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Justice System in Crisis: The Case of India's Undertrial Prisoners

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Introduction

In a recent, landmark judgment in *Bhim Singh v. Union of India*,¹ the Supreme Court (SC) issued a series of directives to state authorities to facilitate the release of undertrial prisoners who have served half of their probable maximum prison term. While the directive is largely a reiteration of earlier judicial measures (*SC Legal Aid Committee v. Union of India*; *Rama Murthy v. State of Karnataka*), it is highly significant in that the SC set a deadline—two months—and directed district judges and prison officials to oversee the process. The highest court's extraordinary directive was in response to a criminal justice system that is widely regarded as 'dysfunctional', where undertrials are made to wait for years before their cases are even heard. An alarming 67.6 percent of India's prisoners languishing in jails across the country are undertrials; this proportion is one of the world's 10 worst.² Of these undertrials, more than 2,000 have been in jail for over five years. India's average occupancy rate in prisons is 112.2 percent. Chhattisgarh (252.6 percent) and Delhi (193.8 percent) have the worst occupancy situation in the country.³ The situation of undertrials in the country is a matter of great concern that requires drastic action.

The Law and India's Undertrials

The 78th Report of the Law Commission of India (1979) defines 'undertrial' as a person who is in judicial custody or remand during investigation. An undertrial or a pre-trial detainee denotes an unconvicted prisoner, i.e., one who has been detained in prison during the period of investigation, inquiry or trial for the offence they are accused to have committed.

For a long time, provisions governing undertrial prisoners were determined under the 1898 colonial law. The change happened in 1973 when the Indian Parliament enacted the Code of Criminal Procedure (CrPC) for administration of substantive criminal law in the country. Section 436 of the Act dealt with the issues concerning undertrials, including the maximum period for which an undertrial prisoner can be detained in police custody. With the numbers of undertrial prisoners rising to alarming levels, the United

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Progressive Alliance government amended the said legislation by adding Section 436A, which stated that should an accused be detained for more than half the maximum period of imprisonment associated with the crime, he/she has the right to be released on the presentation of a personal bond. The most recent addition to the list of provisions for undertrials is the SC's 2014 directive in *Bhim Singh v. Union of India*.

State of Undertrials: A Snapshot

India's undertrials constitute a whopping two-thirds of the country's total inmates. In pure statistical terms, out of some 3.81 lakh prisoners across the country, 2.78 lakh are undertrials. Notwithstanding a slew of legislations and court judgments that have been passed over the years, the number of undertrial prisoners has increased by 9.3 percent from 254,857 in 2012 to 278,503 in 2013.⁴

What is worrisome is that a majority of these undertrials have spent more time in jail than the actual sentence that would have been awarded them in case of conviction. The most recent figures show that a mammoth 37.9 percent of undertrials have been detained for up to three months by the end of 2013, and a record 3,047 undertrials were found to be languishing in various prisons for more than five years (See Table 1).⁵

Table 1: Period of Detention of Inmates (as of end-2013)

Period of Detention	Number of Undertrials	% of Total Undertrial Population
Up to 3 months	105,457	37.9
3 - 6 Months	59,344	21.3
6 - 12 Months	49,155	17.6
1 - 2 Years	34,448	12.4
2 - 3 Years	17,210	6.2
3 - 5 Years	9,842	3.5
Over 5 years	3,047	1.1

Source: NCRB Prison Statistics, 2013

The highest number of undertrials are in the northern states. (See Table 2) The data are revealing: The number of prison inmates is directly proportional to the population of the state, i.e., states which are densely populated have higher crime rates, and higher undertrials. Uttar Pradesh leads in the number of undertrials, followed by Madhya Pradesh and Bihar. UP has more than twice the number of undertrials than Bihar, highlighting the alarming nature of law and order in the country's most populous state (the number accounts for 19.5 percent of total convicts in the country).⁶

Table 2: Distribution Inmates (By state and age group; end-2013)

% Distribution of Undertrials to total Undertrials by Age Group (2013)					
States/UTs	16-18 Years	18-30 Years	30-50 Years	50 Years and Above	Total
Andaman and Nicobar Islands	0.0	45.6	43.5	10.9	100
Andhra Pradesh	0.0	47.8	45.9	6.3	100
Arunachal Pradesh	0.0	67.9	30.9	1.2	100

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Assam	0.0	49.8	41.4	8.8	100
Bihar	0.0	41.9	44.4	13.7	100
Chandigarh	0.0	39.9	33.5	26.6	100
Chhattisgarh	0.0	56.9	34.9	8.3	100
Dadra and Nagar Haveli	0.0	60.0	34.3	5.7	100
Daman and Diu	0.0	60.5	36.8	2.6	100
Delhi	0.0	63.9	31.1	5.1	100
Goa	0.0	74.5	24.5	1.0	100
Gujarat	0.0	51.0	40.0	9.1	100
Haryana	0.0	56.2	34.4	9.4	100
Himachal Pradesh	0.0	55.5	38.4	6.1	100
Jammu and Kashmir	0.0	47.8	42.8	9.3	100
Jharkhand	0.0	46.3	43.4	10.2	100
Karnataka	0.0	49.3	46.9	3.8	100
Kerala	0.0	34.6	45.0	20.4	100
Lakshadweep	0.0	0.0	0.0	0.0	0
Madhya Pradesh	0.0	53.3	38.2	8.5	100
Maharashtra	0.0	40.8	46.6	12.5	100
Manipur	0.0	52.8	43.5	3.7	100
Meghalaya	0.0	69.5	25.0	5.5	100
Mizoram	0.0	45.7	45.7	8.7	100
Nagaland	0.9	69.8	27.0	2.3	100
Odisha	0.0	45.8	43.9	10.4	100
Puducherry	0.0	63.0	30.7	6.3	100
Punjab	0.0	38.9	48.1	13.0	100
Rajasthan	0.0	45.2	43.4	11.4	100
Sikkim	0.0	69.8	27.0	3.2	100
Tamil Nadu	0.0	45.3	49.2	5.5	100
Tripura	0.0	57.6	36.1	6.3	100
Uttar Pradesh	0.0	44.0	42.0	14.0	100
Uttarakhand	0.0	43.6	32.0	24.4	100
West Bengal	0.0	49.9	40.0	10.0	100
India	0.0	46.8	42.2	11.0	100

Source: Ministry of Home Affairs, Govt. of India (ON638)

Apart from population, there is also a close correlation between the undertrial population and their education (See Table 3). A huge 30 percent of undertrials are illiterate; nearly 43 percent never completed their school education, reaching only primary level. Thus, over two-thirds of inmates would presumably have very little knowledge about their legal rights, if at all.⁷

Table 3: Distribution of Inmates (By education; 2013)

Education	Number of Undertrials	% of Total Undertrial Population
Illiterate	80,393	30.07
Up to Class X	117,373	43.32
Above Class X & below Graduation	56,806	19.57
Graduate	16,233	4.89
Post-graduate	5,056	1.35
Total number of undertrials	278,503	100%

Source: NCRB Prison Statistics, 2013.

The demographic profile of undertrials shows patterns that are noteworthy. As seen in Table 2, a large proportion (46.8 percent) of prison inmates belong to the age group 18-30. Widening the bracket to 50 years, the undertrials percentage reaches a mammoth 88 percent. The most productive years are wasted behind bars; this results in what is more than the sentimental loss of youth for these individuals, but a loss for the nation's economy. In several cases, the undertrial happens to be the sole breadwinner, leaving their family in a state of destitution during their imprisonment. What is more damaging is that those incarcerated for years carry the psychological burden of imprisonment (which brings with it the stigma of being called a criminal for the rest of their lives). Mental illness—difficult to detect and let alone cure—has been a known effect.⁸

When it comes to identity of undertrials (here caste, religion and gender), the underprivileged communities make up a large number of unconvicted prisoners (See Table 4). For instance, as against population ratios of 16.2 and 8.6 percent, the share of undertrials among the Scheduled Castes (SC) and Scheduled Tribe (ST) is 20.30 percent and 11.30 percent, respectively. With regard to religion, Muslims have a disproportionate presence among the undertrials. The data reveal that against a population share of 14 percent, more than 21 percent (57,936) of undertrials belong to the Muslim community.⁹ Overall, while Muslims, SC and ST populations constitute nearly 39 percent of the total population, they account for a high 53 percent of total undertrial prisoners in various jails.¹⁰

The story of unconvicted women prisoners demands discussion as well. Although they represent a small proportion (4.6 percent) of total unconvicted prisoners, their situation is alarming.¹¹ For instance, many women undertrials are left with no recourse but to live with their children inside jail: There are currently about 1,252 women undertrials with 1,518 children in various jails in the country.¹² What makes their situation worse is the inadequacy of jail space in most Indian states. There are only 12 women jails out of 35 States and UTs. As a result, major jails like Tihar in Delhi are overcrowded with women prisoners who suffer unspeakable miseries. For women living with their children inside jail, life is exponentially worse.¹³

Table 4: Distribution of Inmates (By religion and caste)

	Convicts	%	Undertrials	%
Total	129,608		278,503	
Hindu	93,273	72.00%	192,202	69.00%
Muslim	22,145	17.10%	57,936	21.00%
Caste				
General	43,855	33.80%	99,748	35.80%
OBC	41,446	32.00%	87,848	31.50%
SC	29,130	22.50%	59,326	21.30%
ST	15,177	11.70%	31,581	11.30%

Source: NCRB Prison Statistics, 2013.

State Response to the Plight of Undertrials

On occasion, issues concerning prisoners in general and the plight of undertrials in particular, have received serious attention from the state. Much of the positive contribution has come through judicial intervention. Through judgments and strictures to authorities managing the criminal justice system, the country's higher judiciary has sought to improve the welfare of India's prisoners, especially the undertrials.¹⁴

The serious judicial intervention on the issues of undertrials began as early as 1979 when the plight of undertrial prisoners was written about by the venerable English daily, *The Indian Express*. The paper carried a series of reports on the horrendous conditions of thousands of prisoners spending years in prison without being even brought to trial. As a direct result, the issue received some serious, albeit judicial, consideration. The report led to the filing of a writ petition through a lawyer activist in the Supreme Court.¹⁵ The Court subsequently admitted the petition and it was only in 1979, in the judgment of *Hussainara Khatoon*¹⁶ that the Supreme Court of India delivered an important verdict: speedy trial was a fundamental, constitutional right for criminal defendants.

The Supreme Court observed: “An alarmingly large number of men and women, including children are behind prison bars for years awaiting trial in courts of law. The offences with which some of them are charged are trivial, which, even if proved, would not warrant punishment for more than a few months, perhaps for a year or two, and yet these unfortunate forgotten specimens of humanity are in jail, deprived of their freedom, for periods ranging from three to ten years without even as much as their trial having commenced. It is a crying shame on the judicial system which permits incarceration of men and women for such long periods of time without trial.”

At around the same time, the plight of undertrials was picked up by the executive branch. Taking note of the growing numbers of undertrials, the Janata Government in 1977 asked the Law Commission (78th) to study the case in depth and suggest reform measures and policy frameworks. Subsequently, the issue concerning the undertrials was picked up by the Mulla Committee,¹⁷ which was constituted by the Government of India in 1980 on prison reforms. Taking cognizance of the issue, the Committee observed that “the most prison inmates belong to the economically backwards classes which could be attributed to their inability to arrange for the bail bond”.¹⁸ It said that legal aid workers were needed to help such persons in getting them released either on bail or on personal recognisance. However, the recommendations of the Committee were not taken seriously by successive governments.

Some of the most influential interventions to improve the condition of undertrials emerged in the 2000s. For instance, seeing no substantial progress in the condition of undertrials, the SC in 2000 directed the Union Government and all state governments to constitute Fast Track Courts (FTCs) to speed up the resolution of cases involving undertrial prisoners, especially those that have been pending for over two years. Accordingly, from 1 April 2001, all undertrial cases from the district and subordinate courts were transferred to the FTCs for speedy disposal. The real momentum came in 2005, when the United Progressive Alliance government passed an amendment to the Criminal Procedure Code by inserting Section 436A. The new provision read: “The maximum period for which an undertrial prisoner can be detained: Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the court on his personal bond with or without sureties”.¹⁹

In the last few years the Executive has taken some positive steps concerning undertrial prisoners. For instance, the executive branch in 2010 made a forceful intervention on the issues of high pendency of undertrial cases and the Ministry of Law and Justice launched “The Mission Mode Programme for Delivery of Justice & Legal Reforms–Undertrial Programme”. The programme aimed to resolve two-

thirds of all undertrial cases and ease congestion in jails by 31 July 2010. The Mission Mode Programme sought to work with state governments in identifying the undertrial prisoners who were entitled to be released under the law and link them with Legal Service Authority with a view to ensure their release.²⁰

It was in 2014 when the most decisive response to the plight of undertrials came. Seeing no visible progress on its past directives, the Supreme Court Bench on 5 September 2014 issued a series of strictures to various institutions managing the country's criminal justice system. In a major departure from its earlier directives, the Court directed judicial officers across states to accelerate the pending trial process and release those prisoners who have spent “half of the maximum sentence prescribed for the offences under Criminal Code. Taking note of gross negligence of its earlier ruling on undertrials, the SC termed the issue of undertrials languishing in jails as 'serious' and directed the Centre to convene a meeting of home secretaries of all the states to find an immediate solution to the long pending problem. It reminded the Centre not to remain a "mute spectator" and rather act as a “nodal agency”.²¹

Apart from the Union government and the highest court, a number of state governments and high courts have also occasionally taken various measures to address the issues of undertrials. For instance, the Patna High Court²² took *suo motu* an action and initiated a PIL for the efficient and effective implementation of Section 436A Code of Criminal procedure, 1973. The Court directed the Jail Superintendent, the Inspector General (Prisons) and the Legal Services Authorities to take interest for the implementation of this section. Similarly, the Bombay High Court in October 2008 took up the issue of undertrial prisoners in bailable cases who could not furnish bail. The Court decided to undertake the task of monitoring the situation for a year and directed all Sessions Judges of the State to call for periodical records from the Magistrates and Jail Superintendents.

Among all Indian states, it is Tamil Nadu that has made some impressive strides in addressing the situation of undertrials. Until the charge-sheet is filed, arrested prisoners in Tamil Nadu are categorised as 'remand prisoners' and are free to be released on their own bond. Moreover, jail comprises four categories of inmates: Remand prisoners who are arrested in the immediate past and are awaiting release on bail; undertrials, who need to undergo trial; convicts; and finally, people held under preventive detention laws. Moreover, a prison *adalat* concept exists where the district legal service authority aims at bringing relief to petty offenders and their family members belonging to the economically weaker sections.

Why do Undertrials continue to overcrowd the prisons?

Despite Executive and Judicial branches of the government launching various programmes and pronouncing some vows to correct the situation, little has changed on the ground and lakhs of undertrials still languish in various jails. If anything, their numbers have only gone up in recent years, notwithstanding frequent directives from the Ministry of Home Affairs to jail authorities and the Supreme Court's judgment in 2014.²³

Crisis in the Justice System

The slow march to justice for thousands of undertrial prisoners has to be seen in the larger context of a criminal justice system afflicted by serious structural and procedural bottlenecks. Countless undertrials are paying the price for India's centralised justice system which has a very low ratio of judges, a dysfunctional

prison system, and alarmingly low police-population ratio. Little priority is given to investigation and prosecution and there is lack of strong commitment to use emergent information and communication tools in carrying out justice delivery functions.

The foremost challenge to the criminal justice system impacting the fate of most undertrials is India's low population-judge ratio.²⁴ There is a vacancy of more than 300 positions against the sanctioned strength of 906 judges in 21 High Courts across the country. The current scenario is even worse in the lower courts, with more than 3,300 posts remaining vacant against a sanctioned strength of 17,715 judges.²⁵ All this has clear bearing on the languishing of undertrials for want of bails. With backlog of litigations stretching over three crore, pre-trial detention is being used a punitive measure, resulting in denial of bail.²⁶

Delayed Investigation

However, low bench strength seems pale in comparison to the role played by police and prosecution functionaries in delaying investigation and trial processes. It is well known that a great majority of undertrials languish in prisons because the police do not finish investigation and file the charge-sheet in time.²⁷ In Assam, for instance, where 80 out of every 100 cases are pending before the court, some 59 percent of cases are yet to be investigated by police.²⁸ While one reason is the low police-population ratio (182 per 1,00,000 population),²⁹ what compounds this is endemic corruption in police rank and file that has been found to be often the leading reason for delay in prosecution, as well as unnecessary arrests. There are also issues of 'unjustified or unnecessary' arrests that police officials often resort to demonstrate the progress of investigation in high-profile cases. According to one reliable estimate, a mammoth 60 percent of all arrests are unnecessary.³⁰

Deficient Prosecution System

Then there are serious issues with prosecutors and existing prison management system that worsen the miseries of undertrial prisoners. The country's judicial manpower has been found to be grossly underfunded³¹ and neglected and so is prison management. The problem is not only that India lacks enough competent public prosecutors, but even those who take their jobs seriously lack basic facilities to carry out their onerous responsibilities. To illustrate what the Delhi High Court observed recently, even at the very basic level public prosecutors lack facilities, such as access to legal databases, and research and administrative assistants. The Delhi High Court, in a March 2014 order observed, "One of the predominant cause(s) for delay in disposal of criminal case is due to shortage of public prosecutors".³²

Dysfunctional Prisons

Among all institutions in charge of the criminal justice system, prison administration involving the Superintendents and guards staff play the most critical role in addressing issues concerning undertrials. For instance, as per the Prisons Act, 1894, the Superintendent has to maintain a register of all prisoners admitted and a book showing when each prisoner is to be released. In every sense, prison authorities are custodians of undertrials' rights and their timely release. In reality, this is rarely the case. There are few prisons in the country that maintain a proper record of undertrials, let alone sensitising them about their rights under Section 436A.³³ The key reason for such a sorry state of affairs in prison administration is

continued low attention paid to its requirements including staffing and modernisation. For instance, on average, only 66 percent of sanctioned posts are met nationally and in some cases like Bihar, this proportion is as low as 21 percent.³⁴ On account of inadequate support provisions like escort vehicles and police personnel, many prisoners are not produced in their respective courts on time.

Inadequate Funding

Behind inadequate infrastructure, poorly qualified prosecutors, lower police-population ratio, and understaffed prisons with appalling facilities, there lies a grossly underfunded criminal justice system. As an example, judiciary was allocated less than 1 percent (INR1,100crore) of India's total budget outlay in 2014-15. The resource commitment on policing, a critical aspect impacting the state of undertrials, is even more worrisome. State governments spend a minuscule share of their allocation (3-5 percent) on policing. Even developed states like Maharashtra spent 98 percent of allocation on staff salary, fuel and office expenses. A meagre two percent is spent on upgradation of investigators' knowledge about forensic techniques and new modus operandi.³⁵

Poverty and Illiteracy

Apart from the various systemic issues, the lot of undertrials have much to do with who they are. A vast majority of them are poor, illiterate, belonging to lower castes and religious minorities.³⁶ Given this, many radical measures including bail provisions via personal bond or surety have fallen flat as most of them are either unaware of the new measures or too poor to arrange for personal bond or even sureties from someone to secure bails.³⁷ Given this, most undertrials are in need of a system of public defenders and legal aid to secure bails. Sadly, India lacks competent and adequate legal representation for the accused. This is compounded by the lack of coordination among legal services authorities and prison officials in identifying those requiring legal aid.³⁸ Thus, in the absence of strong culture of legal aid, thousands of undertrials spend years behind the bars, notwithstanding radical provisions inserted in CrPC in 2005.

Problems with bail system

Finally, the present bail system also contributes to long pre-trial detention. This is because the Code of Criminal Procedure, 1973 does not define the term 'bail' although offences are classified as 'bailable' and 'non-bailable'. The former are less serious offences and any person accused of committing these is entitled to be released on bail as soon as he/she is willing to furnish the bail amount. When accused of committing non-bailable offences, a person can only be released on bail by the court if it is satisfied that the person shall attend the court to stand trial, and will not tamper with evidence or influence witnesses or obstruct police investigation in any manner.³⁹ The existing system of availing bails militates against the poor and underprivileged.

Slow penetration of ICTs

Another challenge is the absence of basic judicial infrastructure that affects the presence or absence of opportunity in leveraging the use of information and communication technologies (ICTs) to speed up trials. Both prosecution and trial system have not kept pace with the progress of transformative

information and communication technologies. For instance, the digitisation of jail records should spell a significant difference in prison system management. Similarly, setting up video conferencing facilities at district prisons can facilitate the trial process at little additional cost. But the criminal justice administration is several decades away from embracing ICT as most justice delivery functions are carried out in manual mode.⁴⁰

The Way Forward

The foregone analysis of challenges facing undertrial prisoners makes it amply clear that solutions are far from easy as it is seemingly being made by the SC's recent directive in *Bhim Singh*. Given that it involves active and time-bound cooperation from various stakeholders such as courts, police, prosecutors, prison administration, legal aid and undertrials themselves, the pathway to ease the situation facing undertrials has to be comprehensive rather than kneejerk such as fast-track courts. There is an urgent need to spur systemic changes by overhauling the entire justice delivery apparatus especially some of the key criminal justice functionaries notably the investigation, prosecution and prison administration to see any positive outcome on undertrials. This can happen through a combination of infrastructure funding, police training, and modernisation of prison system. To be sure, these are tall orders that need time and resource commitment.

For immediate results, a few ideas may be worth considering. Foremost is to target the low hanging fruits: one of them is making district judicial committee to deliver. State authorities need to revamp and streamline undertrial review committees(URC) at their level. This was something envisioned by the Mulla Committee as far back as in 1979 and has since been reiterated by numerous Law Commission reports. URC can turn into an excellent inter-agency coordinating body that allows for all relevant persons to join together to assist the courts in speedy trial and release of undertrials. An important step that the URC can take is to discourage policemen from hasty/unnecessary arrests. In this regard, there is a clear guideline from the National Police Commission (1977)⁴¹ for police to avoid hasty arrests and the same has been reiterated by the Supreme Court in numerous cases. However, this would be a non-starter without serious police reforms.

Second, the country's ailing Legal Aid System needs an urgent overhaul. Such useful state instrument which can prove vital for thousands of illiterate and poor undertrials needs the strong endorsement of the Union Government and states. In this regard, the Law Commission's proposal for new lawyers to do a two-year compulsory stint with the legal aid system is still hanging in fire and needs to be enforced immediately. Further, the country needs a public defender system as well.⁴² In India the state public defenders receive meagre compensation to defend the accused whereas in the United States, the funding comes from both the State and the Federal Government. In fact, India can learn a lot from Latin American countries, especially Colombia and Bolivia, which have impressive legal aid systems that help address their alarmingly high rates of incarceration.⁴³

Third, the justice delivery establishment needs to embrace innovative alternative dispute resolution tools to reduce unnecessary pendency especially in the cases of petty crimes. In this regard, globally acclaimed plea bargaining tools can come handy. To illustrate, a plea bargain is an agreement in a criminal case whereby the prosecutor offers the Defendant the opportunity to plead guilty, usually to a lesser charge or to the original criminal charge with a recommendation of a lighter than the maximum sentence. Thus

most criminal defendants are offered plea bargain. A plea bargain gives criminal defendants the opportunity to avoid sitting through a trial risking conviction on the original, more serious charge.⁴⁴ Although India had introduced plea bargaining in its criminal justice system in 2006 (via Criminal Law Amendment Act, 2005), any serious traction on this has yet to be seen.

Third, there is an urgent need to begin the process of re-engineering the criminal justice system which is rusty and appears to belong in an earlier century. For immediate results, *Lok Adalats*, mediation, plea bargaining, and negotiated settlements can be pursued. Further, employing innovative tactics such as clubbing of similar kinds of cases, leaving administrative functions to Court Managers, introducing modern management tools and systems for docket and case management, can all help improve the plight of undertrials. In this regard, the decision of the National Human Rights Commission (NHRC) to establish human rights cells in state police headquarters is a move in the right direction.⁴⁵ The Cells can be headed by officers of the rank of Additional Directors General/Inspectors General of Police, who act as links between the Commission and the State Police. Also the District Committee system as suggested by SC in *Bhim Singh* case can be of immense help.

Fourth, ICT offers plenty of hope for undertrials. E-courts, which are increasing in number across many parts of the world, should be taken in right earnest. It can seamlessly bring together diverse criminal justice functionaries. This reiterates what has long back been said in the report of “Justice V.S. Malimath Committee on Reforms of Criminal Justice System” (2003), which emphasised the use of modern science and technology in harnessing criminal investigation and training to improve basic process which would benefit the undertrials.⁴⁶ For instance, through the Integrated Services Digital Network [ISDN] technology, courts and prisons can be connected through video linkage. If a video camera and a television set could be provided in a separate room, all the prisoners can be assembled easily. Simultaneously, another video set is put up in the chamber of the presiding magistrate. This will provide jail authorities another mode of communication, so that they do not need to transport prisoners to the courts which, in turn, brings down financial and manpower costs.⁴⁷ While the present Union Law and Justice Ministry's initiative of monitoring and tracking system to oversee implementation of SC verdict is commendable in this regard, it needs to do much more on ICT.⁴⁸

Finally, emphasis should be placed on ensuring the implementation of existing provisions, such as regularising the functioning of the Undertrial and Periodic Review Committees. Ensuring that poor undertrials do not languish in jails for long periods, the establishment of full-fledged e-courts in *taluks* and higher courts, and the use of technology in analysing and grouping cases pending in courts, are equally urgent needs. In this regard, crucial penal reforms are required to replace the old Prisons Act, 1894, with a view to incorporating modern trends in penological thinking. The highest court's ultimatum and plan of action should be rigorously followed at the district level to put an end to the inhumanity of punishing those who, according to universally accepted principles, ought to be presumed innocent until proven guilty.⁴⁹

The real, long-term solution is not early release of undertrial prisoners (as many of them may be hardened criminals),⁵⁰ but overhauling the trial process. This requires massive transformation in the manner in which criminal justice is run in this country. Expedient investigation and trials of criminal cases would remain farfetched without a massive overhaul of the existing criminal justice administration.

Endnotes

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10. For a detailed story, see *The Hindustan Times*, 03 December 2014, <http://www.hindustantimes.com/india-news/controversial-minister-hints-at-link-between-crime-and-religion/article1-1292618.aspx>.
11. Ministry of Home Affairs Note, 11 March 2015. <http://mha1.nic.in/par2013/par2015-pdfs/rs-110315/1477.pdf>.
12. Mizoram has the highest percentage of female inmates. The state is followed by Andhra Pradesh (6.3%), West Bengal (6.1%) and Maharashtra (5.7%). Tripura, Kerala, Nagaland, Arunachal Pradesh and Meghalaya have less than 3% female inmates.
13. Hearing the plight of women prisoners in Tihar jail, recently the Delhi High Court bench made a special intervention. Read the full report in *The Times of India*, 12 February 2015, <http://timesofindia.indiatimes.com/india/Govt-must-answer-for-plight-of-undertrials/articleshow/46207128.cms>.
14. The judiciary took up the issues of undertrials on numerous occasions cases such as *Bhagalpur Blindings*, *Hussainara Khatoon*, *Mantoo Mazumdar*, *Rudal Shab* among other.
15. A Lawyer Kapila Higorani was so shocked to read *The Indian Express* article that she appealed before the Supreme Court for a Writ of Habeas Corpus in 1979.
16. See *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98.
17. In 1980, the Government of India set-up a Committee on Jail Reform under the chairmanship of Justice A. N. Mulla. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders.
18. Report of All India Committee on Jail Reforms (The Mulla Committee), 1980-83.
19. Shailesh Gandhi, “Caged Ordeal”, *Deccan Herald*, 07 September, 2014, <http://www.deccanherald.com/content/429489/caged-ordeal.html>.
20. Department of Justice, Ministry of Law and Justice, Government of India, <http://doj.gov.in/?Q=node/209>.
21. For details see *Bhim Singh v. Union of India*, Ibid.
22. See the story in *The Hindu*, “Poor Undertrials in Bailable offences to be released on bond”, 26 Oct, 2008, available at <http://www.thehindu.com!Holnus/002200810261520.htm>.
23. Editorial, *The Hindu*, 19 May 2015, <http://www.thehindu.com/opinion/editorial/a-system-under-trial/article7220397.ece>.
24. India has 15 judges per million population, making it one of the lowest in the world. The Supreme Court in All India Judges Association case in 2002 had ordered to increase the number of judges to 50 per million, but one has not seen any positive movement on this. See Bibek Debroy, “Justice Delivery in India,- A snapshot of problems and Reforms”, *ISAS Working paper*, No. 47, July 2008.
25. Damayanti Datta, “Sleepless in Supreme Court”, *India Today*, 27 June 2014, <http://indiatoday.intoday.in/story/supreme-court-cji-rm-lodha-bar-council-of-india-cbi/1/368783.html>.
26. Vrinda Bhandari 2014, Ibid.
27. Madhurima, “Undertrial prisoners and the criminal justice system”, *Journal of Human Rights Initiative*, 2010, http://www.humanrightsinitiative.org/new/2010/undertrial_prisoners_&_criminal_justice_system.pdf.
28. Dipti Jain, “The slow moving wheels of Indian judiciary”, *Mint*, August 05, 2014, <http://www.livemint.com/Opinion/VlqmTLJ1UzNtmKd7BuRVbM/The-slow-moving-wheels-of-Indian-judiciary.html>.
29. For example, India has one of the lowest police-population ratios, of 182 officers per 1, 00,000 populations against UN norm of 222. See the Report of Bureau of Police Research and Development (BPRD), Government of India. <http://bprd.nic.in/showfile.asp?lid=1216>.

30. The 120th Report of the Law Commission of India (1987), <http://lawcommissionofindia.nic.in/reports/177rptp2.pdf>.
31. The clearest evidence of this is the overcrowding of prisons. The average occupancy rate is 112.2 per cent and states like Chhattisgarh has an astronomical 252.6 percent occupancy.
32. The Delhi High Court in a shocking order (March 2014) noted that prosecutors' laptop allowances do not exclude payment for internet facilities and legal databases, nor do they have exclusive office space in courts.
33. Madhurima, 2010, Ibid.
34. Vrinda Bhandari 2014, Ibid.
35. See Ajay Shah, Reinventing Criminal Justice System, March 11, 2015, <http://ajayshahblog.blogspot.in/2015/03/reinventing-criminal-justice-system.html>.
36. Ibid.
37. See a crisp analysis on public defender scheme by Sudhir Krishnaswamy and Shishir Bail, "Freeing the Undertrials" *The Hindu*, 22 September, 2014. <http://www.thehindu.com/opinion/lead/freeing-the-undertrial/article6432209.ece>.
38. Ibid.
39. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner. For more details, see *State of Rajasthan v. Balchand*, (1977) 4 SCC 308.
40. Address by former Chief Justice KG Balakrishnan, at the joint conference of chief ministers and chief justices, at Vigyan Bhawan on 08 April, 2007, http://supremecourtfindia.nic.in/speeches/speeches_2007/8.4.2007.pdf
41. See Ministry of Home Affairs, Government of India, National Police Commission, 1977, *Third Report*.
42. Sudhir Krishnaswamy et al, 2014.
43. Richard M. Aborn and Ashley D. Cannon, "Prisons: In Jail, but not sentenced", *American Quarterly*, Winter 2013. <http://www.americasquarterly.org/aborn-prisons>.
44. See an excellent write up on plea bargaining by Parvez Alam Khan, "Unique Remedy to Reduce Backlog in Indian Courts", *Manuputra*, <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=68b01806-8cbc-4ddc-a3df-8e1fb2abdc70&txtsearch=Subject:%20Criminal>.
45. See the report of the National Human Rights Commission, Government of India, <http://nhrc.nic.in/Documents/Publications/nhrcindia.pdf>.
46. Committee on reforms of criminal justice system government of India, Ministry of Home Affairs report, Volume I, http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf.
47. At the same time, the magistrate and the prisoner can talk to each other, and the magistrate can personally enquire whether the accused has filed his bail application or not, find out his period of stay in the jail, details of the crime he is alleged to have committed and other personal details.
48. The Ministry of Law and Justice has set up The Mission Mode Programme for Undertrials to coordinate with various prisons and track the developments in real time basis. See the details, <http://doj.gov.in/?q=node/209>.
49. Yogesh Vajpeyi, "The Undertrials in Jail: The idea of Injustice", *The New Indian Express*, 23 April, 2013. <http://www.newindianexpress.com/columns/Undertrials-in-jails-The-idea-of-injustice/2013/04/28/article1564581.ece>.
50. See Sudhir Krishnaswamy, et al., 2014.

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