

Prison Overcrowding in India: Undertrial Detention and the Limits of Section 479 BNSS

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Abstract

Indian prisons have held more people than they were built for in every year for well over a decade. Figures published by the National Crime Records Bureau show that national occupancy fell from 131.4 per cent in 2022 to about 112.7 per cent in 2024, but undertrial prisoners still make up roughly three out of every four inmates. This paper argues that overcrowding in India is, in substance, an undertrial problem, and that it persists less because the law is badly designed than because its release mechanisms are applied slowly and unevenly. Following a doctrinal method, it reads the case law on Article 21 alongside Section 436A of the Code of Criminal Procedure, 1973 and its successor, Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023, and uses official data and recent Supreme Court orders to test how these provisions have worked in practice. Section 479 is found to improve on the older law by placing a duty on the jail superintendent to move the court, but to narrow it by excluding offences punishable with life imprisonment and by denying its benefit to persons facing more than one case. The paper also observes that undertrials, who form most of the crowded population, are the group least likely to receive any correctional programming. It closes with suggestions on automatic computation of eligibility, the surety problem, Undertrial Review Committees and the exclusions in Section 479.

Keywords: Prison Overcrowding, Undertrial Prisoners, Section 479 BNSS, Section 436A CrPC, Bail, Article 21, Rehabilitation

1. Introduction

In 1979 the Supreme Court was told about men and women in the jails of Bihar who had been waiting for trial for longer than the maximum sentence they could have received if they had been convicted [1]. *Hussainara Khatoon v. Home Secretary, State of Bihar* is usually taught as the starting point of speedy trial jurisprudence in India. It is remembered less often as a case about overcrowding, although in a very direct sense that is what it was. The people whose release the Court ordered were occupying space in prisons that had no lawful reason to hold them.

More than four decades later the basic pattern has not changed very much. At the end of 2022, Indian prisons held 5,73,220 people against a sanctioned capacity of 4,36,266, an occupancy rate of 131.4 per cent, and 75.8 per cent of those people had not been convicted of any offence [2]. The figures for 2023 and 2024 show a real improvement in occupancy, which is examined closely under heading 4, but the undertrial share has stayed close to three-quarters throughout. A prison system in which most inmates are still presumed innocent in law is not, in any straightforward sense, a system that is overcrowded because of crime.

This paper asks three questions. First, why does the undertrial population remain so large when Indian law has contained a statutory ceiling on the detention of undertrials since 2005? Second, does Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced that ceiling from 1 July 2024, actually improve the position, or does it largely restate it? Third, what does sustained overcrowding do to the reformatory purpose that Indian prison law and policy say they pursue?

The central argument is fairly simple. India does not lack a legal framework for keeping undertrials out of prison. It has a strong line of constitutional authority, a statutory detention ceiling, a statutory right to free legal aid for persons in custody and repeated judicial directions on bail. What it lacks is a reliable way of applying these rules to the person who is actually sitting in a district jail, who often cannot read the order granting him bail and cannot find anyone to stand surety for him. Section 479 of the BNSS goes some way towards building that machinery. In other respects it narrows the older law, and the early record of its implementation suggests that the administrative weaknesses which limited Section 436A are already affecting its successor.

2. Review of Literature

The problem of undertrial congestion has been documented for a long time. The Law Commission of India devoted its 78th Report, in 1979, to the congestion of undertrial prisoners in jails, and identified delay in investigation and trial, restrictive bail practice and the poverty of the accused as its main causes [3]. The All India Committee on Jail Reforms, chaired by Justice A.N. Mulla, made similar findings a few years later and recommended both a reduction in pre-trial detention and the expansion of open institutions [4]. Almost four decades later, the Law Commission returned to the subject in its 268th Report on bail, recommending that undertrials be released after serving a fraction of the maximum sentence and that bail conditions take account of the means of the accused [5].

Empirical work has added a social dimension to these findings. The study of pre-trial detention published by Amnesty International India in 2017 found that undertrials were drawn disproportionately from marginalised communities, that many had little understanding of the stage their case had reached, and that legal aid at the remand stage was often absent or ineffective [6]. Comparative literature on the effects of crowded custody, much of it from the United States, links overcrowding with higher levels of stress, violence and mental illness and with a shift in prison administration from treatment to control [7]. What the existing literature has not yet examined in any detail is Section 479 of the BNSS itself, and in particular whether the changes it makes to the old Section 436A are likely to reduce undertrial detention in practice. That is the gap addressed in this paper.

3. Research Methodology

The method is primarily doctrinal. The relevant statutory provisions and the leading Supreme Court decisions are read together, and the annual Prison Statistics India reports of the National Crime Records Bureau (NCRB) are used for quantitative context. No fieldwork was conducted for this study. Where the paper makes claims about practice inside prisons, it relies on judicial findings, official reports and published studies rather than on primary observation. The study is also confined to the undertrial dimension of overcrowding. It does not deal in any detail with capacity expansion, with convicts serving long sentences, or with detainees held under preventive detention laws.

4. The Shape of the Problem

4.1 Occupancy and the Recent Decline

Table 1 sets out the headline figures for the three most recent years for which NCRB data is available.

Table 1: Prison Population, Capacity and Undertrial Share in India, 2022 to 2024

Year	Inmates	Sanctioned Capacity	Occupancy Rate	Undertrial Share
2022	5,73,220	4,36,266	131.4%	75.8%
2023	5,30,333	4,39,119	120.8%	73.5%
2024	5,11,542	4,53,769	112.7%	72.6%

Source: Compiled from NCRB data, figures as on 31 December of each year [2, 8, 9].

Read quickly, the table suggests that the problem is being solved. Occupancy fell by almost nineteen percentage points in two years, and the 2024 figure is the lowest national occupancy rate in a decade. Three features of the data call for more caution. First, the decline is the result of two things happening together: the number of inmates fell by about 61,700 between 2022 and 2024, while sanctioned capacity grew by roughly 17,500. Part of the improvement therefore came from building rather than from releasing. Second, the fall in inmate numbers began in 2023, well before Section 479 of the BNSS came into force, so it cannot be credited to the new provision, whatever else may be said in its favour. Third, and most importantly, the undertrial share has declined only slightly. If the prison population is shrinking while its composition stays almost the same, the system has not changed the way it uses custody. It is simply holding somewhat fewer people in the same way.

The national average also hides a great deal of variation. Delhi's prisons were reported to be running at close to 195 per cent of capacity in 2024, and in both Delhi and Bihar more than four-fifths of all inmates were undertrials [9]. A national rate of 112.7 per cent is therefore entirely consistent with individual jails that hold two people for every sanctioned place.

4.2 An Undertrial Problem, Not a Crime Problem

The claim that overcrowding in India is driven by undertrial detention rather than by crime or sentencing needs some care, because the two are connected. More registered offences will eventually mean more arrests. The structure of the prison population nonetheless points strongly in one direction. The share of convicts in Indian prisons fell from about 32 per cent in 2016 to about 26.6 per cent in 2024 [9]. Nothing in this period suggests that sentences became markedly shorter or that courts were convicting far fewer people.

The more plausible explanation, and one the Supreme Court has itself drawn attention to in its bail jurisprudence, is that a growing number of people are spending longer periods in custody before any court decides their case [10]. The Law Commission described the same problem in 1979, in its report on the congestion of undertrial prisoners, in terms that would not look out of place today [3].

Undertrials are also, for the most part, poor and young, and many have limited formal education. The 2024 data places about 86 per cent of all inmates between the ages of 18 and 50 [9]. The Amnesty International India study reached a similar conclusion from a different direction [6]. These are the people for whom the formal availability of bail means least.

5. The Constitutional and Statutory Framework

5.1 Article 21 and the Undertrial

The constitutional foundation is well known and needs only a brief restatement. Since *Maneka Gandhi v. Union of India*, any procedure that deprives a person of liberty must be fair, just and reasonable [11]. In the fourth of its *Hussainara Khatoon* decisions, the Court read the right to a speedy trial and the right to free legal aid into Article 21 and treated prolonged pre-trial detention as a denial of both [12]. It built on this in *Khatri v. State of Bihar*, holding that the obligation to provide legal aid arises when the accused is first produced before a magistrate, and in *Suk Das v. Union Territory of Arunachal Pradesh*, holding that the obligation does not depend on the accused asking for a lawyer [13, 14].

The statutory counterpart is Section 12(g) of the Legal Services Authorities Act, 1987, which makes every person in custody eligible for free legal services [15].

On bail, the Court's early statements were equally clear. Krishna Iyer J.'s remark in *State of Rajasthan v. Balchand* that the basic rule is bail and not jail has been quoted so often that it is easy to forget how demanding it is [16]. In *Moti Ram v. State of Madhya Pradesh* the Court addressed the precise problem that still keeps many undertrials inside. A magistrate had fixed a surety of Rs. 10,000 for a poor mason and had then refused to accept a surety from another district. The Court held that bail conditions must take account of the means of the accused and that release on a personal bond was permissible [17]. *Sunil Batra v. Delhi Administration* and *Charles Sobraj v. Superintendent, Central Jail, Tihar* then settled that imprisonment does not strip a person of fundamental rights, and that conditions inside prisons are themselves open to constitutional scrutiny [18, 19].

Two points follow. The first is that the constitutional position on undertrial detention has been settled for more than forty years, so the persistence of overcrowding cannot be put down to doctrinal uncertainty. The second is that nearly all of these decisions concerned a remedy that had to be claimed by, or on behalf of, a particular prisoner. The case law gives undertrials rights. It does not, by itself, create anyone whose job it is to see that those rights are exercised.

5.2 From Section 436A of the CrPC to Section 479 of the BNSS

Parliament's main statutory response was Section 436A of the Code of Criminal Procedure, 1973 (CrPC), inserted in 2005 [20]. It provided that an undertrial who had been detained for up to one-half of the maximum sentence for the offence charged, other than an offence punishable with death, was to be released on a personal bond with or without sureties, and that no undertrial could be detained beyond the maximum sentence itself [21].

The court kept a discretion to order continued detention for reasons recorded in writing, and any delay caused by the accused was left out of the calculation.

Section 479 of the BNSS keeps this structure but makes three changes [22]. The first favours the accused. A first-time offender, meaning a person who has never been convicted of any offence, is to be released on bond after serving one-third of the maximum sentence rather than one-half. This reflects, in a limited form, a recommendation of the Law Commission in its 268th Report, which had proposed a one-third threshold for offences punishable with imprisonment of up to seven years [5]. The second change is also favourable in principle. Section 479(3) places an express duty on the superintendent of the jail to apply to the court for the release of an undertrial once the relevant period has been completed. Under Section 436A no officer was clearly responsible for starting the process. The third change runs the other way, and it is considered under heading 6.3.

6. Why the Framework Has Not Worked

6.1 Bail Granted but Not Availed

A significant number of people in Indian prisons are there not because a court has refused them bail but because they cannot meet the conditions on which bail was granted. The Supreme Court acknowledged this directly in *In re Policy Strategy for Grant of Bail*, where it framed a standard operating procedure. Under it, the jail authorities must inform the District Legal Services Authority if a prisoner is not released within seven days of a bail order, and the court may consider relaxing the conditions if the bond is not furnished within a month [23]. The Union Budget for 2023-24 also announced financial support for poor prisoners who cannot afford to pay a fine or furnish bail [24].

These are useful steps, but it is worth being clear about what they concede. Nearly half a century after *Moti Ram*, the surety system still works in practice as a test of wealth.

A person who has been granted bail but cannot find a local surety with property, or cannot pay the amount fixed, stays in exactly the same cell as a person whose bail was refused. From the point of view of the prison, and of that person, there is no difference at all. It is suggested that the problem is structural rather than a matter of individual judicial error. Trial courts tend to fix sureties in a routine form, often in amounts that look modest from the bench but are well beyond the means of a daily-wage labourer, and there is rarely anyone in the courtroom whose task is to point this out.

6.2 The Implementation Record of Section 436A

Section 436A was never self-executing. In *Bhim Singh v. Union of India*, decided almost ten years after the provision came into force, the Supreme Court found it necessary to direct jurisdictional magistrates and sessions judges to hold a sitting in each jail once a week for two months, identify undertrials who had already become eligible for release, and pass orders on the spot [25]. The next year, in the proceedings now known as *In re Inhuman Conditions in 1382 Prisons*, the Court directed that Undertrial Review Committees be set up in every district and meet every quarter to review the cases of undertrials eligible for release under Section 436A and other provisions [26].

The need for these directions says a good deal on its own. A provision that has to be enforced through weekly judicial visits to jails and district committees supervised by the Supreme Court is a provision that the ordinary system was not applying. The reasons are not hard to find. Jail records often did not show the maximum sentence for the offence charged, particularly where charges had been altered when they were framed. Undertrials, as the Amnesty study found, were frequently unaware that the provision existed [6]. Legal aid lawyers assigned to undertrials were under-resourced and not always present at remand hearings. And because Section 436A placed no clear obligation on any particular officer, each of these failures could always be attributed to someone else.

6.3 Section 479: A Better Mechanism with a Narrower Door

Section 479 answers part of this criticism. By making the jail superintendent responsible for applying to the court, it identifies an officer who holds the relevant records and who can be called upon to explain a failure to act. That is a genuine improvement, and it deserves more credit than it has generally received in commentary on the new criminal laws.

The difficulty lies in the exclusions. Section 436A excluded only offences punishable with death. Section 479(1) excludes offences for which death or imprisonment for life has been specified as a punishment [22]. A large number of serious offences carry life imprisonment as the maximum, including several that are routinely invoked at the stage of the first information report and later dropped or reduced, so this change takes a significant group of undertrials outside the statutory ceiling altogether.

The Supreme Court has noticed the practical side of the problem, warning that jail records may continue to describe an undertrial as charged with an offence carrying life imprisonment even after charges have been framed for a lesser one [27].

Section 479(2) is more troubling still. It provides that where an investigation, inquiry or trial in more than one offence, or in multiple cases, is pending against a person, the court shall not release him on bail under the section [22]. Read literally, this means that an undertrial facing two minor charges in two separate cases can never benefit from the detention ceiling, however long he has been in custody, while a person charged with a single, more serious offence can. It is difficult to see a principled justification for this. Multiple pending cases may well be a legitimate factor for a court to weigh, and the proviso to Section 479(1) already allows the court to order continued detention for recorded reasons. Turning that factor into an absolute bar removes judicial discretion exactly where it is most needed. It also falls most heavily on the poorest accused, who are often charged in several small cases arising out of the same set of circumstances.

A further question concerns proof of first-time offender status. Making the one-third threshold depend on the absence of a previous conviction is reasonable in itself. In practice, however, records of previous convictions are held unevenly across police stations, courts and prisons, and an undertrial without a lawyer is badly placed to prove a negative. Unless the burden of verifying prior convictions is placed clearly on the State, the more generous threshold may reach fewer people than its drafting suggests.

6.4 The Early Record under Section 479

The Supreme Court moved quickly once the BNSS came into force. On 23 August 2024, recording the concession of the Union, the Court held that Section 479 would apply to undertrials in cases registered before 1 July 2024, and directed jail superintendents across the country to process applications for eligible undertrials through the courts concerned, preferably within three months [28]. By October, however, the Court recorded that only 19 of the 36 States and Union Territories had filed compliance reports, and observed that the process of identifying eligible undertrials appeared deficient in several of them [29]. In November it directed superintendents to make special efforts to identify eligible women prisoners and stressed that the exercise had to be continuous, since prisoners become eligible on different dates [27].

This sequence repeats, almost step for step, the history of Section 436A: a beneficial provision, a slow and uneven response at the level of the States, and then a series of supervisory orders from the Supreme Court. The Court's continued involvement is valuable, but a system that depends on the country's highest court to check whether district jails are filing applications is not a stable one. It also has an obvious limit. The Court can require reports. It cannot itself verify the eligibility of each prisoner across more than 1,300 prisons.

7. Overcrowding and the Cost to Rehabilitation

7.1 The Reformatory Commitment on Paper

Indian prison law formally accepts that imprisonment should reform. The Supreme Court endorsed the reformatory approach in *Mohammad Giasuddin v. State of Andhra Pradesh*, where Krishna Iyer J. treated criminality as, in part, a condition that a humane penal system should try to cure [30], and *Rama Murthy v. State of Karnataka* identified overcrowding as one of the main obstacles to prison reform [31]. The Model Prison Manual, 2016 and the Model Prisons and Correctional Services Act, 2023, both prepared by the Ministry of Home Affairs, describe the prison as a correctional institution in which

education, vocational training, counselling and aftercare are core functions [32, 33]. Neither document binds the States by its own force, because prisons fall within the State List, and adoption has been uneven; several States still work largely within the framework of the Prisons Act, 1894 [34]. At the international level, Article 10(3) of the International Covenant on Civil and Political Rights (ICCPR) requires that the essential aim of the penitentiary system be the reformation and social rehabilitation of prisoners, and the Nelson Mandela Rules state that the purposes of imprisonment can be achieved only if the period of detention is used to secure, so far as possible, the reintegration of the person into society [35, 36].

7.2 What Overcrowding Does in Practice

The difficulty is that almost every element of the reformatory model depends on space, staff and time, and overcrowding reduces all three. A prison running at 150 or 190 per cent of capacity cannot keep first-time and habitual offenders, the young and the old, or undertrials and convicts in separate barracks in the way the Model Prison Manual contemplates. Workshops, classrooms and counselling rooms built for a sanctioned population end up shared among a much larger one, or are turned into sleeping space. Staff shortages make this worse. The NCRB's 2024 data records large vacancies across prison cadres, including close to half of all sanctioned posts for medical staff [9]. The psychological literature on crowded custody links overcrowding with higher levels of stress, violence and mental illness, and with a tendency for prison administrations to fall back on control rather than treatment [7]. Indian law recognises part of this. Section 103 of the Mental Healthcare Act, 2017 requires the appropriate Government to set up a mental health establishment in the medical wing of at least one prison in each State and Union Territory [37]. Whether that capacity is adequate for the population it now has to serve is a different matter.

There is also a more specific point that is easy to miss. Most correctional programming in Indian prisons is designed around convicted prisoners. Vocational training and prison employment in particular tend to be organised for sentenced inmates, partly because the prison knows how long they will stay and partly because undertrials cannot be compelled to work and may be released at any time [32]. The practical result is that the group making up about three-quarters of the crowded population is the group least likely to receive any rehabilitative intervention at all. An undertrial may spend two or three years in a district jail, sharing space with convicted prisoners, and leave without any training, counselling or preparation for release. If he is eventually convicted, the time spent as an undertrial counts towards his sentence but has contributed nothing to his reform. If he is acquitted, the State has held a person it could not prove guilty for years, in conditions it accepts are unsuitable. On either outcome the reformatory purpose has not been served.

It is not claimed here that overcrowding by itself causes reoffending. Reliable Indian data linking the occupancy of particular prisons to rates of recidivism does not appear to exist, and it would be wrong to borrow causal conclusions from other jurisdictions without qualification. The narrower claim made here is that overcrowding, combined with the undertrial composition of the Indian prison population, leaves the reformatory model largely inapplicable to most of the people it is meant to cover.

7.3 Open Prisons, Parole and the Limits of Existing Correctives

Open prisons and parole are sometimes offered as partial answers. Open institutions, of which Rajasthan has the most developed network, allow selected convicts to live and work outside closed walls during the last stage of their sentence. They relieve pressure on closed prisons and offer a far more realistic preparation for release. Their contribution to the overcrowding problem is limited by one plain fact: they

are open only to convicts, and usually only to convicts who have already served a large part of a long sentence. They do nothing for the undertrial population that drives overcrowding. The same is true of parole and furlough. These institutions deserve expansion, as the All India Committee on Jail Reforms recommended more than forty years ago [4], but they operate at the wrong end of the system to make much difference to occupancy.

8. A Brief Comparative Note

International standards treat pre-trial detention as an exception. Article 9(3) of the ICCPR states that it shall not be the general rule that persons awaiting trial are detained in custody, and the Tokyo Rules provide that pre-trial detention should be used as a means of last resort [35, 38]. A prison population in which undertrials outnumber convicts by close to three to one sits uneasily with both.

Comparative experience also shows that a court can treat overcrowding itself, rather than its individual symptoms, as the constitutional wrong. In *Brown v. Plata*, the Supreme Court of the United States upheld an order requiring California to reduce its prison population to 137.5 per cent of design capacity, on the basis that overcrowding was the primary cause of constitutionally inadequate medical and mental health care [39]. The two systems are very different, and a population cap of that kind would face serious practical and federal obstacles in India, where prisons are a State subject. The case is nonetheless useful because it illustrates an approach Indian courts have not yet taken: fixing a measurable occupancy target and requiring the executive to meet it, instead of issuing procedural directions and calling for reports.

9. Suggestions

The suggestions below are directed mainly at implementation, since the argument of this paper is that the gap lies there rather than in the basic design of the law.

First, eligibility under Section 479 should be computed automatically. The admission record of every undertrial already contains the offences charged and the date of admission. The digital prison management systems now used in most States could calculate the one-third and one-half dates for each prisoner, generate the superintendent's application on the due date and send a monthly list to the District Judge and the District Legal Services Authority. This would turn Section 479(3) from a duty that depends on an individual officer's diligence into a routine administrative step, and it would make non-compliance visible.

Second, the surety problem needs a statutory answer rather than another round of guidelines. The standard operating procedure framed in *In re Policy Strategy for Grant of Bail* should be written into the BNSS, so that a court is required to revisit bail conditions whenever an accused remains in custody for a fixed period after bail has been granted [23]. For offences punishable with imprisonment of up to seven years, release on a personal bond should be the default for an accused who is shown to be indigent, which is only a statutory form of what *Moti Ram* required [17]. In *Satender Kumar Antil* the Supreme Court went further and suggested that Parliament consider a separate law on bail [10]. That suggestion deserves serious attention, because the present provisions are scattered and leave too much to local practice.

Third, Section 479(2) should be amended so that multiple pending cases become a factor for the court to weigh under the proviso to Section 479(1), rather than an absolute bar. Parliament should also reconsider

the exclusion of offences punishable with life imprisonment or, at the very least, provide that eligibility is decided on the basis of the charges actually framed and not the offences recorded at the time of arrest. Fourth, Undertrial Review Committees and jail legal aid clinics should be treated as permanent institutions with defined outputs. Each committee could be required to publish, every quarter, the number of undertrials reviewed, the number found eligible under Section 479 and the number actually released, with reasons for any shortfall. Panel lawyers assigned to jails should be made responsible for filing applications for eligible undertrials where the superintendent fails to act.

Fifth, the point of entry matters as much as the point of exit. Consistent enforcement of the arrest safeguards now contained in Section 35 of the BNSS, together with the directions in *Arnesh Kumar v. State of Bihar*, would reduce the number of people remanded for minor offences in the first place [22, 40].

Sixth, undertrials should have voluntary access to education, skills training and counselling on the same footing as convicts. Taking part in such programmes need not imply any admission of guilt, and a person who is later acquitted loses nothing by having used the time in custody productively.

Finally, the Supreme Court and the State Governments could consider fixing an occupancy target for each State, with a time-bound plan to reach it, monitored within the existing proceedings in *In re Inhuman Conditions in 1382 Prisons*. A target of this kind would shift attention from whether procedures have been followed to whether the prison population has actually come down.

10. Conclusion

The fall in occupancy since 2022 is real, but it owes a good deal to new capacity and has barely changed who is held in Indian prisons. The undertrial remains the typical prisoner, and the reasons are administrative rather than doctrinal: eligibility is not tracked, sureties are fixed without regard to means, and responsibility for release has historically belonged to no one in particular. Section 479 of the BNSS addresses that last point directly by naming the jail superintendent, which is its most important contribution. Its exclusions, and above all the absolute bar on persons facing more than one case, take back part of what it gives. The Supreme Court's supervision since August 2024 has kept the issue alive, but it cannot substitute for a working process in every district. Reducing undertrial detention is therefore not only a question of liberty and speedy trial. It is also the precondition for making the reformatory promise of Indian prison law mean something for most of the people inside. An empirical study tracking applications under Section 479 in a sample of districts would be the natural next step.

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