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PUNISHMENT BEFORE CONVICTION: A CRIMINOLOGY STUDY OF PRE - TRIAL STIGMA

Author
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PUNISHMENT BEFORE CONVICTION: A CRIMINOLOGY STUDY OF PRE - TRIAL STIGMA

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Abstract

Pre-trial punishments and detentions are what is often called as punishment before conviction by scholars wherein the individuals accused of any offence are subjected to punishment before the guilt is proven often to avoid further commission of crime. This research paper dives deep into the phenomena of punishing individuals before the judgement is reached. This paper examines as to how the criminal justice system which is viewed as neutral and fair results in social stigma and injustice with the individuals accused and not proven guilty and explores the system which frequently bypasses the constitutional protections. By synthesizing and explaining foundational theories including Malcolm Feeley's "process as punishment," Howard Becker's labeling theory, and Erving Goffman's analysis of spoiled identity, this research paper explains the mechanisms through which arrest, custodial remand, and bail conditions impose severe social, psychological, and economic costs on unconvicted individuals who are ultimately deemed to be innocent at the conclusion of the trial. The analysis pays particular attention to the Indian context, scrutinizing the change from the Code of Criminal Procedure, 1973¹, to the Bharatiya Nagarik Suraksha Sanhita, 2023². Through an examination of National Crime Records Bureau data and judicial precedents, the study reveals about the "undertrial crisis" in India, whereby nearly 77% of the prison population is unconvicted and thus, represents a systematic failure to uphold the presumption of innocence. This research further delves into the impact of pre-trial detention on marginalized communities, the gendered nature of stigma, and the long-term developmental trauma faced by the families of the detained in terms of social, psychological and economical stigma. It concludes by advocating for a reconstruction of bail jurisprudence that prioritizes liberty and freedom over managerial social control and recommends statutory reforms to provide compensation for wrongful pre-trial incarceration.

Keywords: *Pre-trial Punishments, Social Stigma, Presumption of Innocence, Criminal Justice, Undertrial crisis.*

Introduction

The presumption of innocence is a fundamental principle often referred to as golden rule of criminal jurisprudence in India serving as a moral and political consensus highlighting that no citizen shall be subjected to the state-sponsored hardship or punishment until the guilt is proven beyond doubt. However, modern criminological inquiry reveals a divergence between this normative ideal and the lived experience of those caught in the early stages of the legal system. It is evident that for many individuals, the criminal justice process itself functions as a primary mechanism of sanction which is often called as the "punishment before conviction" that functions through administrative detention, economic extraction, and social criticism. In jurisdictions across the Global South, and particularly within the Indian subcontinent, this

¹ The Code of Criminal Procedure, 1973 (Act 2 of 1974).

² The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023).

phenomenon has culminated in a chronic "undertrial crisis." As of 2023, approximately 77% of India's prison population consists of individuals who have not been convicted of any crime.³ These statistics highlight a systemic disregard for the principle of presumption of innocence, where the state maintains a "culture of custody" for those accused that is often seen to disproportionately impact the poor, the marginalized, and those lacking social capital whereas those with enough social standing often taking advantage of this principle by hiring the best legal professionals and considering this as a loophole. The experience of these "legally innocent" individuals is marked by what sociologists term the "dramatization of evil". This paper provides a deep, multi-dimensional study of pre-trial stigma.

The Contradiction of Pre-Trial Detention and The Presumption of Innocence

The modern criminal justice system is founded upon the principle of presumption of innocence, a normative principle that dictates that the state should treat its citizens with a high degree of restraint ensuring that no one shall be convicted of an offence until proven guilty beyond reasonable doubt. However, the reality of the system reveals a profound contradiction: the very procedures intended to safeguard justice are often viewed as one of the primary mechanisms of punishment. This phenomenon is famously termed as "the process is the punishment" by Malcolm Feeley. It suggests that for a majority of individuals particularly those in the lower courts, the actual sentence imposed upon conviction for an offence is far less impactful and sometimes even lesser in terms than the indignities, financial burdens, and social costs accrued during the pre-trial phase.

Criminological inquiry into this subject necessitates a distinction between "factual innocence" and "legal innocence".⁴ While an individual may be factually guilty of an act, the presumption of innocence serves as a normative proposition that directs the state officials on how they must proceed regardless of the likelihood of conviction.⁵ When the pre-trial process becomes punitive, it undermines the state's moral authority and violates the political consensus that individuals should not be subjected to state-sponsored hardship without a formal adjudication of guilt.⁶

The shift from a traditional adjudicative view to a criminological "process view" highlights these contradictions. While the traditional view sees the pre-trial phase as neutral preparation, the process view identifies it as a tool for managerial social control and informal sanctioning.⁷ Under this framework, the presumption of innocence often becomes a legal fiction bypassed by administrative detention, and bail functions are transformed from a means of ensuring presence at trial to a method for revenue generation and testing the docility of the accused.⁸ Consequently, stigma is no longer merely a byproduct of conviction but a primary tool of social exclusion utilized long before a verdict is reached.

The experience of the unconvicted individual is characterized by a "field of bail," a bounded sphere of social action with specific rules of engagement and shared understandings that prioritize containment and control.⁹ Within this field, court officials often use the bail process

³Jayashri Rajbangshi and Dr. Diptimoni Boruah, "Speedy Trial or Prolonged Detention: Undertrial Prisoners and India's New Criminal Laws" 8 *International Journal of Law Management & Humanities* 2054 (2025).

⁴Pamela R. Ferguson, "The Presumption of Innocence and its Role in the Criminal Process", 27 *Criminal Law Forum* 131–158 (2016).

⁵ *Ibid.*

⁶ J. Harvie Wilkinson III, "The Presumption of Civil Innocence" 104 *Virginia Law Review* 589 (2018).

⁷ Joshua Page and Christine S. Scott-Hayward, "Bail and Pretrial Justice in the United States: A Field of Possibility" 5 *Annual Review of Criminology* 91 (2022)

⁸ Alyssa Leblond, "'The More You Do through This Program, the Better It's Going to Look in Court': Testing, Disciplining and Sorting Accused Pre-Trial through Bail Supervision Program" *The British Journal of Criminology* azaf123 (2026)

⁹ *Supra* note 8, at 3.

for purposes not recognized by law: to punish individuals perceived as troublesome, to elicit information, or to manage perceived dangerousness without the evidentiary burden required for a full trial.¹⁰

This managerial turn in the criminal justice system reflects a shift from determining guilt to sorting and disciplining marginalized populations based on perceived risk.¹¹

Theoretical Frameworks of Pre-Trial Stigma and Social Control

To understand the nature of pre-trial stigma, it is essential to note the sociological theories of labeling and symbolic interactionism. These frameworks provide the terminology to describe how the state changes a person into a "criminal" long before the judicial examination.

Labeling Theory and the "Master Status"

Howard Becker's labeling theory posits that deviance is not an inherent quality of an act, but a status created through social reactions.¹² Once an individual is arrested and formally processed, the state applies a "label" that often becomes their "master status," overshadowing all other characteristics and social roles.¹³ To be labeled a "criminal" or "accused" carries deep-seated connotations of immorality and unreliability, leading society to assume the individual is inherently prone to rule-breaking.¹⁴ This label is particularly "sticky" because while the transition into the status of the accused is a highly ritualized public ceremony what is referred by Frank Tannenbaum as the "dramatization of evil". However, there are no analogous official ceremonies to cancel the stigma once a person is released or acquitted.

Goffman's Analysis of Stigma and Spoiled Identity

Erving Goffman characterized stigma as a process where an individual is disqualified from full social acceptance due to a "deeply discrediting" attribute. For the unconvicted prisoner, the stigma is an objective form of social opprobrium that attaches to the target regardless of their internal state.¹⁵ This spoiled identity leads to "Status Fragility," where the individual's previous social standing is annihilated by the imposition of penal categorizations.¹⁶

This is especially profound for those with lived experience of the system such as "Convict Criminologists" who find that the "collateral and informal pains of imprisonment" follow them into academic and professional spaces, constantly threatening their status and autonomy.¹⁷

Secondary Deviance and Self-Fulfilling Prophecies

The internal psychological transition that accompanies labeling is described by Edwin Lemert as "secondary deviance". When individuals find their access to conventional opportunities blocked by the stigma of an arrest record, they may undergo a "deviant self-concept" change, internalizing the label and identifying with the company of other offenders.¹⁸ This process often results in a self-fulfilling prophecy.

¹⁰ Ibid.

¹¹ Id.

¹² Jón Gunnar Bernburg, "Labeling Theory" in Marvin D. Krohn, Alan J. Lizotte, et.al. (eds.), *Handbook on Crime and Deviance* 187 (Springer, New York, 2009).

¹³ Ibid.

¹⁴ Ibid.

¹⁵ F. Mégret, "Practices of Stigmatization," *76 Law & Contemporary Problems* 287 (2014).

¹⁶ Ed Schreeche-Powell, "Insecurity and Fragility: The Perpetual Duo of Precarity for 'Convict Criminologists' in a Risk Averse Academy" *33 Critical Criminology* 155 (2025)

¹⁷ Ibid.

¹⁸ Joshua Page and Christine S. Scott-Hayward, "Bail and Pretrial Justice in the United States: A Field of Possibility" *5 Annual Review of Criminology* 91 (2022)

This deviance amplification contradicts the classical notion of specific deterrence, suggesting that the pain of pre-trial processing often makes individuals more, rather than less, likely to engage in future criminal acts.¹⁹

The Indian Landscape: From the Code of Criminal Procedure To The Bharatiya Nagarik Suraksha Sanhita

The Indian criminal justice system has been significantly transformed by the transition from the colonial-era Code of Criminal Procedure, 1973 (CrPC)²⁰, to the Bharatiya Nagarik Suraksha Sanhita, 2023²¹ (BNSS). While the legislative intent is framed as decolonizing the law and ensuring "citizen-centric" justice, a detailed comparison reveals significant shifts.

Statutory Tweaks and the Persistence of Custodial Power

The BNSS preserves much of the core framework of bail law but introduces adjustments to timelines and investigation procedures.²² One critical change is found in Section 187²³ of the BNSS, the successor to Section 167²⁴ of the CrPC.²⁵ While the CrPC generally limited police custody to the first 15 days after arrest, the BNSS allows this 15-day period to be taken in phases within the first 60 or 90 days of the investigation.²⁶ This shift has raised concerns regarding prolonged pre-trial interrogation and higher risks of custodial abuse.²⁷

Additional reforms under the BNSS include:

- **Mandatory Arrest Recording:** Section 35²⁸ now mandates that police officers record specific reasons for arrest or non-arrest in offenses punishable with less than seven years.²⁹
- **Forensic Mandate:** Forensic investigation is now mandated for all offenses punishable with seven years or more.³⁰
- **Bail Application Timelines:** Magistrates are now required to decide on bail applications within a fixed statutory window of seven days.³¹
- **Release Thresholds for Undertrials:** Section 479³² of the BNSS preserves the rule for release after serving half the maximum sentence but introduces a new threshold allowing first-time offenders release after serving one-third of the maximum sentence.

¹⁹Prayas, *Experiences of Undertrial Prisoners Released on Bail: Accessing Bail and Post-Bail Situation* (Tata Institute of Social Sciences, 2023), available at: https://tiss.ac.in/uploads/files/Bail_Study_Report_-_2023.pdf (last visited Jan. 12, 2026).

²⁰ Supra note 2, at 1.

²¹ Supra note 3, at 1.

²² PRS Legislative Research, "The Bharatiya Nagarik Suraksha Sanhita, 2023", available at: <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023> (last visited Jan. 12, 2026).

²³ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 187.

²⁴ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 167.

²⁵ "Comparative Analysis of BNSS and CrPC: Understanding the Shifts in India's Criminal Justice Framework" 26 *The Lawway with Lawyers Journal* (2025), available at: <https://thelawwaywithlawyers.com/comparative-analysis-of-bnss-and-crpc-understanding-the-shifts-in-indias-criminal-justice-framework/> (last visited Jan. 12, 2026).

²⁶ Prime Legal, "Bail Under the Bharatiya Nagarik Suraksha Sanhita: Are the New Provisions Truly 'Bail-Friendly'?", *Prime Legal Blogs*, Dec. 21, 2025, available at: <https://blog.primelegal.in/bail-under-the-bnss-are-the-new-provisions-truly-bail-friendly/> (last visited Jan. 12, 2026).

²⁷ Manjeet Balyan and Ritu Pant, "Pre-trial Detention, Bail Denial and Socio-economic Vulnerability" 6 *International Journal of Research Publication and Reviews* 9714 (2025), available at: <https://ijrpr.com/uploads/V6ISSUE11/IJRPR56339.pdf> (last visited Jan. 12, 2026).

²⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 35.

²⁹ Supra note 26, at 6.

³⁰ Supra note 23, at 6.

³¹ Supra note 26, at 6.

³² The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 479.

The "Undertrial Crisis" and the 1/3 Release Rule

The BNSS attempts to address chronic overcrowding by facilitating the release of first-time offenders who have completed one-third of their maximum sentence in pre-trial detention. However, this measure is tempered by carve-outs: it does not apply to individuals charged with offenses punishable by life imprisonment or death, nor to those with multiple cases pending. Given the practice of filing multiple FIRs against one individual, these exceptions may render the thresholds inaccessible to many.³³

Empirical Realities of Pre-Trial Incarceration in India

The scale of pre-trial punishment in India is reflected in National Crime Records Bureau (NCRB) data that shows and highlights that the majority of inmates have never been convicted.³⁴

National Overcrowding and the Undertrial Proportion

As of 2023, India's prisons held between 5.3 and 5.5 lakh inmates, with nearly 77% (approximately 3.8 to 3.9 lakh people) being undertrials. The national occupancy rate stands critically high at 120.8%.³⁵ The "undertrial crisis" is a structural driver of carceral distress. Many languish in jail not because of their alleged crimes, but because of an inability to navigate a bail system that places a "premium on poverty".³⁶ For many, the costs of court travel, loss of wages, and inability to migrate for work during trial serve as an additional economic sanction.

Case Study: Central Jail Indore

Reports from individual facilities, such as the 140-year-old Central Jail Indore, illustrate the physical toll of pre-trial punishment.³⁷ Designed for 1,050 prisoners, the facility frequently holds over double its capacity (2,046 inmates).³⁸ Despite a lone medical officer, the jail struggles with high rates of tuberculosis (40% of deaths in MP prisons are TB-related), diabetes, and hypertension. The insufficient number of "cage latrines" and lack of separate wards for TB further undermine human dignity.³⁹

³³ Megan T. Stevenson i Sandra G. Mayson, „Pretrial Detention and the Value of Liberty” 108 *Virginia Law Review* 709 (2022), *dostupno na*: https://virginialawreview.org/wp-content/uploads/2022/05/StevensonMayson_Book.pdf (posjećeno 12. siječnja 2026.).

³⁴ Bhakti Nair, Pratham Nayak and Unnati Doshi, “Addressing Mental Health Challenges within the Indian Prison System and under BNSS” 24 *YMER* 95 (2025), *available at*: <https://ymerdigital.com/uploads/YMER241009.pdf> (last visited Jan. 12, 2026).

³⁵ Vision IAS, “National Crime Records Bureau’s (NCRB) Prison Statistics India (PSI) 2023 Report”, *News Today*, Sept. 30, 2025, *available at*: <https://visionias.in/current-affairs/news-today/2025-09-30/social-issues/national-crime-records-bureau-ncrb-prison-statistics-india-psi-2023-report> (last visited Jan. 12, 2026).

³⁶ Vibhu Bakshi, “Comparative Analysis Of Bail Provisions – Old Law (Crpc) Vs. New Law (Bnss)” 13 *International Journal of Creative Research Thoughts* r43 (2025), *available at*: <https://www.ijcrt.org/papers/IJCRT21X0311.pdf> (last visited Jan. 12, 2026).

³⁷ Vinod Aggarwal, “Visit of Central Jail, Indore, M.P. by Dr. Vinod Aggarwal Special Rapporteur - NHRC”, *available at*: https://nhrc.nic.in/assets/uploads/minute_of_meeting/1751365757_95de19f7918875b998a2.pdf (last visited Jan. 12, 2026).

³⁸ *Workshop on Prisons Reforms in Madhya Pradesh* (Commonwealth Human Rights Initiative and Madhya Pradesh Human Rights Commission, 2002), *available at*: https://www.humanrightsinitiative.org/programs/aj/prisons/workshops/bhopal2002w.report_FINAL.pdf (last visited Jan. 12, 2026).

³⁹ *Supra* note 38, at 8.

Judicial Precedents: Bail Is The Rule And Jail Is An Exception

The Indian judiciary has attempted to restrain state power to punish before conviction through robust bail jurisprudence.

Moti Ram and Satender Kumar Antil

The seminal ruling in *Moti Ram v. State of M.P.*⁴⁰ (1978) established the principle that "bail is the rule, jail is the exception". Justice Krishna Iyer emphasized that bail conditions must be "humane and reasonable," warning that local surety requirements for migrants amount to "geographical discrimination".

This principle was further reaffirmed in the judgement of *Satender Kumar Antil v. CBI*⁴¹ (2022) in which the guidelines were issued to streamline the bail process. The Court observed that low conviction rates lead lower courts to deny bail as substitute punishment, a practice it explicitly condemned.⁴²

The Implementation Gap and Mechanical Remand

Despite mandates, a "culture of custody" persists. Magistrates and Sessions Judges are frequently criticized for deciding bail applications in a "mechanical manner," acting as "mouthpieces" for the prosecution. This disconnection between constitutional vision and administrative practice is where pre-trial stigma is operationalized.

Psychological And Developmental Impacts of Pre-Trial Stigma

The trauma of pre-trial detention not only affects the accused or detained but also families who faces costs without any offence sometimes.

Impact on Children and Families: Detention of a parent creates a "confinement" environment for children lacking emotional stimuli. Children living with incarcerated mothers are at risk of developmental delays.⁴³ Exposure to parental incarceration is strongly associated with PTSD, anxiety, and asthma in adulthood. This "toxic stress" disrupts brain circuitry during sensitive periods.

Mental Health Behind Prison Walls: Prisons function as "diseased environments," with mental disorders three times more prevalent than in the general population.⁴⁴ For undertrials, legal uncertainty exacerbates psychotic illness and major depression. The absence of qualified psychologists in jails means these crises go untreated.⁴⁵

⁴⁰ *Moti Ram v. State of M.P.*, (1978) 4 SCC 47.

⁴¹ *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.

⁴² Amit Kumar Singh, "Locked justice: Evaluating judicial interventions on prison overcrowding, bail reforms, and the rights of undertrial prisoners under India's criminal justice framework post-BNS, 2023" 5 *International Journal of Criminal Law* 24 (2025), available at: <https://www.criminallawjournal.org/article/148/5-2-9-437.pdf> (last visited Jan. 12, 2026).

⁴³ Priya Prakash, Priyal Khurana *et al.*, "Behind Prison Walls: Critical Overview of the Mental Health Trajectories of Children Living With Incarcerated Mothers" 16 *Cureus* e66938 (2024), available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC11326527/> (last visited Jan. 12, 2026).

⁴⁴ Jayashri Rajbangshi and Diptimoni Boruah, "Forgotten Lives: Overcrowding and Human Rights Violations in Assam's Prisons" 5 *Indian Journal of Integrated Research in Law* 1160 (2025), available at: <https://ijirl.com/wp-content/uploads/2025/10/FORGOTTEN-LIVES-OVERCROWDING-AND-HUMAN-RIGHTS-VIOLATIONS-IN-ASSAMS-PRISONS.pdf> (last visited Jan. 12, 2026).

⁴⁵ Shrruti Sahrawat, "Psychological Well-Being of Jail Inmates in India: Challenges and Pathways to Reformation" 7 *International Journal for Multidisciplinary Research* 1 (2025), available at: <https://www.ijfmr.com/papers/2025/3/43611.pdf> (last visited Jan. 12, 2026).

Institutionalized Discrimination: Caste, Gender, And Structural Violence

Pre-trial stigma is often associated by the caste, gender and class where people from different caste and classes are treated differently.

Caste-Based Segregation and Forced Labor

A profound violation of dignity persists through the caste-based division of manual labor. Many state prison manuals assign "menial" tasks like cleaning to marginalized castes while "dignified" work like cooking is reserved for upper castes.⁴⁶ This normalizes the notion that certain social groups are suited for degrading tasks.

The Gendered Experience of Carceral Stigma

Women in pre-trial detention face unique disadvantages and social ostracization.⁴⁷ Families in traditional settings may reject them, viewing detention as an assault on family "honor".⁴⁸ This alienation diminishes access to support systems, making reintegration an "uphill battle" marked by discriminatory hiring.

Comparative Criminology: Global Trends In Bail And Human Rights

The struggle to balance liberty with safety is not only confined to India but is a global challenge. Let us examine the framework of other countries to better understand the loopholes in our system:

The United Kingdom

The United Kingdom's bail system is primarily governed by the Bail Act 1976⁴⁹, which established a qualified statutory presumption in favor of bail under Section 4. A defendant must be granted bail unless substantial grounds exist for believing they will fail to surrender, commit further offenses, or interfere with witnesses. However, the Police, Crime, Sentencing and Courts Act 2022 (PCSC)⁵⁰ has significantly altered this landscape. It removed the presumption against pre-charge bail, replacing it with a "neutral position" to encourage use where "necessary and proportionate".⁵¹

The United States:

In the United States, pre-trial justice is grounded in the Eighth Amendment, which prohibits "excessive bail". Despite this, the widespread practice of cash bail created a system of "wealth-based detention," where individuals are held not due to risk, but due to poverty. This contributed to a 433% increase in the pre-trial jail population between 1970 and 2015. The movement toward reform culminated in the Illinois Pretrial Fairness Act (PFA) in 2023, making Illinois the first state to completely abolish cash bail. Instead, judges now conduct

⁴⁶ Neha Vinod and Nikhil Erinjingat, "Caste Discrimination in Indian Prisons Case – Part 1 (Division of Manual Labour)", *Oxford Human Rights Hub*, Dec. 3, 2024, available at: <https://ohrh.law.ox.ac.uk/caste-discrimination-in-indian-prisons-case-part-1-division-of-manual-labour/> (last visited Jan. 12, 2026).

⁴⁷ Vasu Sharma, "Retribution vs Rehabilitation: A Study of the Penal System" 3 *International Journal of Legal Affairs and Exploration* 11 (2025), available at: <https://ijlae.com/wp-content/uploads/2025/07/RETRIBUTION-VS-REHABILITATION-A-STUDY-OF-THE-PENAL-SYSTEM-By-Vasu-Sharma.pdf> (last visited Jan. 12, 2026).

⁴⁸ National Judicial Academy, "National Conference for High Court Justices on Cyber Law and Artificial Intelligence (AI) (P-1463): Table of Contents", available at: https://nja.gov.in/Concluded_Programmes/2025-26/P-1463%20TOC.pdf (last visited Jan. 12, 2026).

⁴⁹ The Bail Act 1976 (c. 63) (United Kingdom).

⁵⁰ The Police, Crime, Sentencing and Courts Act 2022 (c. 32) (United Kingdom).

⁵¹ Samantha Jeffries and Barbara Owen, "Locked Away While Innocent: Women, Human Rights, and Pre-Trial Detention" 14 *Laws* 75 (2025), available at: <https://www.mdpi.com/2075-471X/14/5/75> (last visited Jan. 12, 2026).

hearings to determine if a defendant poses a "specific, real and present threat" or is a flight risk.⁵²

Reforms In India: A Blueprint for Change

To restore the presumption of innocence and dismantle the system of advance punishment, India has embarked on a multi-faceted reform agenda focusing on legislative clarity, legal aid professionalization, digital infrastructure, and institutional oversight.

- **Legislative Overhaul and Procedural Timelines:** The enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 represents a systemic overhaul aimed at making the process more victim-centric and time-bound. For example Section 193⁵³ of BNSS imposes strict timelines for investigations, magistrates are now statutorily mandated to decide bail applications within seven days of filing,⁵⁴ and Section 35⁵⁵ of the BNSS mandates that police must record specific, written reasons for making or not making an arrest in offenses punishable by less than seven years.
- **Professionalization of Legal Aid:** Acknowledging that the lack of competent representation is a primary reason for the undertrial crisis, the National Legal Services Authority (NALSA) has professionalized indigent defense through the Legal Aid Defense Counsel System (LADCS).
- **Prison-Based Legal Awareness Clinics (PLAC):** Establishing PLACs ensures early intervention. Data shows that access to legal aid via PLACs leads to a 10% increase in cases dismissed early and a reduction in the number of convicts at the prison level.
- **Digital Transformation:** India is undergoing a massive digital makeover to humanize and modernize judicial processes under e-Courts Project Phase-III (2023-2027), with an outlay of Rs. 7,210 crore.
- **Mandatory UTRC Performance:** Undertrial Review Committees must transition to automated identification of prisoners eligible for release and meet regularly to process cases.⁵⁶
- **Non-Monetary Release Pathways:** Decoupling release from monetary sureties by promoting risk-based assessments and non-financial alternatives like electronic monitoring or probation.

Conclusion

The study of punishment before conviction reveals that the criminal process has evolved into a system of social control independent of trial outcomes. For the unconvicted, the stigma functions as a "dramatization of evil" triggering negative life outcomes—from psychological trauma and job loss to the spoiling of social identity. Upholding the presumption of innocence requires a paradigm shift: decoupling bail from revenue, ensuring strict accountability for mechanical remand, and implementing statutory compensation for wrongful detention. Globally, the move toward non-financial alternatives and person-centered language marks a step toward decarceration, but until the pre-trial phase is treated as a strictly regulatory necessity, the process will remain the punishment.

⁵² Averi R. Amaro, "Behind Closed Doors, Beyond The Cell: Supporting Children of Incarcerated Parents" (Honors Thesis, St. Mary's University, 2025), available at:

<https://commons.stmarytx.edu/cgi/viewcontent.cgi?article=1088&context=honorsthesis> (last visited Jan. 12, 2026).

⁵³ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 193.

⁵⁴ Supra note 23, at 6.

⁵⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 35.

⁵⁶ Supra note 45, at 9.

References

- Amit Kumar Singh, “Locked justice: Evaluating judicial interventions on prison overcrowding, bail reforms, and the rights of undertrial prisoners under India's criminal justice framework post-BNS, 2023” 5 *International Journal of Criminal Law* 24 (2025), available at: <https://www.criminallawjournal.org/article/148/5-2-9-437.pdf>.
- Alyssa Leblond, “‘The More You Do through This Program, the Better It’s Going to Look in Court’: Testing, Disciplining and Sorting Accused Pre-Trial through Bail Supervision Program” *The British Journal of Criminology* azaf123 (2026)
- Averi R. Amaro, “Behind Closed Doors, Beyond The Cell: Supporting Children of Incarcerated Parents” (Honors Thesis, St. Mary’s University, 2025), available at: <https://commons.stmarytx.edu/cgi/viewcontent.cgi?article=1088&context=honorsthesis>.
- Bhakti Nair, Pratham Nayak and Unnati Doshi, “Addressing Mental Health Challenges within the Indian Prison System and under BNSS” 24 *YMER* 95 (2025), available at: <https://ymerdigital.com/uploads/YMER241009.pdf>.
- “Comparative Analysis of BNSS and CrPC: Understanding the Shifts in India’s Criminal Justice Framework” 26 *The Lawway with Lawyers Journal* (2025), available at: <https://thelawwaywithlawyers.com/comparative-analysis-of-bnss-and-crpc-understanding-the-shifts-in-indias-criminal-justice-framework/>.
- Ed Schreeche-Powell, “Insecurity and Fragility: The Perpetual Duo of Precarity for ‘Convict Criminologists’ in a Risk Averse Academy” 33 *Critical Criminology* 155 (2025)
- F. Mégret, “Practices of Stigmatization,” 76 *Law & Contemporary Problems* 287 (2014).
- Jayashri Rajbangshi and Diptimoni Boruah, “Forgotten Lives: Overcrowding and Human Rights Violations in Assam's Prisons” 5 *Indian Journal of Integrated Research in Law* 1160 (2025), available at: <https://ijirl.com/wp-content/uploads/2025/10/FORGOTTEN-LIVES-OVERCROWDING-AND-HUMAN-RIGHTS-VIOLATIONS-IN-ASSAMS-PRISONS.pdf>.
- Jayashri Rajbangshi and Dr. Diptimoni Boruah, “Speedy Trial or Prolonged Detention: Undertrial Prisoners and India’s New Criminal Laws” 8 *International Journal of Law Management & Humanities* 2054 (2025).
- J. Harvie Wilkinson III, “The Presumption of Civil Innocence” 104 *Virginia Law Review* 589 (2018).
- Jón Gunnar Bernburg, “Labeling Theory” in Marvin D. Krohn, Alan J. Lizotte, et.al. (eds.), *Handbook on Crime and Deviance* 187 (Springer, New York, 2009).
- Joshua Page and Christine S. Scott-Hayward, “Bail and Pretrial Justice in the United States: A Field of Possibility” 5 *Annual Review of Criminology* 91 (2022)
- Manjeet Balyan and Ritu Pant, “Pre-trial Detention, Bail Denial and Socio-economic Vulnerability” 6 *International Journal of Research Publication and Reviews* 9714 (2025), available at: <https://ijrpr.com/uploads/V6ISSUE11/IJRPR56339.pdf>.
- Megan T. Stevenson i Sandra G. Mayson, „Pretrial Detention and the Value of Liberty” 108 *Virginia Law Review* 709 (2022), available at: https://virginialawreview.org/wpcontent/uploads/2022/05/StevensonMayson_Book.pdf.
- *Moti Ram v. State of M.P.*, (1978) 4 SCC 47.
- National Judicial Academy, “National Conference for High Court Justices on Cyber Law and Artificial Intelligence (AI) (P-1463): Table of Contents”, available at: https://nja.gov.in/Concluded_Programmes/2025-26/P-1463%20TOC.pdf .
- Neha Vinod and Nikhil Erinjingat, “Caste Discrimination in Indian Prisons Case – Part 1 (Division of Manual Labour)”, Oxford Human Rights Hub, Dec. 3, 2024, available at: <https://ohrh.law.ox.ac.uk/caste-discrimination-in-indian-prisons-case-part-1-division-of-manual-labour/>.

- Pamela R. Ferguson, “The Presumption of Innocence and its Role in the Criminal Process”, 27 Criminal Law Forum 131–158 (2016).
- Prayas, Experiences of Undertrial Prisoners Released on Bail: Accessing Bail and Post-Bail Situation (Tata Institute of Social Sciences, 2023), available at: https://tiss.ac.in/uploads/files/Bail_Study_Report_-_2023.pdf.
- Prime Legal, “Bail Under the Bharatiya Nagarik Suraksha Sanhita: Are the New Provisions Truly ‘Bail-Friendly?’”, Prime Legal Blogs, Dec. 21, 2025, available at: <https://blog.primelegal.in/bail-under-the-bnss-are-the-new-provisions-truly-bail-friendly/>.
- Priya Prakash, Priyal Khurana et al., “Behind Prison Walls: Critical Overview of the Mental Health Trajectories of Children Living With Incarcerated Mothers” 16 Cureus e66938 (2024), available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC11326527/>
- PRS Legislative Research, “The Bharatiya Nagarik Suraksha Sanhita, 2023”, available at: <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023>.
- Samantha Jeffries and Barbara Owen, “Locked Away While Innocent: Women, Human Rights, and Pre-Trial Detention” 14 Laws 75 (2025), available at: <https://www.mdpi.com/2075-471X/14/5/75>.
- Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.
- Shrruti Sahrawat, “Psychological Well-Being of Jail Inmates in India: Challenges and Pathways to Reformation” 7 International Journal for Multidisciplinary Research 1 (2025), available at: <https://www.ijfmr.com/papers/2025/3/43611.pdf>.
- Vasu Sharma, “Retribution vs Rehabilitation: A Study of the Penal System” 3 International Journal of Legal Affairs and Exploration 11 (2025), available at: <https://ijlae.com/wp-content/uploads/2025/07/RETRIBUTION-VS-REHABILITATION-A-STUDY-OF-THE-PENAL-SYSTEM-By-Vasu-Sharma.pdf>.
- Vibhu Bakshi, “Comparative Analysis Of Bail Provisions – Old Law (Crpc) Vs. New Law (Bnss)” 13 International Journal of Creative Research Thoughts r43 (2025), available at: <https://www.ijcrt.org/papers/IJCRT21X0311>.
- Vinod Aggarwal, “Visit of Central Jail, Indore, M.P. by Dr. Vinod Aggarwal Special Rapporteur - NHRC”, available at: https://nhrc.nic.in/assets/uploads/minute_of_meeting/1751365757_95de19f7918875b998a2.pdf.
- Vision IAS, “National Crime Records Bureau’s (NCRB) Prison Statistics India (PSI) 2023 Report”, News Today, Sept. 30, 2025, available at: <https://visionias.in/current-affairs/news-today/2025-09-30/social-issues/national-crime-records-bureaus-ncrb-prison-statistics-india-psi-2023-report>.
- Workshop on Prisons Reforms in Madhya Pradesh (Commonwealth Human Rights Initiative and Madhya Pradesh Human Rights Commission, 2002), available at: https://www.humanrightsinitiative.org/programs/aj/prisons/workshops/bhopal2002w.report_FINAL.pdf.

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