

DEBUNKING THE EFFICACY OF SECTION 436-A OF CRIMINAL PROCEDURE CODE: AN EMPIRICAL STUDY OF UNDERTRIALS IN INDIA

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ABSTRACT

The criminal justice system established in India appertains to a reformative model of administering justice, and posits a need to reform the criminal, rather than opting for retribution against the crime committed. Debunking this aspirational model, the present study aims to analyze the present condition of prisoners in India languishing in prisons after their arrest, which is depreciating at an alarming rate. These undertrials are detained in explicit contravention of the statutory requirements explicated in the Criminal Procedure Code, 1973, while consistently being subject to barbaric third degree torture methods and are coerced to undertake dehumanizing activities during incarceration. The current study aims to empirically analyze the efficacy of Section 436-A of the CrPC, by specifically studying the undertrial population in Unnao District jail in Uttar Pradesh. The study also suggests law and policy reforms to tackle the problem of undertrials effectively, rather than relying primarily on Section 436-A of the CrPC. The study concludes that the undertrials detained in non-Metropolitan cities experience greater legal impediments in availing bail, as compared to their counterparts in Metropolitan cities and hence, there is an urgent need to redress the investigation and trial procedures.

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I. INTRODUCTION

Undertrial prisoners are those who are facing trials in court and for ensuring fair trial they are kept in the custody so that they are not in a position to influence and a fair trial can be ensured. By promising judicial custody they are remanded in the jail mostly. Key reason for them spending substantial time in prison is the delay in trial. Other reasons includes lack of legal awareness, poor legal aid etc, due to which undertrial prisoners are unable to employ the advantages of Bail provisions and are forced to languish in the jails. All these factors give birth to various problems such as overcrowding of prisons, human rights abuse to due to lack of speedy trial, violation of fundamental right due to unnecessary prolonged detention, corroded reputation in society and other emotional and physical setbacks, which runs against the undertrial prisoners in their future endeavors.

Section 436-A and 436 of the CrPC deals with the rights of the undertrials prisoners to be released on bail. S. 436A explains the maximum duration after which undertrial prisoners is entitled to be released on Bail. The Section reads as “Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties.”² While section 436 explains when bail can be sought, it says, “When any person other than a person accused of a non- bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail.”³

This study presents the deplorable situation of undertrial prisoners in India through statistics and interviews, explaining the number of undertrial prisoners are languishing in jail, reason for their detention, factor discouraging them from availing legal benefits and what can be the plausible solution and amendments.

² Criminal Procedure Code, 1973, § 436-A.

³ Criminal Procedure Code, 1973, § 436.

II. RESEARCH METHODOLOGY

The present study aims to analyze the efficacy of Section 436 and 436-A of the CrPC while implementation and the problems associated with granting of bail to the detainees. The research is concentrated upon the undertrial prisoners in the Unnao District Jail in Uttar Pradesh. The specific jail was chosen to provide an accurate perspective on the aforementioned problem as Uttar Pradesh has the maximum number of undertrial prisoners as well as the highest number of district jails in the country.

For the purpose of the empirical study, the researchers primarily interviewed the prison authority, i.e., Mr. Vinay Dubey, Jailer, District Jail, Unnao, Uttar Pradesh, who provided the researchers with the statistics of the Unnao jail and the problems faced by the detainees. Additionally, an NGO, Al-Birr Foundation⁴ that is concerned with providing Legal aid to the inmates of Mumbai prison was interviewed. They deal in aiding the inmates in applying for bail, especially to the people who can't afford it. The researchers spoke to the people who actively work for the NGO, who voluntarily explained the problems in the implementation of the provisions of the CrPC. The interview with the two parties also helped the researchers in discerning a difference in the conditions of the undertrials in Unnao and Mumbai. The secondary sources of the empirical study are the reports and statistical surveys conducted by the Government of India as well as other NGOs and organisations. The researchers analysed the latest prison statistical report which is published annually by the National Crime Report Bureau (NCRB).

Combining the research and data obtained from both the primary and secondary sources lead the researchers to their concluding remarks.

III. JUDICIAL TREND PERTAINING TO BAIL PROVISIONS

A. TREND WITH RESPECT TO S.436 OF CRPC IN SUPREME COURT:

Judicial trend has been evolving and favorable to the guidelines laid down in *Hussainaira Khatoon vs. Home Secy., State of Bihar*⁵ case with respect to the S.436 of CrPC pertaining to the Bail provision. In *Hussainaira Khatoon* case following factors was formulated by the Supreme Court in the present case are to be considered for the grant of bail:

⁴Al-Birr Foundation, <http://www.albirr.in/> (last visited Mar 25, 2016).

⁵ (1980) 1 SCC 81.

- i) How long the offender had been living as a resident in the society,
- ii) His employment status and financial condition,
- iii) Family and relatives,
- iv) Reputation in the society,
- v) Previous criminal record, whether he was released on bail earlier,
- vi) Respected member of the society who will guarantee his reliabilities,
- vii) Offence he is convicted under and the probability of his conviction and risk of his absconding and
- viii) Other factors linking him to the community or bearing the risk of his willful absconding.

In *Md. Iqbal Madar Sheikh vs. State of Maharashtra*,⁶ stringent view on cancellation of bail was taken. It was held that bail cannot be cancelled on mere filing of charge sheet. Bail can be cancelled only when a case for cancellation has been made out under S.437 (5) or 439(2) of the CRPC.

In *Common Cause vs. Union Of India*,⁷ it was held that undertrials languishing in jails for a long period of time should be released if they have spend more than 3 yrs of a maximum punishment of 7 yrs.

Question pertaining to appearance of the accused was raised in *State Of West Bengal vs. Pranab Ranjan Rao*,⁸ It was held that appearance mentioned in these sections can only mean physical appearance of the accused and not appearance by counsel because the very notion of bail presupposes restraint of the accused and hence the person who wishes to be released on bail is to appear and surrender before the court. A. person who is not under any sort of restraint does not require to be released on bail. Appearance given under the sections means physical appearance of the accused, representation by the counsel cannot be considered appearance as the concept of bail presupposes that the accused is detained and hence he wish

⁶ (1996) 1 SCC 722.

⁷ (1996) 4 SCC 33.

⁸ (1998) 3 SCC 209.

to request through bail by appearing in the court. If there is no restraint then there is no question of release on bail.

Distinction between Bail, Furlough and Parole was laid down in *State Of Haryana vs. Mohinder Singh*.⁹ While in *Kalyan Chandra Sarkar vs. Rajesh Ranjan*,¹⁰ the Supreme Court said that after cancellation of bail application successive application can be filed. For granting the successive bail conduct of the accused is to be considered. It was held that it is expected from the accused that he will not misuse the facilities given to him while he was in jail. Bail was granted.

In *Sudha Verma vs. State of U.P.*¹¹, it was held that behavior and conduct of the accused is to be taken into consideration while granting bail. Appeal was allowed. High court was ordered by the Supreme Court to reconsider the bail application of respondent and ordered for his arrest, as he tried to physically threaten the appellant after being released on bail. Therefore the allowing of bail application of respondent by the High Court was considered as without motive and rationale.

In *Rasiklal vs. Kishore*¹², magistrate in a case of defamation, granted bail to the accused who had passed defamatory on the complainant on a TV show, on the same day, by noticing that the offence was bailable. High court cancelled the bail by stating that opportunity of hearing was not given to the complainant. On an appeal this order was held unsustainable, it was held that “The right to claim bail is absolute and indefeasible. Principle of natural justice are not a magic rule to be applied in all cases, its application varies from case to case. In bailable offence there is no question of discretion in granting bail as the words of S. 436 are imperative. Only option available to the police officer or the court concerned is taking information of the accused and asking for security with surety. It is the right of the accused to get bail as soon as he is prepared, and he should not be arrested unless he is unable to furnish a personal bond. However, it is to be noted that if his behavior after granting the bail is improper then forfeiture of bail can be allowed.” Appeal allowed.

⁹ (2000) 3 SCC 394.

¹⁰ (2005) 3 SCC 284.

¹¹ (2007) 12 SCC 507.

¹² (2009) 4 SCC 446.

In *Lal Kamendra Pratap Singh vs. State Of U.P.*¹³ agreeing with the guidelines of the *Amravati v.s State Of U.P.*¹⁴, it was held that said decision should be followed in full spirit in all courts of U.P., particularly because the provision for anticipatory bail does not exist in U.P. interim bail should be granted by looking at the case as detention affects the reputation of a person and cause immense loss, as held by the apex court in *Joginder Kumar* Case. Arrest is not mandatory in all cases and whether to arrest or not must be navigated by the guidelines laid down by the apex court in *Joginder Kumar* Case.

Further in *Manoj Narayan Agrawal vs. Shashi Agrawal*,¹⁵ it was held that magistrate is authorized to consider who is entitled to bail by exercising his judicial knowledge. The high court should not be checking as to whether there existed valid ground for grant of bail. However, if there are improper grant of bail then the matter can be remitted to the high court for reconsidering the bail application.

In *Om Prakash vs. Union of India*,¹⁶ the Supreme Court said that if a person is arrested without a warrant then he is entitled to be released, if he furnished bail, as per S. 436 of CrPC. It was held that non cognizable offences are generally bailable, but in some cases bail may be exempted. While recently in *Sayyed M. Masud vs. Union of India*¹⁷ offences under the custom act are bailable.

B. TREND WITH RESPECT TO S.436-A OF CRPC IN SUPREME COURT:

Section 436-A of the CrPC was inserted through 2005 amendment to release those prisoners who have already spent half of the maximum sentence on bail with or without sureties on a personal bond. In *Pramod Kumar Saxena vs. Union Of India*¹⁸ as many as 48 cases were filed against petitioner in six different states; appeal was made for the trial of all the cases in one court and for the release on bail under section 436-A of CrPC. Court allowing the appeal partly held that, as the petitioner has been in the jail for 10 years he is entitled to be released on

¹³ (2009) 4 SCC 437.

¹⁴ 2005 CRLJ 755 All.

¹⁵ (2009) 6 SCC 385.

¹⁶ (2011) 14 SCC 1.

¹⁷ (2012) 13 SCC 746.

¹⁸ (2008) 9 SCC 685.

bail so that he can arrange for amount to be paid and defend himself in court of law, but the consolidation of all the cases in one court is not possible.

*Bhim Singh vs. Union of India*¹⁹ is a recent landmark judgment wherein the Supreme Court issued directions for the release of undertrial prisoners after expiry of time period. Excerpts from the judgment are:

1. Judicial magistrate/ CJM/ Session judges directed to hold one sitting in a week in every jail for two months.
2. Undertrial prisoner who have already served either half or full term of their offence should be released from jails.
3. Report of these sittings should be submitted by the registrar general of the high court to the secretary general of the Supreme Court.
4. All the necessary facilities must be provided by the S.P. of Jail.

C.TREND WITH RESPECT TO S.436-A OF CRPC IN HIGH COURTS:

While analyzing the trend in the High Court judgment it was found that the S. 436-A is followed literally without much scope for reforms and suggestions, as in the case *In The Matter of News Reports vs. State of Bihar*²⁰ petition was filed before the court to monitor the progress of the S.436-A of the code, which was newly implemented and directions were issued in 2006. Petition was dismissed by the High Court stating that, as periodical superintendence is anyway kept and advocate general is required to submit a report in furtherance of it, so there is no need of a regular order. In *Praveen Kumar vs. State*²¹ it was held that, at most petitioner is liable under S. 324 IPC for which he already spent more than 7 years in jail, so he is perfectly entitled to be released on bail. In *Mohd. Mobsin Khan vs. State*²² note of the undertrial prisoners are taken care of by providing the remedy through S. 436-A of the Code, but it was held that in post-conviction cases where appeal is for the cancellation of the sentence, complaint can be filed for long detention, but there is no specific formula as to after this time prisoner must be released.

¹⁹ (2015) 13 SCC 605.

²⁰ (2008) 65 AIC 407 (Pat).

²¹ (2009) 113 DRJ 569 (Del).

²² (2013) 3 MWN (Cri) 209 (Raj) (FB).

IV. RESULTS

A. PRIMARY SOURCE

Unnao District Jail in Lucknow Division of Uttar Pradesh was established in 1885. As per the information provided by the Prison Authorities of Unnao Jail, total number of undertrial prisoners in the jail was 936 out of which there were 871 males, 36 females and 29 juveniles, as of 2015. The number of undertrial prisoners who were able to avail the benefits of legal help are merely 14 in a total of 936. 6 children inhabited the prison with 36 women undertrial prisoners, out which 4 were boys and 2 were girls.

It is interesting to note that the maximum numbers of undertrials were incarcerated for a period of 3 months. The undertrials detained for a period less than a year are 620, out of a total of 936, constituting 66.2% of the total prisoners.

There were 2476 undertrial prisoners released on bail during the last year from the prison. Period of detention of the undertrials in the prison is illustrated in the table below:

<u>Period of detention</u>	<u>Undertrial Males</u>	<u>Undertrial female</u>	<u>Undertrial juveniles</u>	<u>Total</u>
Upto 3 months	267	11	06	284
3-6 months	190	10	08	208
6-12 months	113	08	07	128
1-2 year	200	05	05	210

2-3 years	59	02	03	64
3-5 years	37	nil	nil	37
Above 5 years	05	nil	nil	05
Total	871	36	29	936

B. SECONDARY SOURCE

As per the 2014 prison statistics report of National Crime Report Bureau (NCRB)²³ total numbers of district jails in India are 364 and their holding capacity is 135,439, but the actual total inmates population in district jails in India is 179,695 which leads to the occupancy rate of prison to 132.7, which is highest among all type of jails in India. Uttar Pradesh is the state with highest number undertrial prison population with 62,515 undertrial prisoners. It also has most number of district jails in the country i.e., 56 District prisons. It is important to note that most prisoners in the district jails across the country are under trials. As per the 2014 statistics there are 143,138 under trials in India which constitutes 79.7 % of the total district jails prison population. Women under trial figures are almost parallel to national under trial district jail figures, as there are 6,022 women under trial prisoner in district jails across the country which constitutes 80.0% of district jail population.

District jails in the State of Uttar Pradesh are overcrowded and are occupied by more prisoners than its actual capacity. Figures also represent a stark difference as the entire 56 district jails in U.P. are overcrowded as total inmate capacity of the district prison of U.P. is 43,383 but the actual inmate population of these jails is 74,637. In these 56 jails instead 40756 male inmate capacities, 71,494 are housed, while, 3,143 female are locked against the female inmate capacity of 2,627.

²³ National Crime Records Bureau, Ministry of Home Affairs, Government of India, Prison Statistics India (2014), <http://www.ncrb.gov.in> (last visited Mar 25, 2016).

Total undertrial prisoner in the district jails of U.P are 60005, out of which 57503 are male and 2502 are female. Out of all the undertrial prisoners in the state of U.P. around 45.3% belongs to the age group of 18-30 are 28335 in numbers, of which 27568 are male and 767 are female, while 40.8% belongs to the age group of 30-50 and 13.9% denotes the undertrials of age group 50 and above. So, it is evident that most of the undertrials languishing in the district jails of U.P. are young population. Also there is a major chunk of women undertrials living in jail with their children, which is a major concern as they not only affect the women well being but also the environment and upbringing of children which ultimately dent their development. As per the NCRB 2014 statistics there are 304 women undertrials living with 345 children in the jails of state of U.P., which is concerning as children are more in number than the women.

Following table presents the type of offences and the number of undertrials imprisoned under them in the state of U.P.

<u>Types of IPC offences/ Special and Local laws</u>	<u>Number of Undertrials</u>
Murder	11326
Attempt to murder	4949
Culpable homicide not amounting to murder	2378
Rape	5098
Kidnapping & Abduction	2966
Dacoity	1478
Preparation and	813

assembly for Dacoity	
Robbery	2360
Arms act	2479
NDPS act	3164
Gambling act	593
Excise act	1298
Prohibition act	29
Explosive & explosive substances act	252
TADA	4
Immoral Traffic prevention act	64
Indian railways act	800
Registration of foreigners act	20
Protection of civil rights act	8
SC/ST (prevention of atrocities act)	1046
Indian passport act	28
Essential	244

commodities act	
Antiquities & arts treasurers act	25
Dowry prohibition act	973
Foreign exchange regulation act	1
Prevention of corruption act	218
Conservation of foreign exchange and prevention of smuggling activities act	3
Other SLL crimes	808

Worst part about the situation of undertrial prisoners is that only 218694 undertrials in 2014 are released on bail in U.P out of the total 62515 undertrial prisoners. Also, if we look at the demographic profile of the undertrial prisoners in U.P. then we find that most of the undertrials are either illiterate or their educational qualification is below standard 10th which is one of the prime factors preventing them to avail the benefits of bail provision due to unawareness. As per the figures, 20132 undertrial prisoners are illiterate and 22310 have studied only till standard 10th, which is more than one half of the total undertrial prison population of the state. As far as rest of the prisoner's demographic profile is concerned 13341 have studied above standard 10th but below graduation, 4699 are graduates, 1583 hold post-graduation degree, and 450 hold some technical degree or diploma. So these figures clearly flaunt the sick picture

that majorly illiterate or less literate people are the one who are hardly able to enjoy their available legal right.

Now, when these prisoners are unable to avail their legal right of bail, they continue to rot in the prisons, which cause an irreparable loss to their reputation and well-being. At the end of 2014, 19923 undertrials were detained in the jails for at least 3 months of which 19152 were males and 771 were females, 13432 were detained for 3-6 months of which 12842 were males and 590 were female, 10946 were in the jail for 6-12 months with 10445 male and 501 female, 8590 have spent 1 to 2 years in the prisons as undertrials of which 8226 were male and 364 were females, 5123 prisoners have were detained for 2-3 years of which 4902 were males and 221 were females, 3479 spent 3-5 years with 3343 as males and 136 as females, and 1022 have gone even to the extent of spending more than half a decade in prison as detainee of which 1003 were males and 19 were females.

Above figures can be more clearly understood from the following table representing percentage of undertrial prisoners in Uttar Pradesh considering their duration as detainee:

<u>Period of detention</u>	<u>Percentage of undertrial prisoners</u>
Upto 3 months	31.9%
3-6 months	21.5%
6-12 months	17.5%
1-2 year	13.7%
2-3 years	8.2%

3-5 years	5.6%
Above 5 years	1.6%

C. LEGAL LIMITATION PLACED ON UNDERTRIALS

i. Right to bail under Section 436A of the CrPC

In the case of *Mumtoo Majumdar & Basdev Singh v. State of Bihar*²⁴ the Supreme Court held that the personal liberty of the undertrials cannot be curtailed indefinitely. If they have been detained for period more than half of the sentence awarded for the offence, then they have to be released on personal bond, with or without sureties. This judicial development was incorporated in the CrPC under Section 436A. But even in presence of judicial guidelines and statutory laws, undertrial prisoners still continue to languish in jails. This provision has not been effective in Indian prisons mainly due to negligence of police authorities and disregard of laws. Additionally, for effective implementation of the said provision, it is imperative that the duration of detention in judicial custody is noted and recorded efficiently. But this too is not possible in District jails in Uttar Pradesh as whenever a bail application is cancelled and he returns to the jail or the inmate is transferred to a new prison, he gets allotted a new undertrial number and his records start afresh, thus rendering the determination of the time period impossible.

ii. Right to bail under Section 436 of the CrPC

The CrPC mandates that in a bailable offences. In cases where the accused hails from a low socio-economic background and cannot afford it, the court has the discretionary power to grant bail to an indigent person without sureties and by executing a personal bond.²⁵In spite of the provision, undertrial prisoners are denied bail as the bail amount fixed is exorbitantly high, which they cannot afford.

iii. Right to Free Legal Aid

²⁴1980 SCR (2)1105.

²⁵Criminal Procedure Code, 1973, § 436.

The Constitution provides for free legal aid to the people from impoverished backgrounds under Article 39A. This obligation on the State is also strengthened by the Articles 14 and 22, under which there must equality before law and the State should strive for a system that provides justice to all irrespective of their social backgrounds. Due to illiteracy of the undertrials, in most cases, they are not aware that they are entitled to a lawyer free of cost by the State or whether they have been appointed a lawyer. In most cases the prisoners are unrepresented at the stage of arrest as well as subsequent trial stages. Additionally, the lawyers are negligent in handling the cases as they are hired on political consideration with fixed salary, without any need to dispose off the cases properly. Consequently, many lawyers do not even meet their clients in jails.

iv. Right to Speedy Trial

In the case of *Hussainara Khatoon v. Home Secretary, State of Bihar*,²⁶ the Supreme Court held that the right to speedy trial to a prisoner is implicit under Article 21 of the Constitution. But the spirit of the judgment is not carried on by the judiciary. This inordinate delay is mainly caused by inadequate number of judges and lawyers in the judiciary itself. The judges who are present proceed to go on leaves, thus delaying the case further. The problem is further aggravated by lack of police authorities and their equipment as the prisoners cannot be transported to the courts on the day of their hearing due to lack of vehicles.

D. HUMAN RIGHTS VIOLATION

The undertrial prisoners are frequently subject to violence for slightest of defiance on their part. They are subjected to dehumanising activities like manual scavenging and are slurred on the basis of their caste or professions. Considering the fact that many undertrials hail from the Scheduled Caste (SC), Scheduled Tribe (ST) or Other Backward Castes (OBC), they are segregated on the basis of their castes and professions and are routinely abused and assaulted. Prison system, ostensibly, being a reformatory system has no vocational training to help in the development of the inmates. The two major problem, resulting in human right violation are outlined below-

i. Violence in prisons

²⁶AIR 1979 SC 1639.

The overcrowded jails routinely experience torture, assault and sexual violence at the hands of both the other prisoners as well as the prison authorities. Negligence on the part of supervising authorities leads to heinous injuries and horrific torture with corruption and intimidation running rampant. The problem is further aggravated by the absence of accountability inside the prison system. Recently in October, 2015, clash between two groups resulted in death of 2 people in Tihar jail as the administration in the jail is facing a massive supervising staff crunch. Further, the principal accused in the Nirbhaya rape case, Ram Singh, was allegedly raped in the prison as a form of retributive justice, after which he committed suicide.²⁷ The problem of violence including rape and sodomy is massively prevalent in India and needs redressal.

ii. Dismal state of health facilities in Indian prisons

It is imperative for the State to provide conditions conducive for growth and development of health, as envisaged by Articles 39 (e) & (f), 42 and 47 of the Constitution. Further in the case of *Parmanand Kataravs Union of India*,²⁸ the Supreme Court held that the State is bound to provide health facilities to the inmates, regardless of the fact whether they are undertrials or convicts as the right to health is included under right to life. But the condition of the health facilities provided to the inmates in the prison is deplorable. Due to overcrowding, the inmates are more susceptible to communicable diseases and due to sexual violence, the spread of HIV also increases manifold.²⁹ Another problem is created by lack of medical staff. Hence, overcrowding as well as lack of facilities leads to deterioration of health of the inmates, affecting them physically and psychologically.

V. DISCUSSION AND CONCLUSION OF THE EMPIRICAL STUDY

1. Over the course of the empirical study, the researchers have inferred that the efficacy of Section 436-A is limited. Though, the judicial pronouncement on the same has been welcomed by the media and civil section of the society as the primary strategy to combat the

²⁷ Ram Singh's death: Rape and ugly sexual violence in Indian jails - Firstpost, , <http://www.firstpost.com/india/ram-singhs-death-rape-and-ugly-sexual-violence-in-indian-jails-657071.html> (last visited Mar 23, 2016).

²⁸(1989) 4 SCC 286.

²⁹Kate Dolan & Sarah Larney, *HIV in Indian prisons: Risk behaviour, prevalence, prevention & treatment*, 132 INDIAN J. MED. RES. 696–700 (2010).

problem of undertrials, a diligent reading of the same exhibits divergent results. A judicious perusal of the prison statistics collected during the empirical survey of Unnao District Jail in the year 2015 and the report published by NCRB on all the 56 Uttar Pradesh District jails in 2014 reveals that an overwhelming majority of the undertrials, i.e., 66.2% and 70.9% remain in the prison for less than a year respectively. This indicates that majority of the undertrials are detained for short periods of time. Further, reviewing the reports by NCRB from 2001 to 2010 shows that almost 75% of the undertrials were incarcerated for offences that had the maximum punishment of 3 years and above, hence could be detained for at least upto 18 months in accordance with Section 436-A. Hence, a majority of undertrials are released before completing half of the maximum sentence for their offences, thus rendering the provision futile. Further, almost all of the reports and surveys that are published indicate the number of undertrials in a year. Since, every year the percentage and proportion of the undertrials remains the same, people are deceived into thinking that the same batch of undertrials has been incarcerated for longer periods, while the reality is that a large number of undertrials, who have mostly committed serious offences, are detained for shorter durations. Thus, the inference that can be clearly drawn is that Section 436-A can only benefit a small percentage of people, and is indifferent to the majority of undertrials.

2. By juxtaposing the interview of the jailer in Unnao and the NGOs in Mumbai, a stark difference is discerned. For the undertrials which are placed in Metropolitan cities, there is better access to free legal aid that is provided by various NGO and other social-welfare organisations. The NGOs mostly prefer to work in bigger cities with the aim of gaining publicity and social visibility. On the other hand, the undertrials detained in non-Metropolitan cities, don't have the legal aid of many NGOs. They rot in the prisons, without any awareness of their legal rights and in cases where the awareness exists, they don't have the economic means to avail the bail provision, due to absence of financial support lent by the social groups. Hence, the state of undertrials in non-Metropolitan cities is worse than that detained in Metropolitan cities.

3. The course of empirical analysis and study reveals shortcomings of the bail provisions of Section 436 and 436-A of the CrPC, which have been highlighted above. Releasing undertrials under Section 436-A is a short-term provision. There is need of amending the statutory provisions of investigation and trial procedure so as to facilitate speedy disposal of cases. The police-population and judge-population ratios need to be improved. The structural overhaul of

the judiciary is necessary, so that fast-track courts constituted can function without the problems affecting the regular courts. The overhaul should include a provision under which the judges themselves can travel to the prison, constituting “jail-courts.” The judges adjudicating over a particular criminal case must not be discontinued from the same and transferred to another criminal matter and additionally, the practice of unnecessarily adjourning the court proceedings must be minimized. Finally, the illiteracy and unawareness of the detainees need to be combated so they know their legal rights and entitlements.