for prisoners.
 - **Article 22:** An arrested person must be promptly informed of the reasons for their arrest and has the right to consult and be defended by a lawyer of their choice.
 - **Article 39A:** Ensures [free legal aid](#) to ensure justice for those unable to afford legal representation.
- **Legal Framework:**
 - **Prisons Act, 1894:** The Prisons Act, enacted during British rule, serves as the foundational legal framework for prison management in India.
 - It focuses on the custody and discipline of prisoners but lacks provisions for rehabilitation and reform.
 - **The Identification of Prisoners Act, 1920:** This law governs the identification process for prisoners and the collection of biometric data.
 - **The Transfer of Prisoners Act, 1950:** It provides guidelines for the transfer of prisoners between different states and jurisdictions.
- **Oversight Mechanisms**
 - **Judicial Oversight:** The Indian judiciary plays a critical role in overseeing prison conditions through Public Interest Litigations (PILs) and specific cases addressing inmate rights.
 - For instance, the Supreme Court in *D.K. Basu vs. State of West Bengal* (1997), mandated strict protocols for arrest and detention.

What are the Initiatives Related to Prison Reforms in India?

- **Modernization of Prisons Scheme:** The scheme for modernisation of prisons was launched in 2002-03 with the objective of improving the condition of prisons, prisoners and prison personnel.
- **Modernisation of Prisons Project (2021-26):** Government has decided to provide financial assistance to States and UTs, through the Project for using modern-day security equipment in Prisons for enhancing the security of jails and to facilitate the task of reformation and rehabilitation of prisoners through correctional administration programmes.
- **E-Prisons Project:** The E-Prisons project aims to introduce efficiency in prison management through digitization.
- **Model Prison Manual Act, 2016:** The manual provides detailed information about the legal

services (including free services) available to prison inmates.

- **National Legal Services Authority (NALSA):** It was constituted under the Legal Services Authorities Act, 1987 which came into force on 9th November, 1995 to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society.

Way Forward

- **Making Prisons Correctional Institutions:** The ideal policy prescription of making prisons into places of rehabilitation and “correctional institutions” will only be achieved when the issues of unrealistically low budgetary allocation, high workloads and the unmindfulness of the police regarding procedural safeguards are addressed.
- **Implementing Committee Recommendation:** The **Supreme Court appointed Justice Amitava Roy (retd.) Committee(2018)** which gave the following recommendations to address the **overcrowding of prisons:**
 - **Speedy trial** remains one of the best ways to remedy the unwarranted phenomenon of overcrowding.
 - There should be **at least one lawyer for every 30 prisoners**, which is not the case at present.
 - [Special fast-track courts](#) should be set up to deal exclusively with petty offences which have been pending for more than five years.
 - The concept of [plea bargaining](#), in which the accused admits guilt for a lesser sentence, should be promoted.
- **Improving Prison Management:** This includes **providing proper training** and resources to prison staff, as well as implementing effective systems for monitoring and accountability.
 - This also includes **providing basic amenities** such as clean drinking water, sanitation, and medical facilities to inmates.

Drishti Mains Question

Q. Discuss the current status of undertrial prisoners in India and analyze the potential of provisions under the Bharatiya Nagarik Suraksha Sanhita, 2023, to address these issues. Suggest measures to ensure effective implementation of such reforms.

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q. Consider the following statements in respect of the Constitution Day :(2023)

Statement-I : The Constitution Day is celebrated on 26th November every year to promote constitutional values among citizens.

Statement-II : On 26th November, 1949, the Constituent Assembly of India set up a Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar to prepare a Draft Constitution of India.

Which one of the following is correct in respect of the above statements?

(a) Both Statement-I and Statement-II are correct and Statement-II is the correct explanation for Statement-I

(b) Both Statement-I and Statement-II are correct and Statement-II is not the correct explanation for Statement-I

(c) Statement-I is correct but Statement-II is incorrect

(d) Statement-I is incorrect but Statement-II is correct

Ans: (c)

Q. Which one of the following statements best reflects the Chief purpose of the 'Constitution' of a country?(2023)

(a) It determines the objective for the making of necessary laws.

(b) It enables the creation of political offices and a government.

(c) It defines and limits the powers of government.

(d) It secures social justice, social equality and social security.

Ans: (c)

Mains

Q.1 Instances of the President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time specified for the President to accept/reject such petitions? Analyse. **(2014)**

Q.2 National Human Rights Commission (NHRC) in India can be most effective when its tasks are adequately supported by other mechanisms that ensure the accountability of a government. In light of above observation assess the role of NHRC as an effective complement to the judiciary and other institutions in promoting and protecting human rights standards. **(2014)**

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