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Presumption of Innocence: Principle of Law and Undertrial Prisoners in India

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Issue Brief

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1. INTRODUCTION

A quote often attributed to a Russian author, Dostoevsky, and quoted as a closing statement for prison reform and correctional facilities discourses, stands at the center of how prisons reflect on society.

Fyodor Dostoevsky, in *The House of the Dead* (1862), states, “The degree of civilisation in a society can be judged by entering its prisons.”

Pre-trial detainees or undertrial prisoners are often subjected to the same treatment as convicted persons in jail; they are held in prisons for long periods. In many cases, these can be longer than the sentence they are meant to serve if the offender is convicted. According to the International Centre for Prison Studies, India has the 18th largest undertrial population currently detained; it ranks 3rd among Asian countries (Amnesty International, 2017).

Protection from arbitrary detention (Article 9) is a universal right that is also outlined in the Universal Declaration of Human Rights. The Constitution of India also guards people against arrest and detention in certain cases. It makes provisions under Article 22; additionally, it also gives Indian citizens the right to seek a remedy for the deprivation of fundamental rights under Article 32.

There is a realisation across the world that high-incarceration rates impact freedoms and the community at large. Beyond just those reasonably behind bars due to their conviction, a large number of undertrial prisoners continue to be held in jails in India. According to the National Crime Records Bureau (NCRB)

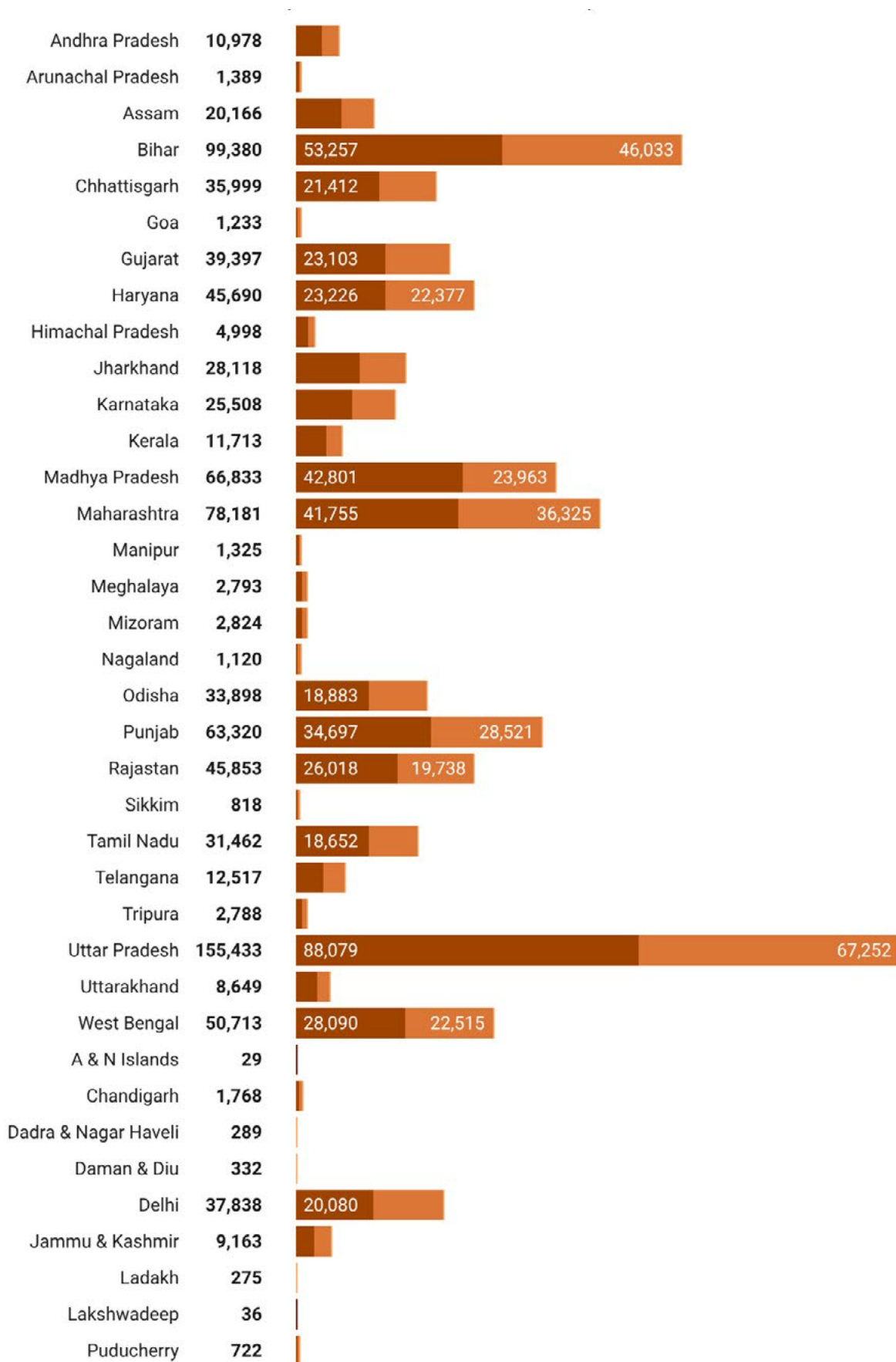
2024 data, there are currently over 5,11,542 inmates in jails across the country; alarmingly, only 26.6% are convicted of the charges against them, and more than 72.6% are undertrial (NCRB, 2024).

Prison reformists argue that the prison systems are often used to suppress and marginalise communities systematically. The Amnesty report, with reference to the Prisoner Statistics of 2015, shows that the undertrial population has a disproportionate number of Muslims, Dalits and Adivasis. About 53% of undertrials are from these communities, which make up a 39% share of the population of India.

1.1. DATA SNAPSHOTS OF UNDERTRIAL PRISONERS

The legal process in India can take years to conclude. Thus, many of the accused persons whose cases have not concluded remain in jails and prisons across the country. Undertrial prisoners constitute a majority of the people who are currently held in jails, making up over 72% of the total jail population.

According to the Prison Statistics of India 2019, the highest number of undertrial prisoners in the country is in Uttar Pradesh, followed by Bihar and Maharashtra. Among the Union Territories, Delhi has the highest number of undertrial prisoners.

Figure 1: Inmates in Prisons (Total and Undertrial) in States and UTs

A closer look at these states with a high number of undertrial prisoners shows growing concerns around capacity, human rights, and legal representation. The central jails in the state of Maharashtra operate at an occupancy rate of 162.8 per cent, making it amongst the highest for prison congestion, followed by Delhi, Meghalaya, Jammu & Kashmir and Madhya Pradesh (Indian Express, 2026).

The undertrial prisoners appear to be largely marginalized, overrepresenting people from groups with no formal education or below 10th standard. Almost 62.6% of all undertrial prisoners in India come from these groups. Furthermore, legal representation of undertrial prisoners remains minimal. In December 2021, Justice UU Lalit, sitting chairperson of the National Legal Services Authority (NALSA), acknowledged that only 1% of all cases pending in courts are under the belt of legal services (TISS, 2021).

Figure 2: Educational Status of Undertrial Prisoners

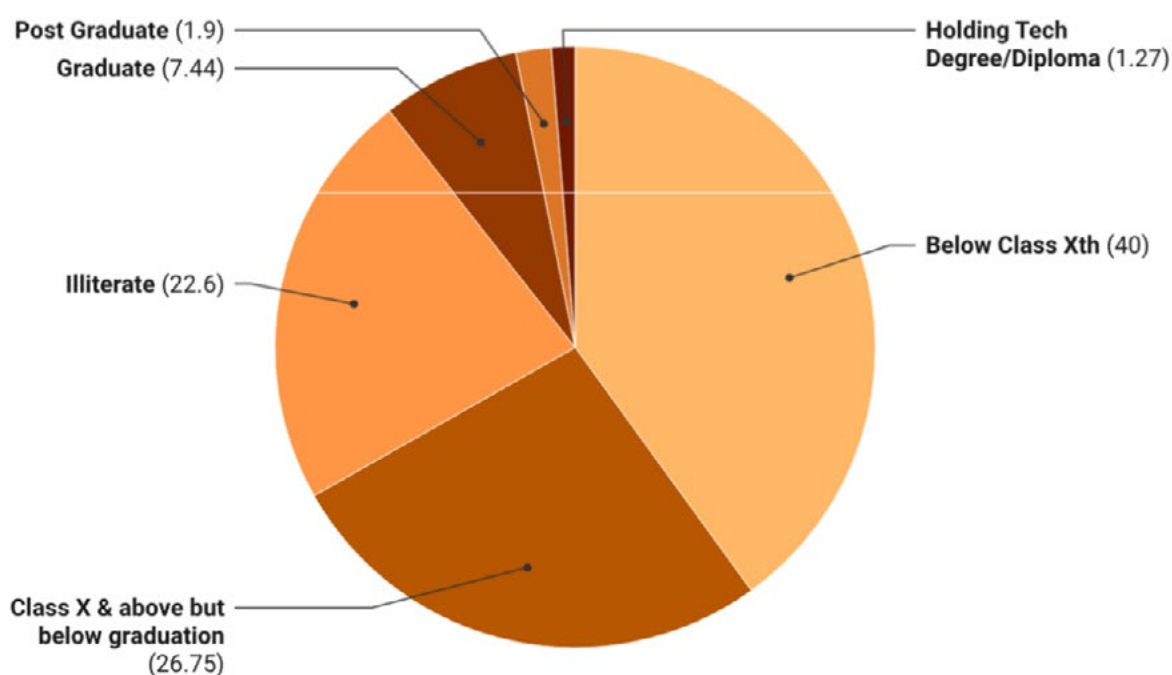


Chart: Anusha Arif • Source: National Crime Records Bureau, PSI Report 2024 • Created with Datawrapper

A decade-old case study on the situation of undertrial prisoners in Maharashtra (Ragahvan, 2016) captured data from the 2015 National Crime Report Bureau report showing that nearly 80 per cent of the prisoners belonged to SC, ST, OBC and Muslim communities, and nearly 70 per cent of undertrials came from family backgrounds characterized by poverty and marginalization.

However, in a landmark judgment in 2024, the Supreme Court struck down provisions, including those mandating the collection of caste-based data for prison registries. This decision was made to reduce caste-based segregation and manual labor in prisons; the SC also directed the deletion of the caste column and any references to caste in undertrial prisoner data (Sukanya Shantha vs. Union of India). The court judgement noted that classifying prisoners based on caste violates the principles of equality before law as mentioned under Article 14 of the Constitution of India.

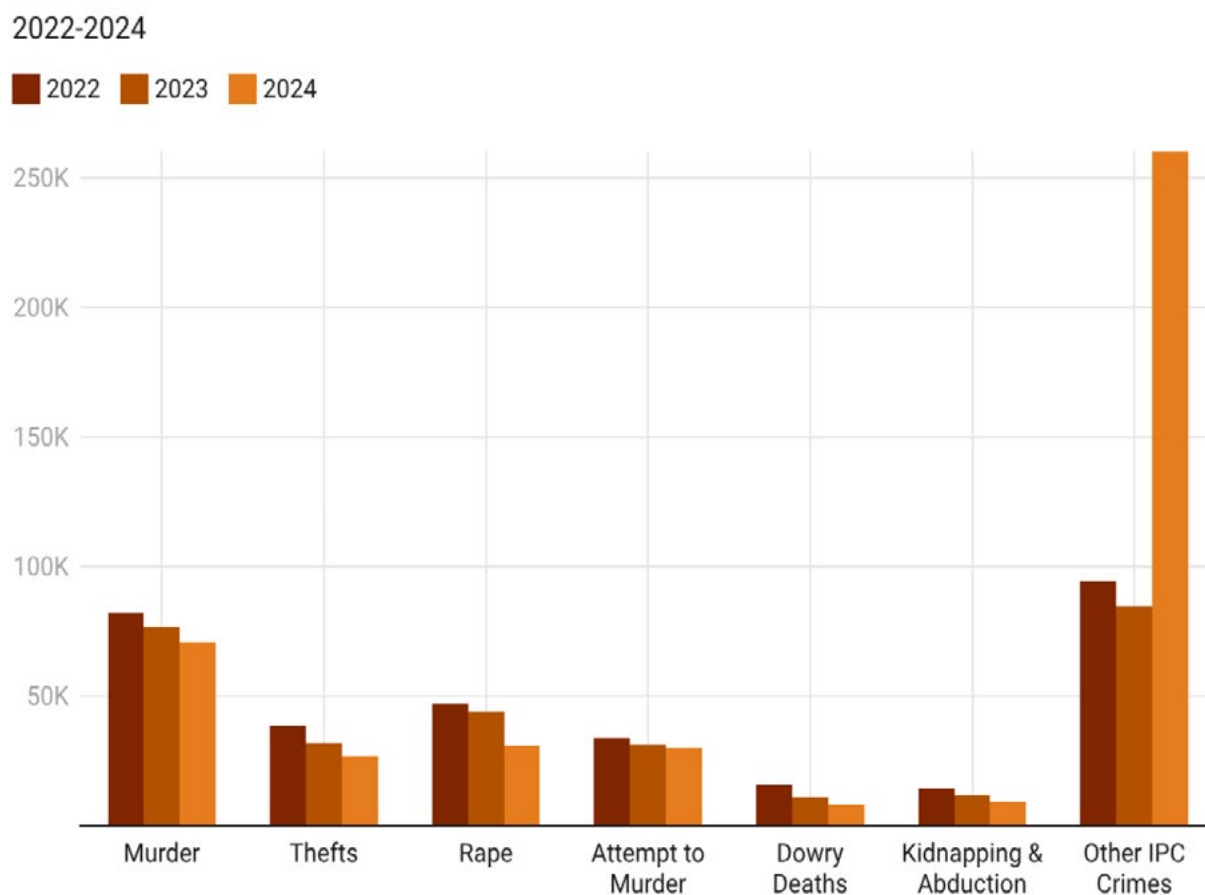
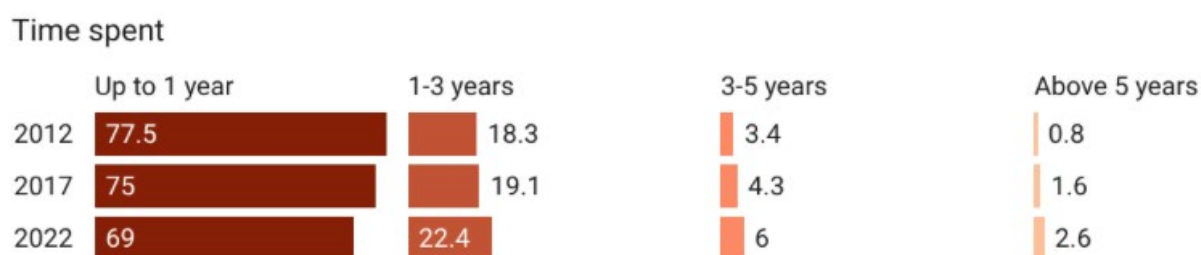
Figure 3: Undertrial Confined under Major IPC Provisions

Chart: Anusha Arif • Source: NCRB Prisoner Statistics • Created with Datawrapper

Figure 4: Period of Detention for Undertrials

Source: India Justice Report 2025 • Created with Datawrapper

Out of all the fibres used, polyester is the most widely produced, making up 59 per cent of total fibre output, while cotton remains the second-largest fibre at about 19 per cent, with production at roughly 24.5 million tonnes.

Over the last few years, the rate of confinement of undertrial prisoners is not the only thing that has increased. According to the India Justice Report 2025, undertrials are increasingly spending more

time in prisons. The report shows that over the last decade, the share of undertrials in detention for 3-5 years has nearly doubled, and the share of those above 5 years has tripled.

Anti-terror laws have created stringent provisions that have also led to the arrest of 10,440 individuals under the Unlawful Activities Prevention Act (UAPA) between 2019 and 2023, many of whom have remained undertrials for 3-5 years (MoHA, 2025). However, the conviction rate under the UAPA remains 3.2 per cent over this period.

The addition of undertrial prisoners to the total number of occupants in prisons has led to severe overcrowding. These have not only increased the human rights concern about unfair periods of detention but also exponentially increased the concern around the conditions of detention. The court took cognizance of the matter in the case, *Bhim Singh vs. Union of India and Ors.*, where “Fight for Human Rights” brought to the forefront the issue that 31,000 ST and SC tribal prisoners were held in various Naxal-affected areas (Kezo, 2014). The court constituted an Undertrial Prisoner Review Mechanism and reinforced that undertrial prisoners serving more than half of their maximum sentence have the right to bail on personal bond (Kezo, 2014). In the same case, the Court also provided for mandatory detention under Article 436-A of the CrPC, stating that no person shall, in any case, be detained during the period of investigation, inquiry, or trial for more than the maximum period of imprisonment provided for the said offence.

2. DETENTION AND HUMAN RIGHTS CONCERNS

Data shows that undertrials languish in prisons for long periods, sometimes even without adequate legal representation. The lack of representation or poor representation can often compound the concerns beyond systematic delays. In *Sunil Batra (II) v. Delhi Administration*, 95, the Supreme Court of India emphasized that a person in prison does not cease to be a human being or lose all human rights, and that it is the duty of the State to address justifiable needs and requests. It was held that *“in the eye of law, prisoners are persons, not animals”*.

The undertrial prisoners go through a period of punishment before they are found guilty. Through this period of detention, undertrials suffer physical and mental health deterioration. The study from Maharashtra conducted by the Tata Institute of Social Sciences (TISS) found that 40% of undertrials suffered health deterioration. The legal framework in India guarantees many rights to the person. Under Article 21, every person has the right to a speedy trial; the criminal procedure Act under the Bharatiya Nagrik Suraksha Sanjita (BNSS) makes provisions for the right to bail for bailable offences. All persons are also entitled to free legal aid under the Legal Services Authorities Act, 1987 (Gill & Kumari, 2025). The court has also noted that prolonged detention without trial violates the guarantee of life and personal liberty under Article 21 (*Hussainara Khatoon v. State of Bihar*, 1979). The same TISS study on undertrial prisoners reveals that legal representation remains a key challenge to legal representation for undertrials. The first and foremost challenge was found to be the general awareness of legal aid provisions; even when the undertrial persons are aware of the legal aid, there is a noted lack of confidence, which has led to underutilisation in use of legal services. The report also notes that support for bail-related services is the most dominant need for undertrials seeking legal aid (TISS, 2021).

The BNSS, like its predecessor, the CrPC, makes provisions for set-off where the detention period is against the sentence of imprisonment for a convict. Although the rights and freedoms of those who continue to be sentenced are one part of this discourse on undertrial prisoners, major human rights concerns arise when considering those who are kept detained for long periods without being found guilty of the crime.

3. CASE STUDY: MACHANG LALUNG

One of the most tragic cases of unfair detention and forgotten undertrial prisoners in India has been that of Machal Lalung. In 1951, Machal Lalung was arrested from his village in Silsang in Guwahati (Bhaumik, 2005) on a charge of grievous harm (section 116 of the Bharatiya Nyaya Sanhita and previously 320 under the Indian Penal Code), which is a non-bailable offence under the Indian criminal law. The crime is punishable for a period of seven years and a fine rising to a minimum of ten years where it is serious injury as mentioned in the law. During his arrest, he suffered from epilepsy, and his family was not made aware of his arrest. He was deemed 'unfit' for trial and transferred to a psychiatric facility around 90 kilometres from his village. After sixteen years of his stay at the facility, the doctors confirmed him to be fit for trial and release. However, he did not face trial; in fact, he was transferred to Gawahati Central Jail, where he was held until 2005. His case was recognized following an intervention by the National Human Rights Commission (NHRC).

The tragic circumstances of this case are aggravated by the years he spent in prison. Lalung was isolated through language; since he was only a Tiwa speaker, he could not communicate with Assamese, Hindi, or English speakers (Freckelton, 2014). This case also brought to light other issues of 'forgotten' prisoners who were kept in psychiatric facilities and nursing homes for extended periods. The case, which is now more than two decades old, stands as a reminder of institutional failure, isolation, and oversight. The loss of life and freedom that it cost not only to an individual but to a family and to society. While this case may present an exception, it does exist within the same system that detains without guilt.

3.1. PRESUMPTION OF INNOCENCE

The criminal justice system operates on the presumption of innocence, where each person is considered innocent until proven guilty of the crime.

It is not merely a procedural right, but it is also the moral & ethical groundwork for a fair trial and punishment. The presumption of innocence flows from due process and the rule of law. Article 21 of the Indian Constitution establishes that no person shall be deprived of life or liberty without due process of law. In that light, undertrial prisoners, especially those wrongfully detained for long periods, stand in opposition to this fundamental principle of the presumption of innocence and fairness.

The Supreme Court of India in the State of Rajasthan, Jaipur vs, Balchand @ Baliay established the bedrock, stating that 'the basic rule is bail, not jail, except where there are circumstances suggestive of fleeing from justice...or creating other troubles'.

The criminal justice system in India places the burden of proof squarely on the prosecution to protect individuals from arbitrary punishment. Yet the widespread and most often prolonged detention of undertrials stands in stark contrast with this protection. The presumption of innocence beyond the prison walls also begins to fade as years pass; many undertrial prisoners carry the social stigma and disruptions far beyond the detention period.

4. JUDICIAL SYSTEM SHORTFALLS

The large number of undertrials in the country is a direct result of a slow-moving judicial system, which is faced by a multitude of challenges, including a low population-judge ratio and other systematic and administrative delays. According to official government data, at present there are about 21 judges per million population in the country (GOI, 2024). Despite growth in the number of appointed judges from 15 per million population over the last two decades, the number remains effectively quite low for an overworked judiciary.

The Supreme Court has made note of these shortfalls and suggested an increase in the number of judges in cases such as P.Ramachandra Rao Vs. State of Karnataka, as also endorsed by the Law Commission's 120th Report to achieve the number of judges per million population to fifty (GOI, 2024). The backlog of cases has continued to increase, with the National Judicial Data Grid (NJDG) recording over 4.5 million cases pending in district courts as of 2024, with 30 per cent of criminal matters pending for more than five years (Ahmed, S., 2026).

Despite its shortfalls in the process, the judicial system is set up to provide support to marginalized persons. One of the most important is the provision of free legal aid to accused persons. According to the NCRB data, between the period of 2016-2019, only 7.91% of the 'inmates admitted' into prisons utilized the legal aid system. The study by the National Law University, Delhi, Project 39A looked at this underutilisation of free legal aid through two lenses; the first, systems failure to grant access to those for whom it is designed to serve and/or more importantly, the second is the lack of quality assessment and therefore, a lack of trust in these state resources (Sundernath & Andrew, 2022). The report ultimately concludes that there is a lack of cohesive and co-related data to understand this phenomenon but admits to the requirement of empirical investigation.

5. CONCLUSION

The evidence through data and cases that have been discussed in this paper reveals a major concern within the criminal justice system where detention, in practice, has become detached from guilt and conviction. With undertrial detainees accounting for more than 72% of India's prison population, the presumption of innocence is quietly eroding through administrative delay, overcrowding, and systemic neglect.

The makeup of undertrial prisoners overrepresents marginalized groups with low income and less formal education, which in itself is an interesting finding. However, it requires more research to draw any conclusions about whether or not the criminal justice system is being used as a mechanism for control and further subjugation. Yet, it is clear that jail has begun to function more as a rule than an exception, especially for those with limited legal and financial resources. Under the UAPA, where the conviction rate remains low at 3.2 per cent, it shows evidence that a growing number of innocent people are unfairly held in jails for long periods of time since the judicial system has shifted towards a more preventative & speculative approach.

At the same time, the limited access to legal aid and the quality assessment of the free legal aid need to be strengthened to allow due process to be followed. The case of Machang Lalung, even decades later, stands as a stark reminder of what happens through institutional failure and oversight. Despite legal safeguards, the gap between these protections and their implementation remains wide. Based on Dostoevsky's observation that a society's civilization can be judged by its prisons, the persistent overcrowding, marginalization, and prolonged detention of undertrials in India demand more attention. It calls for judicial reform, faster trials, and more robust and accessible legal aid.

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