

● REFORMS IN BAIL PROVISIONS FOR THE UNDERTRIALS IN BAILABLE AND NON-BAILABLE OFFENCES



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"An undertrial cannot be indefinitely detained in prison if there is a delay in concluding the trial. The courts would ordinarily be obligated to grant bail if a timely trial is impossible and the accused has been in jail for an extended period".

Supreme Court of India

Abstract

Currently, the prisons in India are overcrowded, mainly due to the retention of many undertrials in bailable and non-bailable cases. Several factors, which include present regulations, their interpretation, and the intention and knowledge of various agencies involved in delivering justice, have led to a situation of concern. The present circumstances will create unmanageable administrative issues within the prison, leading to a considerable loss of faith in Indian criminal justice jurisprudence amongst ordinary citizens. The article aims to evaluate the existing regulations of bail provisions for bailable and non-bailable offences and bring out the limitations of law and practices which have increased the strength of undertrial in detention. Also, the issue of anticipatory bail provisions shall be covered. Some of the much-needed reforms in the existing mechanism shall be covered along with the recommendations for improvement.

Key Words: *Cognizable offence, bail, non-bailable offence, undertrial.*

I. Introduction

The Indian legal system covers various exhaustive procedural mechanisms regarding the grant of bail to ensure fair treatment to the accused under the law and, on the other hand, ensures that the accused does not circumvent the law of the land, weakening the victims' faith. The constitution's framers understood the delicate balance over such sensitive issues of the relevant criminal procedures; however, they also perhaps failed to anticipate the magnitude of adverse impact on those undertrials presently confined in prison. Does the law adequately address the rights of all undertrials in a criminal investigation? If yes, then perhaps nothing can be further contrary to the truth. In actuality, the facts are not very encouraging. The 268th Law Commission report quotes, "*powerful, rich and influential obtain bail promptly and with ease, whereas the masses or the common or poor languish in jails*"¹. The commission has categorically emphasised that the bail conditionality should be on the case's merit rather than the accused's status.

¹Jain, Singh, and Akanksha Ashish. "Victim-Oriented Criminal Justice System-need of the Hour." (2017).

It also raised concern that 67 per cent of the cases rendered trials are in prison². The natural consequence of the frequent denial of bail is that the prison's capacity has been exploited to a magnitude, amounting to severe administrative issues. National Crime Records Bureau (NCRB) has given rising figures of undertrial prisoners who represent the economically weaker sections, deprived classes, and minority communities without education and financial capability to protect their rights³.

Bail is a rule rather than an exception in the legal fraternity, especially in cases of bailable offence. In *Rasiklal v. Kishore Khanchand Wadhvani* AIR 2009 SC 1341, the court stated that in a bailable offence, there is no question of discretion in granting bail as the words of section 436 are imperative⁴. Section 436 to 450 of the CrPC mentioned the provisions under which the Session Court and Superior Court can grant bail to the accused. The genesis of adding the bail provision to the guilty was that the guilty was assumed to be innocent until proven otherwise. Therefore, it becomes essential to understand the various bail provisions in the Indian legal system for bailable and non-bailable offences and analyse the causes of the significant strength of undertrial prisoners in Indian prisons. The paper will cover the law on the issue of bail, critical judgements, and the present status of undertrial prisoners, and it will recommend measures for improving the present conditions. The paper's content will be valuable for all those interested in criminal law procedures.

II. Bail Mechanism in Bailable and Non-bailable Offences

In cognisable offence, the police, while undertaking the investigation, can arrest the suspect without a warrant as per section 57 of the Criminal Procedure Code (CrPC) if the investigation is by an investigating officer of the rank of a sub-inspector⁵. The suspect is produced before the magistrate within 24 hours as per law. The magistrate may grant the police his custody on the case's merit. Under section 167 CrPC, the magistrate will not grant the custody of the accused to the police beyond 15 days⁶. He also holds the discretion for deciding whether the accused goes to police custody or judicial custody. In the executive magistrate's case, the custody period cannot be beyond seven days⁷. While assessing the case's merits, if the magistrate feels that the police custody is unwarranted, he can send the accused to judicial custody, which cannot be beyond 90 days, where the accused faces a charge for an offence punishable by imprisonment for a period, not less than ten years⁸. If the offence is punishable by less than ten years,

²Kumar, Manish. "Anticipatory Bail: The Concept and implication Under criminal Procedure code, 1973." PhD diss., (2021).

³Chandra, Aparna, and Keerthana Medarametla. "Bail and Incarceration: The State of Undertrial Prisoners in India." *Approaches to Justice in India*, Shrutu Vidyasagar et al. (ed.), Eastern Book Company (2017).

⁴Das, Paulomi. "Detailed Study of Bail in India." *LexForti Legal J.* 1 (2019): 20.

⁵Raj, Pracheen. "CUSTODIAL DEATH CRITICAL ANALYSIS." *Ilkogretim Online* 20, no. 1 (2021).

⁶Al-Mamun, Abdulla. "Abusive of Police Power and Challenges to Prevent Under the Code of Criminal Procedure 1898." *International Journal of Law and Politics Studies* 1, no. 1 (2019): 10-14.

⁷Das, Sayan S. "Environmental Law in India." (2014).

⁸Vaghela, Ramesh. "DEFAULT BAIL: A STUDY OF CASE LAW." *Journal of the Indian Law Institute* 45, no. 1 (2003): 80-96.



judicial custody cannot be more than 60 days. Beyond the provision of such a period of judicial custody, the accused is eligible for bail at the pre-cognisance stage if the charge-sheet has still not been filed in court by the police. The accused's detention order by a magistrate mandates forwarding a copy of the order with reasons for the detention to the office of the Chief Judicial Magistrate⁹.

However, if the magistrate believes that the accused has not committed any non-bailable offence, the charges still need investigation; he may grant bail to the accused under section 437 (2) CrPC¹⁰. In the case of *Seema Singh vs Central Bureau of Investigation* AIR 2018 SC 2161, the court stated that the accused charged with a serious offence by itself is not grounds to deny him bail if other circumstances justify the grant of bail. The granting of bail is merely the entrustment of the accused person to those who give his sureties for being available subsequently for the legal proceedings. The bail may have the condition that the person giving the accused's surety deposits a sum of money as a bond. The genesis of bail is that the law considers the accused innocent until proven guilty. However, if the same court feels the accused will be under custody later, he may cancel his bail under section 437 (7) CrPC¹².

The bail is often rejected due to a lack of competent legal aid unavailable to the accused to represent his case in front of the magistrate. Many of the accused cannot hire competent lawyers to represent their cases, and the free legal aid (*generally through District Legal Aid Services Authority*) available through the legal provision (*Article 22 of the constitution guarantees an accused legal representation in the court of law*) often proves inadequate to take up the case justifiably in front of the court. The law enforcement agencies involved in the case and the lower court must be well-versed in providing bail in bailable (*under section 436 CrPC, the bail can be granted by the police station itself*) and non-bailable offences while considering granting bail to the accused. There have been several cases on record in which, on scrutiny of facts, it was realised that there was a sheer lack of knowledge of provisions of the grant of bail amongst the authorities, which was avoidable and caused undue delay. Here, the question arises as to why granting bail is essential to the accused. Only once the accused is on bail would he have a fair opportunity to prepare his case backed with evidence and witnesses to prove his innocence, which otherwise will be adversely impacted if he is in prison or custody. The genesis for the grant of bail culminates from the essential provision of Article 21 of the constitution, which states that each individual has a right to safeguard his/her liberty, and any undue detention or arrest violates such right.

⁹Nirmal Singh Heera, A., and N. Prabhavathi. "Police Brutality and Custodial Torture in Technological Era: Need for Anti-Torture Law in India-A Critical Analysis." *Indian Journal of Forensic Medicine & Toxicology* 15, no. 2 (2021).

¹⁰Sadiq, Shereen. "Women under trial: an enquiry into the efficacy of Section 437 (1) of the Indian Criminal Procedure Code, 1973." In *First International Conference of the South Asian Society of Criminology and Victimology (SASCV)*, 15-17 January 2011, Jaipur, Rajasthan, India: SASCV 2011 Conference Proceedings, p. 287. K. Jaishankar, 2011.

¹¹<https://indiankanoon.org/doc/62770560> (Visited on 30 Nov 2023).

¹²Malik, Lokendra, and Shailendra Kumar. "Personal Liberty vs. Societal Interest: The State of Bail Jurisprudence in India." *Taking Bail Seriously-The State of Bail Jurisprudence in India* (2020).

If the trial court rejects the bail petition of the accused, he may approach the High Court for bail under the provision of section 439 CrPC¹³. The Supreme Court, in *Himanshu Chandravardhan Desai v. State of Gujarat* AIR 2006 SC 179, stated, "the Supreme Court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail by the High Court because the High Court should generally be the final arbiter in such cases"¹⁴. Once the police file the charge-sheet as per section 173 CrPC, the magistrate under section 309 CrPC can hand over the accused to the police on remand. However, a reasonable amount of delay has been observed in several cases regarding the execution and implementation of these procedures. In 2005, the Supreme Court took notice of this fact. In the case of *Bhim Singh v. the Union of India*, an amendment in section 436A (section 436 of the CrPC deals with bailable offence) created a provision that any accused who has served about half the period of maximum punishment awardable under the offence shall be granted bail. The detention by denial of bail to any accused should not be used as a punitive measure by the state. Some of the provisions of the grant of bail are also in desperate need of reform. For instance, monetary assurance asked by courts as a precondition for the grant of bail makes it utterly impossible for poor people to benefit from the provisions, adversely impacting their liberty. Some cases of plea bargaining have come before the courts due to disadvantages faced by the deprived class, who, as an alternative, opt for it to ensure a reduced sentence.

Suspects charged under special laws, for instance, the Narcotics Substance and Psychotropic Drugs (NDPS) Act 1985, the Arms Act 1959, terrorist acts, and other unlawful activities, are booked under non-bailable provisions. Although the CrPC defines a bailable offence as having a punishment of fewer than three years and a non-bailable offence with more than seven years, it still does not explicitly define bail itself, leaving the scope of interpretation by the courts. The court examines the nature of the accusation, the severity of punishment, and the type of evidence in existence before considering the accused's bail application. If the court believes the release of the accused will jeopardise the complainant's safety or lead to tampering with the evidence, it may deny the bail.

Under conditions where the police investigation is incomplete, even within six months, the magistrate can close the investigation if he feels that further delay would not assist in imparting justice to the concerned parties. Such a magistrate's decision is challenged in the session court under section 167 (6) of CrPC¹⁷.

III. Provisions of Anticipatory Bail

The accused has a provision to apply for anticipatory bail under section 438 CrPC if his

¹³Rahman, Talha Abdul. "IN THE CUSTODY OF LAW." *Journal of the Indian Law Institute* 60, no. 4 (2018): 427-443.

¹⁴<https://indiankanoon.org/doc/75690/> (Visited on 30 Nov 2023).

¹⁵Pandey, Advocate Kamal Kumar. "BLOG SEARCH."

¹⁶<https://www.thestambhorganization.com/post/bhim-singh-vs-union-of-india-and-ors#:~:text=Through%20Bhim%20Singh%20Case%20there,cases%20to%20ensure%20criminal%20justice.> (Visited on 30 Nov 2023).

¹⁷Chatterjee, Swarnendu, and Chetna Alagh. "Gautam Navlakha vs National Investigation Agency: A Jurisprudential Analysis." *Jus Corpus* LJ 1 (2020): 16.



arrest is possible under a non-bailable offence¹⁸. Filing an FIR is not a prerequisite for seeking relief under anticipatory bail. The provision of anticipatory bail in the Indian criminal legal system came on the recommendation of the 41st Law Commission report of 1969¹⁹. The provision of anticipatory bail protected individuals against any form of false accusation. However, the courts have a broad discretionary power while deciding upon the grant of anticipatory bail and cannot be taken as a right. The session or high court can give anticipatory bail over such matters. For instance, the Kerala High Court granted anticipatory bail to filmmaker Aisha Sultanain a sedition case against her for a slanderous remark against Lakshadweep administrator Praful Khoda Patel²⁰. During a debate on a Malayalam news channel, Sultanawas critical of the administration's handling of the political crisis in Lakshadweep. During several case hearings related to anticipatory bail, the courts opined that the provision would be valid when the accused is arrested. Some conditionality added to anticipatory bail include invoking the provision only when the offence is non-bailable and the accused is sure of his likely arrest. The session court and the higher courts hearing the anticipatory bail need to consider the facts of the case and other circumstances with strict criteria before allocating anticipatory bail. On the final hearing regarding the grant of anticipatory bail, the person applying for the same must be present in court. The court may exercise the power of placing specific refraining orders on the person granted anticipatory bail. For instance, the court may ask the applicant to surrender his passport as a precondition for the grant of anticipatory bail. To ensure an unhindered police investigation, the court may direct the person granted anticipatory bail to appear before the police on a routine basis.

The Criminal Amendment Bill 2018 added clause 4 to section 438 CrPC²¹. As per the amendment, a person accused of committing rape of women under 16 years will not get anticipatory bail. Further, under section 18, anticipatory bail shall stand denied for the accused charged under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act) 1989. In other cases, the anticipatory bail will continue even if the police have filed the charge sheet in court. Nevertheless, again, in serious crimes like dowry death, anticipatory bail can be denied to the applicant.

Here, it is essential to acknowledge that anticipatory bail provisions should be exercised with utmost caution. However, having a preconceived legal perspective regarding anticipatory bail leading to a complete denial of the same is against the spirit of criminal legal jurisprudence. There have been several cases where the Supreme Court had to interpret the provisions of anticipatory pay applications, which Allahabad High Court denied as a matter of precedence with the viewpoint that if criminals were granted anticipatory bail, they are bound to impact the trial of the case adversely. Making a note

¹⁸Singh, Meera Kumari. "Anticipatory Bail Provisions in India: A Review." IUP Law Review 10, no. 1 (2020).

¹⁹Shah, Malika, and Vaibhav Chadha. "Evolution of law on anticipatory bail in India." JANUS. NET e-journal of International Relations 12 (2021): 251-264.

²⁰K.C. Gopakuma, "Kerala High Court observes that prima facie sedition case against Aisha Sultana does not stand", 25 June 2021. <https://www.thehindu.com/news/national/kerala/kerala-high-court-makes-absolute-the-interim-anticipatory-bail-granted-to-aisha-sultana/article34961843.ece> (Visited on 29 Nov 2023)

²¹Lalli, Jaideep Singh. "Who Is a Proclaimed Offender? Putting the CRPC's Interpretive Imbroglia to Rest." NALSAR Stud. L. Rev. 15 (2021): 127.

of this the Supreme Court judge J. Markandey Katju commented, "*I make a strong recommendation to the Uttar Pradesh government to immediately issue an ordinance to restore the provisions for anticipatory bail and empower the Allahabad High court as well as the sessions courts in the state to grant anticipatory bail*"²²ⁿ.

IV. Rights of Arrested Persons

Article 21 of the Indian Constitution safeguards the accused undertrials or even convicts²³. Each arrested person under Article 14 has a right to a fair and just trial, where he must be treated equally before the law. Under Article 22 (1), the accused is entitled to know the grounds of his arrest and must be informed of his right to seek bail²⁴. Section 50 of CrPC gives guidelines to police officers for disclosure of such information, which arrests without a warrant²⁵. The police are also mandated under section 50 A to inform the relatives of the accused regarding his police custody.

If the accused desires, he can remain silent and be represented through a lawyer under section 41 D and section 303 of CrPC²⁶. As per Article 20 (2), no person can be a witness against himself by force. Under section 304 of CrPC, the state must provide legal counsel if he cannot hire a lawyer independently²⁷. The provision for the same is in Article 39 A of the constitution²⁸. The accused has the right to be produced within 24 hours before the magistrate when the arrest is without a police warrant.

Further, under section 54 of CrPC, the accused also has the right to request the magistrate for his medical examination if he has been through any physical ordeal during immediate arrest by the authorities²⁹. Besides those mentioned above, other procedural legal provisions safeguard the accused's rights while under arrest. Still, there are frequent accusations of unfair treatment of undertrials even after such provisions. The status of such undertrial in prisons in India is an issue of grave concern and needs to be addressed on priority.

V. Status of Under Trial Accused in Prison

As per the 2017 details, nearly 67 per cent of prisoners in Indian jails are under trial³⁰. Many of them have been waiting for years for their trial to commence. Thus, the question is why these accused have not been granted bail under the existing legal provisions. The

²²Rustogi, Ankita. "The Right to Bail Under Indian Criminal Procedural Law." Available at SSRN 1437977 (2009).

²³Abeyratne, Rehan. "Socioeconomic rights in the Indian constitution: toward a broader conception of legitimacy." *Brook. J. Int'l L.* 39 (2014): 1.

²⁴Sarkar, Saroj Kumar. "Indian Constitution and Human Rights." *HUMAN RIGHTS AND SOCIAL JUSTICE*: 71.

²⁵Dhull, Jitender Singh. "Rights of Arrested Person and the Judicial Decisions." *MDU LAW JOURNAL*: 25.

²⁶Blackshield, A. R. "Capital punishment in India." *Journal of the Indian Law Institute* 21, no. 2 (1979): 137-226.

²⁷Shaha, Kusa Kumar, and Sachindananda Mohanthy. "Alleged dowry death: a study of homicidal burns." *Medicine, science and the law* 46, no. 2 (2006): 105-110.

²⁸Sharma, Shubhang, and Maryam Sana. "Critically analyse Article 39 of the Indian Constitution."

²⁹CRIMES, CHALLENGES AFFECTING REGULATION OF CYBER. "CYBER CRIME PROFILING: QUINTESSENTIAL NEED FOR CYBER OFFENDER DETECTION IN INDIA." 18 *JILI*, 238 (2021).

³⁰Ahmad, Irfan, and Md Zakaria Siddiqui. "Democracy in Jail Over-representation of Minorities in Indian Prisons." (2017).



facts on the ground on the issue are rather shocking. According to the National Crime Records Bureau (NCRB) report, the young men and women in prison primarily represent that section of society with no education or primary education and belong to the minority class with denigrated socio-economic status³¹. Most of them lack the financial resources to hire legal counsel for applying for bail and have no extended legal support from the state for fair representation. The Supreme Court has called the prevailing status of undertrials in Indian prisons "*a crying shame on the judicial system*," but the circumstances have still failed to improve.

As per the National Crime Record Bureau report of 2020, there are 1387 prisons across the country, including the central, district, sub-district, women's jail, open, unique, and all other types of jails in which 4,18,536 inmates have been locked³². Most of these prisons are overcrowded and lack basic amenities. Out of the total inmates in prison 2,82,866 are under trial, facing confinement for several years. Nearly 42.5 per cent of prisoners in the Indian jail are between the age group of 18 years to 30 years, and another 44.5 per cent are between the age of 30 years to 50 years. These statistical details are on the rise, and the blatant mismanagement of bail provisions for the undertrial cannot be further ignored by all the stakeholders involved in the procedures of law.

VI. Cases of Undertrials in Custody for Prolong Period

A strength of nearly three lakhs under trial prisoners is considerably very high, reflecting upon the existing weakness of the Indian judicial system and the policy of the central and the state governments, which has continued unchecked for several years. In past laws, commissions have highlighted the issue of undertrial prisons. Some of the cases of undertrial prisoners are as follows: -

1. Ali Mohammad Bhat. In 2019, Ali was acquitted of the charges of terror attack in 1996 in the Lajpat Nagar blast after spending 23 years in prison³³. There were additional charges framed against him under the POTA Act for the blast in Samleti village in Rajasthan. The individual belonged to Kashmir and had a shawl business in Nepal, from where his arrest on a terror plot took place. The investigating agencies had failed to draw out any direct evidence regarding the involvement of the individual in the terror act, even when he was under detention for such a long period. The case reflected gross misuse of legal power by detaining the accused and denying him the right to bail.
2. Mohammad Maqbool Shah. In the same terror case of 1996, Shah's name was on the charge sheet filed by Delhi Police. He spent 14 years in jail without bail until his final acquittal of the charges by the court. However, again, the individual belonged to Kashmir. Shah was merely 14 years old when he was framed for the crime and failed

³¹Ghosh, Arijeet, and Sai Bourouthu. "Existing beyond constitutional rights: Transgender persons in Indian prisons." (2021).

³²<https://ncrb.gov.in/en/Crime-in-India-2020>. (Visited on 29 Nov 2023).

³³"Unjustly Jailed For 23 Years, Ali Mohammed Bhat Returns To Parents' Grave", 26 July 2019. <https://www.ndtv.com/india-news/unjustly-jailed-for-23-years-for-lajpat-nagar-and-samlet-blast-ali-mohammed-bhat-returns-to-parents-2075796>(Visited on 20 Oct 2023)

to be granted bail during the entire period³⁴. The court finally acquitted him of all charges.

3. Bala Singh. The individual remained in prison until 2017 without bail for ten years in Uttar Pradesh till the police realised that he was a case of mistaken identity. Witnesses in the case admitted to the individual's wrongful identity³⁵. He faced charges of murder committed not by him but by his brother. The entire case reflected the existing fault lines within the criminal judicial procedures.

The individuals were charged with severe, non-bailable crimes in the above-mentioned cases. Apart from these cases, several other cases involving bailable offences exist where the accused has spent a substantial amount of time in detention. There is a need for legal reforms to address the issue of grant of bail. If the problem is left unaddressed, it will not only create administrative concerns in overcrowded prisons but also lead to a loss of faith of ordinary citizens in the judiciary's capability and capacity of the legislative and the executive regarding the maintenance of the rule of law within the state. Based on the above analysis, there are some recommendations for implementation and increasing the efficiency of the provisions for the grant of bail, especially to undertrial prisoners.

VII. Conclusion

Many undertrials are presently in prison due to denial of bail. As the phenomenon has become a rising trend, a massive prison strength comprises the undertrial, leading to prison management concerns. In most cases, the bail denial is due to the poor state of the provisions rather than the seriousness of the offence committed. Some undertrial prisoners have already spent many years in prisons at par with the actual punishment term applicable for the offence. Some of the undertrials are in detention for petty crimes that are bailable. However, they have not been released due to poor representation and issues of surety and bond. In the cases where the offence is non-bailable, the accused who are influential and have financial resources have been able to acquire bail compared to those who come from the marginalised segment of society. This disparity in the allocation of bail to those undertrial prisoners needs reforms.

Further, the paper also covered the aspect of anticipatory bail and the strictness required of the judicial system before the accused are granted anticipatory bail, which was discussed in detail. The article attempted to cover the existing bail mechanism under bailable and non-bailable offence charges in India and the arrested person's rights. The status of undertrial prisoners and a few actual cases were covered. Finally, recommendations address the bail issues of the undertrial prisoners.

VIII. Recommendation for improving conditions for Undertrial Prisoners

There is an urgent need to improve the status of undertrial prisoners detained in Indian prisons. Such unwarranted delay in granting bail to the undertrial lowers the image of

³⁴Jamia Teachers' Solidarity Association (JTSA). "Framed, Damned, Acquitted: Dossiers of a 'very' Special Cell." *Social Change* 43, no. 1 (2013): 111-124.

³⁵Civil Appeal No.10464 of 2017. Page 1 of 46. Digitally signed by. BALA PARVATHI. Date: 2018.03.31. 12:45:18 IST.



the Indian judicial system. Some of the recommendations for improving the status of the undertrials are as follows: -

1. **Speedy Trial.** Those undergoing trial must get a speedy trial, and the court must prioritise the cases for hearing. The average period for a case to be trial is five to six years. By the time the cases undergo finalisation in the session court, 15 years would have passed. Then, such cases are represented in the court of appeal, causing further delays in time. The accused must get bail in case of a trial delay. There is a need to create a mechanism wherein a time limit is specified for speeding up the trials, thereby restoring faith in the criminal Legal jurisprudence. Here, it is equally important to address the increasing availability of courts and judges, which will appropriately empower them to address cases without overload. Unless the present functional structure of lower courts is reformed in India, the capacity building to handle the increasing load of cases shall remain inadequate.
2. **Changes in the Legal Provisions.** There is also a need to re-examine the existing legal provisions in the Indian judicial system. For instance, the Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985, where the accused is guilty until proven innocent, and many individuals are locked up in prisons³⁶. Today, the act has only led to the arrest of those who themselves are victims of drug abuse rather than the arrest and indictment of those who are involved in the nexus of the drug supply within the country. Several nations are changing their approach to dealing with drug problems and are developing a legal mechanism which is less harsh on the users of drugs and focuses on apprehending those involved in its production and supplies. The court needs to compassionately consider such prisoners who are themselves victims of drug abuse and require physical and mental medical assistance and adequate legal relief. Then, there are several other persons in detention for petty bailable offences. As a measure of such relief, the Supreme Court *Legal Aid Committee representing Undertrial Prisoners v. Union of India*, 1994 (6) SCC 731 directed the release of undertrial prisoners who had already done half the punishment of the actual offence³⁷.
3. **Legal Counsel for the Accused.** There are several undertrial cases where many are languishing in prisons due to a lack of competent legal counsel. If they are provided with competent lawyers to represent their case, many of them would be able to get bail. There is a need to increase the number of proper legal services available to those from poor backgrounds who cannot pay for their legal representation. There have been instances where, due to the prisons being in the outskirts of cities and towns, the undertrials have barely been able to interact with their lawyers allocated under free legal aid, thereby poorly representing their case in the court of law for grant of bail. Such functional problems also need to be identified and duly addressed.

³⁶Khanna, Monica, and Seema Garg. "NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT (NDPS 1985): A CRITICAL ANALYSIS." *Nimitmai Review Journal* 3, no. 1 (2020): 28-32.

³⁷Susman, Susan D. "Distant Voices in the Courts of India-Transformation of Standing in Public Interest Litigation Transformation of Standing in Public Interest Litigation." *Wis. Int'l LJ* 13 (1994): 57.

<https://indiankanon.com/doc/1208997/> (Visited on 27 Oct 2023)