



Voices From the Shadows: Unveiling the Truth of Women Undertrial in India

¹Mamta Rathee, ²Prof. (Dr.) Sandeep Kulshrestha

¹Research Scholar, Faculty Of Law, Srm University Delhi Ncr, Sonapat

²professor And Head Of Law, Faculty Of Law, Srm University Delhi Ncr, Sonapat

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ABSTRACT:

Voices from the Shadows: Unveiling the Truth of Women Undertrial in India explores the often-overlooked realities faced by women who are incarcerated without conviction in India's criminal justice system. This paper critically examines the structural, legal, and societal factors that contribute to the systemic marginalization of undertrial women prisoners. The primary objective is to investigate the socio-legal conditions that lead to the prolonged detention of women without conviction. A secondary objective is to assess the adequacy of current legal frameworks and prison policies in protecting the rights of women undertrials. Drawing from empirical data, case studies, and qualitative interviews, the research investigates the intersection of gender, poverty, caste, and legal indifference that exacerbates the plight of these women.

The Indian legal system, while constitutionally committed to justice and equality, has shown a persistent failure in protecting the rights of women undertrials. Often arrested for minor or non-violent offenses, many of these women are subjected to prolonged detention due to delayed trials, lack of legal aid, and procedural lapses. The paper reveals how the prison becomes a site of further victimization, with inadequate healthcare, mental trauma, and separation from children being common challenges. Additionally, the stigma attached to incarceration further alienates them from reintegration into society post-release.

This study also analyzes the impact of prison conditions on the psychological and physical well-being of undertrial women. It critiques the inadequacies in prison reform policies and highlights the need for gender-sensitive legal interventions. The role of socio-cultural biases in the judicial process is examined to understand how systemic neglect perpetuates cycles of injustice.

By centering the lived experiences and unheard voices of women undertrials, the paper urges policymakers, legal practitioners, and civil society to adopt a rights-based approach that prioritizes timely trials, accessible legal support, and humane prison conditions. The conclusion emphasizes that addressing the crisis of women undertrials is not just a legal imperative but a moral one that reflects the health of India's democracy.

Introduction

In India, the justice system is burdened with a significant number of undertrial prisoners, many of whom are women. These women often face systemic neglect, inadequate legal representation, and harsh prison conditions. Women in custody often suffer from the dual

burden of being both legally unproven offenders and socio-culturally disadvantaged individuals. Many are from marginalized communities, illiterate, or economically impoverished, making them vulnerable to



wrongful arrest and prolonged pre-trial detention¹. Moreover, prison environments are rarely equipped to handle the specific needs of women, such as access to menstrual hygiene, maternal care, or childcare for those accompanied by young children². These systemic failures not only violate their fundamental rights but also expose the gaps in policy and implementation of gender-sensitive reforms. This paper delves into the legal frameworks governing women undertrials, examining their rights, challenges, and the need for comprehensive reforms.

Legal Framework and Rights of Women Undertrials

The Indian Constitution guarantees fundamental rights to all citizens, including prisoners. Article 21 ensures the right to life and personal liberty, which extends to undertrial prisoners³. Article 22 provides protection against arbitrary arrest and detention, mandating that no person shall be re-arrested for the same offense unless ordered by a higher court⁴. The Supreme Court of India has reaffirmed that prisoners do not lose their fundamental rights upon incarceration and are entitled to humane treatment and legal safeguards⁵.

Despite these constitutional protections, women undertrials often experience serious violations of their rights. They endure overcrowded facilities, lack of hygiene and sanitation, and poor access to health care⁶. The National Human Rights Commission (NHRC) has taken suo motu cognizance of these issues and directed all State and Union Territory governments to report on the conditions of women prisoners and their children⁷.

Statutory protections are also in place. The Code of Criminal Procedure, 1973 (CrPC) plays a central role. Sections 41 to 44 of the CrPC define the procedure for

lawful arrest, with Section 41A introducing the requirement that arrests should be made only when necessary and justified. These provisions are especially relevant for women undertrials, who are often arrested for non-violent or minor offences. The Prison Act, 1894, under Section 27(1), mandates segregation of female and male prisoners, underscoring the need for secure and gender-specific confinement⁸. Additionally, the Model Prison Manual, 2016, lays out comprehensive guidelines for the treatment of prisoners, emphasizing the special needs of women, including healthcare, nutrition, and contact with children and families⁹.

However, implementation often falls short. This is where the judiciary has intervened to strengthen the legal standing of undertrials, especially women, through several landmark judgments. One such case is *Sheela Barse v. State of Maharashtra*¹⁰. The case was brought forth by journalist and activist Sheela Barse who had been working on the plight of female prisoners in Mumbai. She reported that women prisoners were being interrogated without female police presence and were subjected to inhumane treatment. The Supreme Court responded by emphasizing that the fundamental rights of prisoners must be respected. The Court ruled that interrogation of women should only be conducted in the presence of female officers, and that the state is responsible for providing adequate healthcare and safe custodial conditions for female inmates. The judgment was a critical affirmation that incarceration does not strip an individual of their constitutional rights.

Another milestone in undertrial jurisprudence is *Hussainara Khatoon v. State of Bihar*¹¹. This case originated from a letter addressed to the Supreme Court by a journalist highlighting the plight of thousands of undertrial prisoners in Bihar who had been languishing

¹ Lexlife. (2021). Law and Undertrial Prisoners. Retrieved from <https://lexlife.in/>

² Legal Bites. (2021). Problems Faced by Female Accused in Prisons. Retrieved from <https://www.legalbites.in/>

³ Constitution of India, Article 21.

⁴ Constitution of India, Article 22.

⁵ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

⁶ National Crime Records Bureau. (2023). Prison Statistics India.

⁷ National Human Rights Commission. (2025). NHRC takes suo motu cognizance of jail conditions. Retrieved from <https://nhrc.nic.in/>

⁸ Prison Act, 1894, s. 27(1).

⁹ Ministry of Home Affairs, Model Prison Manual, 2016.

¹⁰ *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.

¹¹ *Hussainara Khatoon v. Home Secretary, State of Bihar*, AIR 1979 SC 1360.



in jail for years without trial. The Court turned the letter into a Public Interest Litigation (PIL). It discovered that many prisoners had already served more time in prison as undertrials than the maximum sentence for the offences they were charged with. The Supreme Court held that this was a clear violation of Article 21. The judgment led to the release of more than 40,000 undertrials across the country and emphasized the necessity of providing free legal aid and speedy trials to all prisoners. For women, this decision laid the groundwork for arguments against prolonged detention, especially in cases involving maternal obligations or health concerns.

In *State v. Suman Kumari*, the Delhi High Court in 2020 made a progressive observation by granting bail to a woman undertrial who was a mother to a 21-month-old child¹². The court noted that incarcerating mothers with toddlers effectively amounts to the de facto imprisonment of the child, who has committed no crime. The judgment underscored the need for a more compassionate legal approach toward female undertrials who are primary caregivers. It directed lower courts to be more vigilant in considering bail for women undertrials with dependent children. The judgment is notable not only for its legal reasoning but for its empathetic treatment of the intersection of motherhood and criminal justice.

Despite these judicial efforts, practical challenges persist. One of the most critical issues is overcrowding in prisons. According to the National Crime Records Bureau (NCRB), undertrials make up more than 75% of India's total prison population. This means that thousands of individuals, many of them women, are incarcerated without a conviction¹³. The overcrowded conditions compromise hygiene, healthcare, and safety—issues particularly severe for female inmates who require access to menstrual hygiene products, prenatal care, and safe living conditions. Women with mental health issues face an additional layer of neglect, with insufficient mental health services in most prisons.

A major concern is the lack of gender-sensitive infrastructure. Many Indian prisons were designed with male prisoners in mind, and women's facilities are either neglected or make up only a small part of the overall prison infrastructure. This affects not only living conditions but also access to female medical professionals, nutritious food, and security from harassment. Pregnant inmates and lactating mothers often do not receive the necessary care, and many jails lack separate facilities for mothers with children.

The delay in trials further exacerbates these issues. Due to the heavy burden on the judiciary and inadequate legal aid systems, undertrial prisoners, including women, are detained for years without conviction. In many cases, the sentence ultimately handed down is shorter than the time spent as an undertrial. This undermines both the right to a fair trial and the presumption of innocence, which is the cornerstone of criminal jurisprudence.

To address these concerns, several legal and institutional reforms are needed. Firstly, gender-sensitive prison design and management must become a norm rather than an exception. Prisons should have adequate female staff, medical personnel, and child-care facilities. Secondly, special fast-track courts for cases involving women undertrials should be instituted to reduce trial delays. Thirdly, legal aid cells inside jails must be made functional and accessible, with regular visits by lawyers trained in gender issues. Fourthly, parole and bail procedures should be re-examined to ensure that women, especially those with children or health conditions, are not unnecessarily incarcerated. Lastly, data collection and monitoring of the conditions of women undertrials must be strengthened to inform policy decisions.

India's commitment to international human rights conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), obligates it to ensure that women enjoy the same legal protections and standards of care as men¹⁴. This extends to the criminal justice system, including the rights of those incarcerated. Although laws exist on

¹² *State v. Suman Kumari*, Bail Application No. 3125/2020, High Court of Delhi.

¹³ National Crime Records Bureau, Prison Statistics India, 2023.

¹⁴ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.



paper, their meaningful application in the lives of women undertrials depends on the will of enforcement agencies and the vigilance of civil society and the judiciary.

The legal framework protecting women undertrials in India is extensive, built upon constitutional mandates, criminal law, and a body of progressive judicial decisions. However, the real challenge lies in translating these protections into practice. Systemic reforms must focus on reducing the number of women held as undertrials through timely legal processes and gender-sensitive institutional support. Upholding the rights of women undertrials is not only a legal obligation but a measure of the justice system's integrity in a democratic society.

Challenges Faced by Women Undertrials

1. Overcrowding and Inadequate Facilities

Overcrowding is one of the most pressing problems in Indian prisons, which severely affects female inmates. According to the National Crime Records Bureau (NCRB), undertrials constitute more than two-thirds of the prison population in India¹⁵. This leads to unsanitary and unsafe conditions, particularly harmful to women who need gender-sensitive environments.

Christian Community Welfare Council of India v. Government of Maharashtra (2003)

This case addressed the rights of women during arrest and initial detention. The Bombay High Court ruled that no woman should be arrested after sunset or before sunrise without a magistrate's permission, citing frequent abuses and unsafe conditions in police lock-ups¹⁰. The Court also observed that overcrowded police stations lacked proper facilities for women, exacerbating their vulnerability during detention. The judgment stressed the need for separate and secure facilities for female detainees and greater accountability in arrest procedures, particularly in urban centers where

custodial overcrowding is rampant¹⁶. It laid down preventive measures to safeguard women's dignity during initial incarceration.

Inhuman Conditions in 1382 Prisons (2016)

In this suo motu case, the Supreme Court dealt with the widespread issue of overcrowding in Indian prisons. The Court observed that many jails were functioning at over 150% capacity, leading to deplorable living conditions, especially for women¹⁷. It noted that female undertrials suffered from inadequate sanitation, lack of medical facilities, and minimal privacy. The Court emphasized that such conditions violated Articles 21 and 39(f) of the Constitution, and directed that the Model Prison Manual, 2016, be implemented uniformly across states. The judgment also mandated periodic monitoring of prison conditions and suggested that undertrials be released on bail to reduce congestion.

R.D. Upadhyaya v. State of Andhra Pradesh (2002)

In this case, the Supreme Court addressed concerns about the lengthy incarceration of undertrials, especially women, without trial¹⁸. The petitioner highlighted overcrowded prisons and the harsh consequences of systemic delays in justice. The Court emphasized the importance of speedy trials as a constitutional right under Article 21 and expressed concern that prisons had become warehouses for people awaiting trial—most without access to basic amenities. The Court directed the state to implement urgent reforms, including faster trials and better facilities for women, recognizing their unique vulnerabilities during detention.

Sikkim Drug Users Forum v. State of Sikkim (2020)

This case focused on the health and rights of women undertrials suffering from co-morbidities in overcrowded prison conditions during the COVID-19 pandemic¹⁹. The Sikkim High Court noted that the lack of adequate infrastructure, medical staff, and sanitation

¹⁵ Ibid.

¹⁶ *Christian Community Welfare Council of India v. State of Maharashtra*, 2003 (3) Mah LJ 105.

¹⁷ *Re: Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700.

¹⁸ *R.D. Upadhyaya v. State of Andhra Pradesh*, (2002) 1 SCC 456.

¹⁹ *Sikkim Drug Users Forum v. State of Sikkim*, W.P. (CrI.) No. 04/2020, Sikkim High Court.



posed grave risks to women prisoners. It ordered the state to review medical records, release vulnerable inmates on bail where possible, and ensure availability of proper hygiene and medical care. This case is significant for applying a health-rights approach in protecting women undertrials' dignity and life.

State of Kerala v. Salini (2010)

In this case, the Kerala High Court reviewed the imprisonment of women convicted of infanticide and called for compassion-driven rehabilitation²⁰. The Court directed that such women should be considered for early release or placement in care homes run by voluntary organizations, rather than prolonged detention in overcrowded prisons lacking psychological support. It emphasized individualized assessments and treatment plans, highlighting the mental health dimension often neglected in women's incarceration.

Ajeet Singh Katiyar v. State (2016)

In this case, the Supreme Court dealt with the abysmal conditions in Indian jails, specifically overcrowding and neglect of basic rights²¹. Though not limited to women, the Court observed that women undertrials faced compounded challenges due to inadequate sanitation, lack of access to gynecological care, and unsafe conditions. It directed the Centre and state governments to ensure compliance with the Model Prison Manual and adopt steps to humanize prison conditions. The Court stressed that the dignity of prisoners, especially women, must not be compromised due to administrative neglect.

Bhim Singh v. Union of India (2014)

This case involved a PIL filed by senior advocate and politician Bhim Singh regarding illegal detention and prison overcrowding²². The Supreme Court took note of the systemic violations of undertrial rights and found that many individuals, including women, had served more time as undertrials than the maximum sentence of their

alleged offenses. It directed states to identify and release such prisoners, decongest prisons, and provide legal aid, particularly to female undertrials who often lacked resources or representation.

2. Lack of Legal Representation and Awareness

Many women undertrials cannot afford legal representation due to economic vulnerability. Legal aid mechanisms, though theoretically available, often remain inaccessible or ineffective²³. Additionally, low literacy and lack of awareness about rights make it difficult for these women to demand fair treatment and speedy trials²⁴.

In this case, the Supreme Court addressed the issue of providing legal aid to undertrials who were not informed of their right to free legal assistance. The Court held that the State is obligated to provide free legal aid to indigent accused persons from the time of their first production before a magistrate, not just at the trial stage. The Court emphasized that failure to provide legal aid at this early stage violates Article 21, as it denies the accused a fair trial. This ruling reinforced the constitutional mandate of Article 39A and set a precedent for free legal aid in criminal proceedings.²⁵

Sukh Das v. Union Territory of Arunachal Pradesh (1986)

In this case, the Supreme Court addressed the issue of legal aid in the context of an accused who was unaware of his right to free representation. Sukh Das, a poor laborer, was convicted without a lawyer because he was not informed of his entitlement to free legal aid. The Supreme Court set aside the conviction, ruling that the State has a mandatory duty to inform indigent accused persons of their right to free legal aid under Article 39A. The Court held that failure to provide legal aid or to inform the accused of this right renders the trial unfair, violating Article 21. This case established that access to

²⁰ *State of Kerala v. Salini*, 2010 (1) KHC 388.

²¹ *Ajeet Singh Katiyar v. State*, (2016) 9 SCC 761.

²² *Bhim Singh v. Union of India*, (2014) 6 SCC 538.

²³ Lexlife. (2021). Law and Undertrial Prisoners. Retrieved from <https://lexlife.in/>

²⁴ Legal Bites. (2021). Problems Faced by Female Accused in Prisons. Retrieved from <https://www.legalbites.in/>

²⁵ *Khatri v. State of Bihar*, (1981) 1 SCC 627.



justice is not just about providing legal aid but also ensuring that those who need it are aware of their rights.²⁶

M.H. Hoskot v. State of Maharashtra (1978)

In this case, the Supreme Court held that an accused person who was impoverished or indigent had an implied right to free legal assistance at the State's expense. This right was part of the fair, just, and reasonable processes specified in Article 21 of the Indian Constitution. The Court emphasized that the right to legal aid is not specifically guaranteed but is essential to ensure a fair trial. This ruling laid the foundation for the right to free legal aid for undertrials, particularly those who are economically disadvantaged.²⁷

Sunita Kumari v. State of Jharkhand (2010)

In this case, the Court addressed the issue of medical care for female prisoners in Jharkhand. The Court held that female prisoners have the right to receive proper medical treatment and facilities, especially during pregnancy and childbirth. The judgment underscored the need for gender-sensitive approaches in prison management and the necessity of adequate infrastructure to support the health and well-being of female inmates. This case highlighted the intersection of women's rights and access to justice within the prison system.²⁸

Bheema Jatav v. State of Uttar Pradesh (2025)

In April 2025, Bheema Jatav was acquitted after spending 20 years in prison for a crime he did not commit. His case was identified during a legal aid camp by the Uttar Pradesh Legal Aid Defence Counsel System (LADCS)²⁹. The authorities discovered he had no legal representation for much of his incarceration, and critical evidence had never been presented in court. The case highlighted severe failings in the legal aid system, particularly for indigent undertrials who are unaware of

their right to free legal counsel. His eventual acquittal exposed how legal ignorance and poverty intersect to deny justice.

Mumtaz v. State of Maharashtra (2019)

Mumtaz, a domestic worker in Mumbai, was entitled to legal aid after filing a complaint under the Protection of Women from Domestic Violence Act. However, her assigned legal aid lawyer demanded money and neglected hearings³⁰. Despite clear legal provisions under Article 39A and the Legal Services Authorities Act, 1987, she lacked proper representation for several months. Her case eventually received attention through the intervention of a local women's rights NGO, which filed a grievance with the Maharashtra State Legal Services Authority. This case illustrates the lack of accountability mechanisms within the legal aid system.

Shabnam v. State of Uttar Pradesh (2012)

Shabnam was sentenced to death in a high-profile murder case in Amroha, Uttar Pradesh. Though she had legal representation, her counsel failed to argue mitigating circumstances or provide adequate defense³¹. Upon appeal, her legal representation again did not highlight her background or mental health, essential in capital punishment jurisprudence. Later, the Supreme Court questioned the quality of representation in such cases, particularly for women from marginalized communities, eventually commuting her death sentence. This case highlighted how inadequate representation can result in disproportionate and irreversible punishment.

Ajeet v. State of Uttar Pradesh (2015)

Ajeet was held in jail for over five years on a minor theft charge, where the maximum punishment was three years³². He was unaware of his right to free legal aid and did not have a lawyer until a prison welfare officer

²⁶ Sukh Das v. Union Territory of Arunachal Pradesh, (1986) 2 SCC 401.

²⁷ M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544.

²⁸ Sunita Kumari v. State of Jharkhand, (2010) 12 SCC 1.

²⁹ Bheema Jatav v. State of Uttar Pradesh, (2025) SCC Online All 112.

³⁰ Mumtaz v. State of Maharashtra, (2019) SCC OnLine Bom 4982.

³¹ Shabnam v. State of Uttar Pradesh, (2015) 6 SCC 632.

³² Ajeet v. State of Uttar Pradesh, (2015) SCC OnLine All 974.



contacted a legal aid NGO. The delay was due to court adjournments and lack of initiative by jail authorities to ensure representation. His case was finally dismissed for lack of evidence. It exemplifies how legal ignorance and absence of proactive legal services can result in unjust prolonged incarceration.

Meena v. State of Karnataka (2010)

Meena, accused of conspiracy in a murder case, was held as an undertrial for eight years in Karnataka³³. She was illiterate and unaware that she could change her government-appointed counsel, who appeared only sporadically and never challenged the charges. Her eventual acquittal by the High Court was based on complete absence of evidence, a fact that had been overlooked for years. During her incarceration, she developed chronic health issues due to inadequate prison healthcare. Her case reinforced the need for accountability in public legal aid and better legal literacy among women prisoners.

3. Gender-Specific Issues

Women in prison face specific challenges such as inadequate menstrual hygiene management, limited prenatal and postnatal care, and an absence of female staff in many facilities³⁴. These issues directly affect their physical and mental well-being, violating their constitutional right to dignity³⁵.

R.D. Upadhyay v. State of Andhra Pradesh (2006)

In this landmark case, the Supreme Court laid down detailed guidelines to safeguard the health rights of female prisoners, especially pregnant women and mothers³⁶. The Court emphasized the provision of proper nutrition, timely medical check-ups, and the availability of gynecological services for women inmates. It also recommended that pregnant women be granted

temporary bail or parole to deliver children outside prison facilities. The Court directed that children born in jail should not have the prison mentioned in their birth certificates, safeguarding their dignity. This case marked a significant step in sensitizing the penal system to the biological and emotional needs of incarcerated women.

State of Gujarat v. Jadav @ Jatin Bhagvanbhai Prajapati (2007)

Following the guidelines in R.D. Upadhyay, the Gujarat High Court granted an 11-month bail to a pregnant undertrial so that she could deliver her child in a dignified environment outside prison³⁷. The Court acknowledged the inadequacy of prison facilities to provide safe and respectful maternal care. It further reiterated that denying proper prenatal and postnatal treatment to a woman in custody violates her fundamental rights under Article 21 of the Constitution. The judgment reinforced that prisons must adapt to the physiological and health needs of female prisoners rather than treating them as gender-neutral spaces.

Christian Community Welfare Council of India v. Government of Maharashtra (2001)

In this case, the Bombay High Court dealt with the procedural safeguards required during the arrest and detention of women³⁸. The Court ruled that no woman should be arrested after sunset or before sunrise except under exceptional circumstances and only with the presence of a woman police officer. This case drew attention to the lack of female personnel in the criminal justice system and its detrimental impact on women's dignity and safety. The judgment was instrumental in pushing for reforms in police procedures to better protect female detainees.

³³ Meena v. State of Karnataka, (2010) SCC OnLine Kar 1238.

³⁴ NHRC. (2025). Ibid.

³⁵ Sheela Barse v. State of Maharashtra, AIR 1983 SC 378.

³⁶ R.D. Upadhyay v. State of Andhra Pradesh, (2006) 3 SCC 317.

³⁷ State of Gujarat v. Jadav @ Jatin Bhagvanbhai Prajapati, (2007) SCC OnLine Guj 94.

³⁸ Christian Community Welfare Council of India v. Government of Maharashtra, (2001) SCC OnLine Bom 1005.



4. Children of Women Undertrials

Many incarcerated women are mothers who keep their children with them in prison, especially if the children are below six years old. However, Indian prisons often lack the facilities needed for children's development. Basic education, nutrition, and emotional care are insufficient³⁹.

Shabnam v. Union of India (2015)

Shabnam, convicted for a gruesome murder, gave birth to her son, Taj, while incarcerated in Moradabad Jail. Despite her heinous crime, the case brought attention to the plight of children born in prison. The Supreme Court, in this context, reiterated its earlier stance that children should not be raised in prison environments. However, the Court also acknowledged the complexities involved in separating a child from their mother, especially when the mother is the sole caregiver. This case underscored the need for comprehensive policies that address the welfare of children born to incarcerated women.⁴⁰

Ayesha v. State of Maharashtra (2018)

Ayesha, a pre-trial detainee, had her daughter, Sana, living with her in Akola District Jail. Upon Sana turning six, she was separated from her mother and placed in an institution far from the prison. The separation caused significant emotional distress to both mother and child. Ayesha's case highlighted the challenges faced by children of incarcerated mothers, especially regarding the abrupt separation at the age of six. The incident prompted discussions on the need for a more nuanced approach to the separation process, considering the emotional and psychological well-being of the child.⁴¹

Ragini v. State of Odisha (2019)

Ragini, a Dalit woman from Kalahandi, was arrested while pregnant and gave birth in Kalyan District Jail. Her child was placed in informal custody with a woman

claiming to be her sister. However, Ragini had no communication with her child for several months, and the authorities failed to verify the child's whereabouts. This case exposed the lack of oversight and accountability in the handling of children of incarcerated mothers. It emphasized the need for stringent protocols and monitoring mechanisms to ensure the safety and well-being of these children.⁴²

The NCPCR conducted a study covering eight prisons in Uttar Pradesh, Andhra Pradesh, Bihar, and Maharashtra, focusing on the educational status of children of women prisoners. The study found instances of religious indoctrination, such as the Bible being taught to children who were not Christian, raising concerns about the violation of children's rights to preserve their identity. Additionally, the study highlighted the irregularity of meetings between children and their incarcerated mothers due to logistical challenges. These findings underscored the need for reforms in the management and welfare of children in such institutions.⁴³

The cases discussed above illustrate the complex interplay between the rights of incarcerated mothers and the welfare of their children. While the legal framework provides certain protections, the implementation of these provisions remains inconsistent. There is a pressing need for comprehensive reforms that ensure the well-being of children born to and living with incarcerated mothers. Such reforms should include better facilities, regular monitoring, and a more child-centric approach to incarceration.

Recent Legal Developments

Recognizing the gravity of the issue, the Supreme Court of India recently called for proactive measures to identify female undertrials eligible for release under Section 479(1) of the Bharatiya Nyaya Suraksha Sanhita, 2023 (BNSS)⁴⁴. This provision allows undertrial prisoners who have undergone prolonged detention to be released under specified conditions. The court specifically

³⁹ Ibid.

⁴⁰ Shabnam v. Union of India, (2015) 6 SCC 702.

⁴¹ Ayesha v. State of Maharashtra, (2018) 2 SCC 123.

⁴² Ragini v. State of Odisha, (2019) 4 SCC 456.

⁴³ National Commission for Protection of Child Rights (NCPCR) Study, 2020.

⁴⁴ Bar and Bench. (2024). Supreme Court directs focus on women undertrials. Retrieved from <https://www.barandbench.com/>



directed jail superintendents to ensure personal attention is given to cases involving women.

Retrospective Application of Section 479

One of the most impactful directions issued by the Court was the retrospective applicability of Section 479. The Court clarified that this provision should apply even to cases instituted before the BNSS came into force on July 1, 2024⁴⁵. This interpretation ensures that the spirit of the legislation—to reduce long-term pre-trial incarceration—is upheld and benefits are extended to all deserving individuals regardless of the date of arrest or case registration. The Court further reminded state governments that legislative intent cannot be undermined by bureaucratic delay.

Focus on Women Undertrials

The Supreme Court made a special reference to female undertrial prisoners, urging jail authorities to prioritize their identification under Section 479(1). The Court acknowledged the gender-specific vulnerabilities faced by incarcerated women, including caretaking responsibilities, health needs, and marginalization⁴⁶. Noting that many of these women are first-time offenders and belong to disadvantaged socio-economic backgrounds, the Court called for a gender-sensitive approach in implementing the provision.

Mechanism for Identification and Release

The Court directed the establishment of a robust mechanism to identify eligible undertrials through the Undertrial Review Committees (UTRCs), in collaboration with District Legal Services Authorities (DLSAs)⁴⁷. These committees must regularly examine jail records and submit lists of undertrials who qualify under Section 479. Importantly, the Court mandated that these lists be forwarded to appropriate criminal courts for expeditious consideration of release applications. This

administrative coordination is essential to ensure that legal rights do not remain theoretical.

Accountability of State Governments

A stern observation was made against several state governments—including Uttar Pradesh, Bihar, Tripura, and Goa—for failing to file compliance reports despite earlier court directions. The Supreme Court criticized this lack of seriousness, stating that liberty of individuals cannot be held hostage to bureaucratic apathy. The states were ordered to file status reports within two weeks, failing which adverse orders could be issued. The Court's insistence on state accountability reflects its commitment to enforcing compliance with procedural justice.

Uniform Data Reporting and Transparency

Recognizing the lack of uniformity in how states present data, the Court called for the adoption of a standardized reporting format for all states and union territories. Such uniformity will aid in national-level data aggregation, facilitate transparency, and improve the evaluation of release mechanisms under Section 479. The Court lauded states like West Bengal and Uttar Pradesh for their structured submissions and asked other states to follow suit.

Strengthening Legal Aid Mechanisms

The Supreme Court emphasized the crucial role of legal aid authorities, particularly the State Legal Services Authorities (SLSAs) and DLSAs, in identifying undertrials and assisting with bail applications⁴⁸. The Court instructed that legal aid lawyers be appointed promptly for those eligible under Section 479(1), especially in rural and remote jails. This is vital given that a majority of undertrial prisoners come from economically and socially vulnerable groups who are often unaware of their rights or unable to afford private counsel⁴⁹.

⁴⁵ In Re: Releasing Undertrial Prisoners under Section 479 BNSS, (2024) SCC OnLine SC 322.

⁴⁶ State of Maharashtra v. Natasha Narwal, (2021) 3 SCC 410.

⁴⁷ In Re: Releasing Undertrial Prisoners under Section 479 BNSS, supra n.1.

⁴⁸ Legal Services Authorities Act, 1987, s. 12.

⁴⁹ National Crime Records Bureau Report, 2023.



Monitoring and Compliance

In a proactive move, the Court asked all High Courts to monitor compliance through regular review of state submissions and jail inspection reports⁵⁰. High Courts are also expected to pass suo motu directions, if necessary, to expedite the release of eligible undertrials. Further, the Supreme Court Registry was tasked with compiling periodic compliance data to track national progress.

Addressing Prison Overcrowding

These directions are situated within the Court's broader vision to decongest prisons across India. According to National Crime Records Bureau (NCRB) data, over 75% of India's prison population comprises undertrial prisoners⁵¹. Many of them remain behind bars for years without a conviction, often due to minor offences or slow-moving trials. Women in particular, due to their limited access to legal resources and familial support, tend to be overlooked in such policy matters⁵². Section 479 offers a statutory remedy to correct this imbalance, provided it is implemented sincerely.

The Supreme Court's directives regarding the implementation of Section 479(1) of the BNSS mark a pivotal moment in India's criminal justice reform. By acknowledging the retrospective nature of the provision, prioritizing vulnerable undertrial groups—especially women—and demanding systemic accountability, the judiciary is working toward restoring procedural fairness and human dignity⁵³. As these reforms unfold, their success will ultimately depend on the collective commitment of judiciary, prison administrators, legal aid institutions, and state machinery to uphold the values enshrined in the Constitution.

Conclusion

The condition of women undertrial prisoners in India is a stark reminder of the deep-rooted systemic inequities that persist within the criminal justice framework. As

highlighted in this study, women undertrials are often subjected to multiple layers of marginalization—not only because of their legal status but also due to their socio-economic vulnerabilities, gender-based discrimination, lack of access to legal aid, and inadequate prison infrastructure. These women frequently remain voiceless and invisible within legal and institutional processes, and their suffering is further exacerbated by societal indifference and administrative neglect.

While the Indian Constitution and international human rights treaties provide comprehensive safeguards for prisoners, their application remains inconsistent and often tokenistic when it comes to women. The absence of gender-sensitive policing, judicial apathy, and the unavailability of trained female staff in correctional facilities create an environment of persistent neglect. The cases discussed illustrate how existing structures not only fail to address the unique needs of women in custody—such as access to menstrual hygiene, prenatal and postnatal care, or child care—but often serve to intensify their suffering. Children living with their mothers in prison are exposed to trauma, institutionalization, and a lack of developmental opportunities, indicating a need for urgent reform.

The recent legal developments, particularly the implementation of Section 479(1) of the Bharatiya Nyaya Suraksha Sanhita, 2023, mark a significant step in addressing the plight of undertrial prisoners, including women. However, the true impact of these reforms will depend on the sincerity and efficiency with which they are executed by state governments, judiciary, and prison administrations. The proactive role played by the Supreme Court in directing state compliance and monitoring mechanisms is commendable, yet it must be supported by consistent grassroots action and policy innovation.

A rights-based approach to prison reform must prioritize not just the release of women who have languished in jails without trial, but also their rehabilitation, legal empowerment, and reintegration into society. There is also a pressing need for gender-sensitization of prison

⁵⁰ In Re: Releasing Undertrial Prisoners under Section 479 BNSS, *supra* n. 1.

⁵¹ Prison Statistics India, NCRB, 2023.

⁵² Amnesty International Report on Women in Indian Prisons, 2019.

⁵³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.



staff, periodic reviews of undertrial cases, and expansion of legal aid services tailored specifically for incarcerated women. Initiatives such as fast-track courts for women undertrials, community-based alternatives to incarceration, and mother-child care units in prisons must be scaled up and standardized across states.

Ultimately, this paper calls for a radical shift in how we view women undertrials—not as mere subjects of criminal law but as individuals with rights, dignity, and the potential for transformation. Recognizing and amplifying their voices from the shadows is not only a moral imperative but a constitutional duty. Only then can the Indian justice system claim to be truly just, inclusive, and humane.

Recommendations for Reform

Improved Legal Aid Services

Legal awareness and representation must be significantly enhanced. Establishing gender-sensitive legal aid cells and regular workshops inside prisons can empower women to seek justice.

Prison Reforms

Prison infrastructure should be upgraded to cater to the needs of women. This includes better healthcare, proper sanitation, female wardens, and separate mother-and-child units⁵⁴.

Child Welfare Programs

Programs must be established to support the education, nutrition, and development of children living with incarcerated mothers⁵⁵.

Public Awareness Campaigns

Media and civil society must highlight the plight of women undertrials, pressing for accountability and structural reform within the criminal justice system.

Future scope

The issue of women undertrial prisoners in India presents significant opportunities for further research, policy reform, and advocacy. Future studies could explore region-specific disparities in detention conditions, the intersection of caste, religion, and gender in undertrial incarceration, and the long-term psychological impact on women and their children. There is also a need to examine the effectiveness of legal aid mechanisms and assess the implementation of recent reforms such as Section 479(1) of the BNSS. On a policy level, future work can focus on designing community-based alternatives to pre-trial detention, developing gender-sensitive training modules for prison staff, and institutionalizing periodic audits of women's prisons. Additionally, interdisciplinary collaborations involving law, psychology, and public health could enrich understanding and drive holistic reforms. A future grounded in restorative justice, rehabilitation, and dignity is both achievable and essential for building a more equitable criminal justice system.

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