

Pretrial Detention in India: an Examination of the Causes and Possible Solutions

Vrinda Bhandari¹

Received: 17 September 2014 / Accepted: 8 June 2015
© Springer Science+Business Media Dordrecht 2015

Abstract The average rate of pretrial detention in India is 20 per 100,000 of the general population, which is less than half the global average. However, as of 2013, the number of pretrial detainees as a proportion of all prisoners is 67.6 %—over twice the global average. This article seeks to understand the causes of such a high proportion of pretrial detention. Answering this question will help evaluate the present governmental response to the problem of pretrial detention. The article begins by examining the laws and practice of pretrial detention in India and then tries to explain the disjuncture between the two by analysing, first, the role of various functionaries, namely the police, prosecutors, judiciary and prison officials; second, the profile of the pretrial detainees and their (in)ability to post bail and, finally, the (in)effectiveness of the existing legal aid system. It posits that while partly a result of relatively low overall convict populations, the high incidence of corruption; shortage of human, physical and monetary resources and governance and lack of coordination contribute to the high number of pretrial detainees in the prison population in India. It then concludes by describing existing solutions and referencing the practice in Pakistan and Bangladesh, which face similar problems and have similar laws and institutional structures.

Keywords Criminal justice · Pretrial detention · Undertrial · Prisons · Prisoners · South Asia · India · Pakistan · Bangladesh · Accused · Jail

Introduction

Almost every third prisoner (32 %) around the world is awaiting trial or the conclusion of trial. The world's nearly 3 million pretrial detainees or 'undertrial prisoners' (as they are called in India, Pakistan and Bangladesh) are persons who have not been convicted of the charge(s) for which they have been detained and are presumed innocent (in most jurisdictions). Another way of counting the global pretrial detention population is not in relation to the prison

✉ Vrinda Bhandari
vrinda.bhandari@gmail.com

¹ New Delhi, India

population, but as a rate of the general population. Using such a calculus, in 2013, globally, there were 50.4 persons in pretrial detention per 100,000 people in the world.

An intriguing regional outlier in terms of pretrial detention use and dynamics is South Asia, in particular the successor states of the British Indian Empire: India, Pakistan and Bangladesh, formed in 1947 and 1971, respectively. Collectively, these three countries, which comprise almost a quarter (24 %) of the world's population, contain only about a tenth of the global pretrial detention population (10.7 %) and a twentieth (5.1 %) of all prisoners worldwide.¹ The average rate of pretrial detention in these three countries is 22.4 per 100,000 of the general population, less than half the global average. However, as Table 1 shows, the number of pretrial detainees as a proportion of all prisoners is 66.5 %—over twice the global average.

Table 1 makes clear that figures in India mirror those in South Asia. In fact, in 2013, 67.6 % of India's prison population comprised pretrial detainees (up from 66.2 % in 2012); thus, more than 2 out of every 3 persons in the overcrowded Indian prisons are unconvicted and still innocent.² The judicial response to manage this problem has been to direct the fast-tracking of criminal cases, and the release of pretrial detainees who have completed at least half their maximum prison term under Section 436A of the Criminal Procedure Code, 1973 (CrPC). The Supreme Court in 2014 in *Bhim Singh v Union of India*³ also brought attention to the plight of those languishing in prison while awaiting trial, which coincides with Prime Minister Modi's mandate to decongest prisons by releasing pretrial detainees (Utkarsh Anand 2014; Vrinda Bhandari 2014). While laudable as a short-term solution, these measures do not address the underlying long-term causes for the high proportion of pretrial detention population in the prison population.

This article seeks to understand the causes of the high incidence and proportion of pretrial detention in India. It begins by charting trends and examining the relevant laws and practice of pretrial detention. Chapter 4 then tries to explain the disjuncture between the two by analysing, *first*, the role of various functionaries, namely the police, prosecutors, judiciary and prison officials; *second*, the profile of the pretrial detainees and their (in)ability to post bail and, *finally*, the (in)effectiveness of the existing legal aid system. It posits that while partly a result of relatively low overall convict populations, the high number of pretrial detainees in the prison population is caused by the high incidence of corruption; shortage of human, physical and monetary resources and governance and lack of coordination. The article concludes by describing existing solutions and referencing practices in Pakistan and Bangladesh, which face similar problems and have similar laws and institutional structures.⁴ Pertinently, this article focuses only on the formal legal system and does not deal with informal justice systems, including the *panchayat* system prevalent in villages, because in such cases the dispute is often

¹ International Centre for Prison Studies ('ICPS'), *World Prison Brief*, <<http://www.prisonstudies.org/world-prison-brief>>; Roy Walmsley, *World Pretrial/Remand Imprisonment List*, ICPS, 2nd edn, <http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/world_pretrial_imprisonment_list_2nd_edition_1.pdf>.

² National Crime Records Bureau, *Crime in India—2012*, Table 17.5; National Crime Records Bureau, *Prison Statistics India—2012*, Tables 2.1 and 3.2, <<http://ncrb.gov.in/PSI-2012/ContTab.htm>> (*hereinafter*, 'NCRB, Prison Statistics').

³ Writ Petition (Crl.) Nos. 310/2005, order of the Supreme Court of India dated 5th September 2014.

⁴ Somewhat unsurprisingly, criminal codes in India, Pakistan and Bangladesh originate from the same source, Lord Macaulay's Indian Penal Code of 1860 and the Code of Criminal Procedure (CrPC) of 1898. Hence, they share concepts of 'bailable' and 'non-bailable' offences (bail as a right and at the judge's discretion, respectively); 'pre-arrest' bail and 'cognizable' and 'non-cognizable' offences (the power to arrest without or with a warrant, respectively).

Table 1 Current occupancy levels, prisoner and pretrial detainee numbers in South Asia

	Country	Total pretrial detention population	Pretrial detainees as a % of total prison population	Prison population rate per 100,000 population	Pre-trial/remand population rate per 100,000 population	Occupancy level (based on % capacity)
t.1.3	Bangladesh	46,919	69	42 (2012)	29	192.2
t.1.4	India	254,857	66.2	30 (2012)	20	112.2
t.1.5	Pakistan	49,582	66.2	41 (2012)	27	177.4
t.1.6	All Asia		47.8			
t.1.7	Europe		20.5			
t.1.8	The World	Nearly 3 million	32	157.6 (2013)	50.4 (2012)	118

Sources: ICPS, World Prison Brief and Human Rights Watch (Human Rights Watch 2010)

resolved without involving the police or making an arrest. Such cases, thus, do not contribute directly to the problem of pretrial detention. 69

Dysfunctional systems, including understaffed and underpaid prosecutors and judges, poor quality of police investigations and widespread corruption, limit the number of serious offenders India is capable of arresting, imprisoning, prosecuting and convicting. Consequently, a relatively high number of pretrial detainees do not end up standing trial, or, if tried, not being convicted. For instance, India's conviction rate is 37 %, which pales in comparison to countries such as Australia and USA (85 % each).⁵ Moreover, there is likely a tendency—or temptation—by judges to view pretrial detention as a form of punishment given that the backlog of cases stretches the conclusion of trial and makes post-conviction prison sentences relatively difficult to obtain. The situation is exacerbated because those awaiting trial are often poor, ignorant about their rights, unable to access legal aid and incapable of paying the requisite bail amounts. 70

India's imprisonment dynamics are likely to change—as the country grows, urbanisation rates will increase and the middle classes will expand, pushing governments to cut crime. Typically, governments respond by increasing the size and budgets of their visible (uniformed) policing—a relatively quick and noticeable response popular with crime-weary citizens. Focused in growing urban areas, more policing often leads to more arrests. However, lacking the resources of high-income countries, lower middle-income countries such as India (and Pakistan/Bangladesh) typically fail to invest in a sufficient number of investigators, forensic crime laboratories, courtrooms, judicial officers and prosecutors to keep pace with rising arrests. 71

Overburdened by the flood of arrestees, prisons experience an increase in the number of pretrial detainees and overcrowding. This is worrying because arbitrary and excessive pretrial detention is a human rights violation—it is related to a nexus of other abuses and ill-effects such as torture, corruption and the spread of disease. Excessive pretrial detention can stunt economic development and undermine the rule of law. 72

Understanding pretrial detention dynamics in India may help us predict future detention trends and help understand why solutions such as releasing pretrial detainees (as recommended in *Bhim Singh*), while commendable, do not address the underlying problem, which continues 73

⁵ Muhammad Waheed, *Victims of crime in Pakistan*, The 144th International Senior Seminar Participants' Papers, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, <http://www.unafei.or.jp/english/pdf/RS_No81/No81_14PA_Waheed.pdf> at 144. 74

to fester. This is important because over-incarceration and related pretrial detention are problems affecting many countries, both rich (e.g. USA) and poor (e.g. Bangladesh).

Trends

Table 2 examines trends of pretrial detention in India to reveal an increase in the absolute number of pretrial detainees and their proportion per 100,000 population from 2000. A near-consistent proportion of two thirds of the prison population comprises pretrial detainees.

The 2012 National Crime Records Bureau (NCRB) Prison Statistics⁶ help further disaggregate the data.

First, amongst the various states, there is vast discrepancy in the proportion of pretrial detainees to the total prison population. States with a high proportion of pretrial detainees are Jammu and Kashmir (79 %), Bihar (85.4 %), Jharkhand (75.2 %) and Delhi (73.4 %).

Secondly, murder constitutes the single largest proportion of pretrial detainees charged for offences under the Indian Penal Code, 1860 at 26.9 %. Six states—Uttar Pradesh, Madhya Pradesh, Bihar, Karnataka, Maharashtra and Odisha—account for 53 % of the total pretrial detainees in prison on charges of murder. After murder, theft (11.5 %) and attempt to murder (10.6 %) contribute to the next largest share of pretrial detention population.

Finally, ‘Special and Local Laws’ (such as criminal laws relating to drugs, explosives, excise, customs, etc.) contribute to 20.4 % of the total number of pretrial detainees, with those accused under the Narcotic Drug and Psychotropic Substances Act forming the highest proportion (27.6 %) of pretrial detainees under these laws.

Existing Laws and Practice

A majority of India’s arrest and bail laws are liberal; although, as the following sections will demonstrate, the problem lies in the non-implementation of the laws. To begin, however, it is important to provide a brief background on the laws and jurisprudence governing pretrial detention in India.

Arrest and Investigatory Provisions

The CrPC empowers the police to *suo motu* arrest a person accused of a ‘cognizable’ offence, although the power to arrest is distinct from the justification of its exercise (The Supreme Court 1997; Joginder Kumar v State of Uttar Pradesh 1994a). The Supreme Court in its 2014 decision in *Arnesh Kumar* reiterated that Section 41 of the CrPC expressly precludes a police officer from arresting a person accused of an offence punishable with up to 7 years imprisonment ‘only on its satisfaction that such person has committed the offence punishable as aforesaid’ (*Arnesh Kumar v State of Bihar* 2014). Instead, the police have to satisfy themselves that the arrest is mandated by the provisions of the section, ‘is really required’, and does not ‘mechanically reproduce’ the reasons contained in Section 41 (*Hema Mishra v State of Uttar Pradesh* 2014; *Lalita Kumari v State of Uttar Pradesh* 2014). With the ‘aim to avoid unnecessary arrest[s] or threat of arrest[s]’ (*Arnesh Kumar v State of Bihar* 2014), the CrPC

⁶ NCRB, *Prison Statistics India—2012*, at chapters 3–4.

Table 2 Changing prisoner and pretrial detainee numbers in India, 2000–2013

Year	Number of prisoners	Number of pretrial detainees	Pretrial detainees as a % of prison population	Pretrial/remand population rate per 100,000 population
2000	271,948	193,627	71.2 %	18
2005	358,120	237,076	66.2 %	21
2010	368,998	240,098	65.1 %	19
2013	411,992	278,503	67.6 %	22

Source: ICPS, World Prison Brief

was amended in 2008 to insert Section 41A mandating the issuance of a ‘notice of appearance’ to the accused in all cases where their arrest is not required under Section 41.

Section 167(2) of the CrPC authorises the Judicial Magistrate to send an accused to police custody for 15 days if the police investigation cannot be completed within the mandated 24 h and if the magistrate is satisfied with the legality of the arrest.⁷ Beyond this, if the magistrate ‘is satisfied that adequate grounds exist’, they may authorise a further judicial custody up to a 60 or 90 days based on whether the alleged offence is punishable with a sentence of less than, or more than, 10 years (*Sundeep Kumar Bafna v State of Maharashtra* 2014). On the expiry of this period, the accused is entitled to be released on bail provided they can ‘furnish bail’. In *Arnesh Kumar*, the Supreme Court strongly criticised the ‘routine, casual, and cavalier manner’ in which detention was authorised by magistrates and directed them to independently peruse the police report and record their satisfaction (*Arnesh Kumar v State of Bihar* 2014).

While undoubtedly welcome, the decision in *Arnesh Kumar* should be viewed in context of the Supreme Court’s existing ‘public interest-oriented’ jurisprudence on illegal or wrongful arrests. In general, the Supreme Court has adopted a ‘public order’ approach instead of a ‘liberty-focussed’ approach, ‘balancing’ the human rights and liberty of the accused with societal interest in reducing crime (*Raghuvansh Dewanchand Bhasin v State of Maharashtra* 2012; *Inder Mohan Goswami v State of Uttaranchal* 2007; *Joginder Kumar v State of Uttar Pradesh* 1994b).

Bailable and Non-bailable Offences

In bailable offences, where bail is a matter of right, Section 436 of the CrPC requires the release of the accused, provided such person ‘is prepared’ to give bail or execute a personal bond. A 2005 amendment to the section provides that any indigent person unable to furnish surety ‘shall’ be discharged on executing a personal bond, instead of paying bail. The amendment also inserted a new section, Section 436A, which required an accused who had been detained for ‘one-half of the maximum period of [stipulated] imprisonment’ to be considered for release, and to be guaranteed release on the completion of the maximum period of imprisonment. Section 436A, however, only applies to offences where death is not stipulated as one of the punishments under law; therefore, it would not aid a person accused of murder.

⁷ *Id.* The Court clarifies that before authorising the detention, the Magistrates must ‘record [their] own satisfaction’, however brief, although the satisfaction ‘shall never be based on the ipse dixit of the police officer’.

Sections 437 and 439 of the CrPC deal with non-bailable offences and specify the conditions under which bail may be granted. Bail can be denied to prevent the accused from absconding, reoffending, tampering with evidence or influencing witnesses (Panchanan Mishra v Digambar Mishra 2005; State of Rajasthan v Balchand 1977). The Supreme Court has held that bail is the rule and jail the exception,⁸ and if the appearance of the accused can be secured through other means, then it should not be necessary to hold them in pretrial detention (Kelkar 2008; Antulay and Nayak 1992). Delay in prosecution and failure to monitor the conditions and time period of a person's detention violates their right to life and personal liberty under the Indian Constitution.⁹

The exceptionality of bail as a pretrial measure, as described above, has not always translated into practice. Newspaper reports reveal instances of the accused having slipped through the net and remaining incarcerated in prison for 38¹⁰ or 54 years (Parwini Zora 2005), without the conclusion of trial. On occasion, courts have also held that 'mere long period of incarceration is not per se illegal. If the petitioner has committed offence, he has to remain behind bars.' (Prمود Kumar Saxena v Union of India 2008; Ajeet v State of Uttar Pradesh 2012). Even if these cases are outliers, they are illustrative of the breakdown in the pretrial detention system. As demonstrated in Tables 2 and 3, the absolute number and, in many cases, the proportionate percentage of pretrial detainees have increased over the last two decades.

Unfortunately, these figures also include children who are in prison on account of their mothers being in pretrial detention (RD Upadhyay v State of Andhra Pradesh 2007). In *RD Upadhyay v State of Andhra Pradesh*,¹¹ the Supreme Court took note of the practice of arresting female prisoners and then automatically arresting their children. Based on various affidavits submitted, the court recorded the presence of were 6496 female pretrial detainees, with 1053 children and 1873 convicted female prisoners, with 206 children. The court passed directions that a child shall not be treated as a pretrial detainee while in prison with their mother. Nevertheless, female prisoners are allowed to keep their children with them, till they reach the age of 6 years. As per the 2012 NCRB report, there are 1813 children under the age of 6 years, living as prison inmates with their mothers across the country. The issue of children automatically becoming pretrial detainees is an important issue meriting consideration.

Finally, Section 438 of the CrPC governs anticipatory or pre-arrest bail. On bail amounts, Section 440 of the Criminal Procedure Code mandates that the amount of every bond be fixed with 'due regards to the circumstances of the case' and 'shall not be excessive'.

Extraordinary Laws

Preventive detention is an extraordinary power that permits the *preventive* arrest of a person to maintain public order, national defence and India's relations with other countries or to prevent a breach of security (Haradhan Saha v State of West Bengal 1975; Yumman Ongbi Lembi Leima v State Of Manipur 2012). It has been authorised under Article 22(3) of the Indian Constitution and is provided under Sections 107/151 of the CrPC to empower the police to preventively arrest persons to prevent the commission of cognizable offences. Preventive detention can only be sanctioned for up to 3 months, unless certain conditions are fulfilled.

⁸ *State of Rajasthan v Bal Chand*, AIR 1977 SC 2447, at para 2.

⁹ *Mantoo Majumdar v. State of Bihar*, AIR 1980 SC 846.

¹⁰ *After 38 years in jail, man starts life at 70*, Times of India, 23rd April, 2006, <<http://timesofindia.indiatimes.com/india/After-38-years-in-jail-man-starts-life-at-70/articleshow/1500343.cms>>.

¹¹ 2007 (15) SCC 337.

Table 3 Number of pretrial detainees by period of detention at the end of the year, 1995–2012

Year	Up to 3 months	3–6 months	6–12 months	1–2 years	2–3 years	3–5 years	Above 5 years
1995	155,461 (89.4 %)			13,327 (7.7 %)	2832 (1.6 %)	1966 (1.1 %)	255 (0.1 %)
2000	78,316 (40.4 %)	43,799 (22.6 %)	34,419 (17.8 %)	22,488 (11.6 %)	9629 (5 %)	4152 (2.1 %)	824 (0.4 %)
2004	88,007 (40.5 %)	42,403 (19.5 %)	39,649 (18.3 %)	28,023 (12.9 %)	11,272 (5.2 %)	5707 (2.6 %)	2069 (1 %)
2010	91,007 (37.9 %)	52,917 (22 %)	43,535 (18.1 %)	30,040 (12.5 %)	13,948 (5.8 %)	6992 (2.9 %)	1659 (0.7 %)
2012	96,207 (37 %)	56,306 (22.1 %)	44,954 (17.6 %)	31,564 (12.4 %)	15,092 (5.9 %)	8706 (3.4 %)	2028 (0.8 %)

Source: NCRB, Prisons Statistics India, Table 6.1

However, those detained are not entitled to the constitutional safeguards of being informed, as soon as possible, of the grounds of arrest, the right to a legal practitioner of their choice or the right to be produced before a magistrate within 24 h of detention.¹² Pertinently, bail laws do not cover individuals who have been preventively detained; hence, they cannot be released on bail (Mrinal and Bad characters, history Sheeters, budding Goondas and Rowdies 2010).

Part VIII of the CrPC empowers the magistrates to order ‘suspected persons’, ‘habitual offenders’ and others to execute bonds (with or without sureties) for ‘keeping the peace’ or ‘for good behaviour’.¹³ Magistrate can detain such persons for 6 months, pending inquiry as to the truth of information, which may be proved by ‘evidence of general repute or otherwise’.¹⁴ Additionally, if this person is unable to furnish the required security, they can be imprisoned up to a maximum of 3 years under Section 122(3) of the Criminal Procedure Code.

Apart from the Criminal Procedure Code, there are other national and state legislations such as the National Security Act, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act and the Goonda Act, which authorise preventive detention.

A simple perusal of newspaper reports reveals the prevalence of the use of preventive detention provisions under the CrPC. In the run up to the 2014 elections, 186,460 ‘potentially dangerous’ persons were preventively detained by the Gujarat Election Commission with the assistance of the Gujarat Police, while 52,649 non-bailable warrants were issued against ‘notorious and dreaded criminals, who are yet to be nabbed’ (PTI 2014). Similarly, in 2010, 8000 ‘anti-social elements’ were preventively detained by the Madhya Pradesh police to safeguard law and order before the Supreme Court’s Ayodhya verdict (PTI 2010).

Legal Aid Provisions

Sections 12 and 13 of the Legal Services Authorities Act govern legal aid in India. They provide ‘free legal services’ to *any* person in custody, any member of a scheduled caste or tribe, or any woman or child. Eligible candidates also include those with annual incomes below Rs. 100,000 (\$1666), although in the Supreme Court, the limit is Rs. 125,000 and in some states it is only Rs. 50,000 (\$833) (National Legal Services Authority (NALSA) 2013).

The National Legal Services Authority has supplemented the Act with the *Quinquennial Vision Document of 2010* directing district legal service authorities to run legal aid clinics in

¹² Article 22 of the Constitution of India.

¹³ Sections 107, 109 and 110, CrPC.

¹⁴ Section 116, CrPC.

prisons and improve legal literacy. Additionally, its *Paralegal Volunteers Scheme* trains paralegals to work as intermediaries between the people and the Legal Service Authorities.

Pertinently, the Supreme Court has clarified that the right to a lawyer arises at the accused's first production before the magistrate and not at the commencement of trial. Nevertheless, a lawyer is not permitted to be present during police interrogation since unlike the USA, statements made to the police during interrogation are not admissible in trial in India (Mohammed Ajmal Kasab v State of Maharashtra 2012).

Although national level data on the reach and effectiveness legal aid could not be found, the high prevalence of pretrial detention (despite legislative amendments) is indicative of the difficulty in accessing legal aid. Anecdotal evidence exists as well; the former Kerala DG of Prisons, Mr. Alexander Jacob, estimates that 20 % of prison inmates are innocent and are in pretrial detention due to 'lack of access to legal aid' (although the basis of his estimation is unclear).¹⁵ Although the National Legal Services Authority has directed the state legal services authorities to visit prisons to build legal awareness and run legal aid clinics, this has not been uniformly implemented (UNDP-MARG 2012; National Legal Services Authority 2010). For instance, Amnesty International found that five of the 11 nominated legal aid lawyers in Bangalore's Central Prison had *never* visited in 2.5 years. Similarly, three of the six lawyers nominated by the Bangalore Rural District Legal Service Authority visited only once or twice in 2013 (Amnesty International 2014).

UNDP in its needs assessment of several legal service authorities reached similar conclusions. It found that many National Legal Service Authority directions had not been implemented; these included having a panel lawyer and paralegal at every Legal Service Authority front office, designating panel lawyers on retainers, building a strong base of paralegal volunteers and instituting monitoring committees and reporting requirements.¹⁶

Analysis: Understanding the Disjuncture Between Law and Practice

Progressive changes were made to the law in India in 2005, with the introduction of plea-bargaining and amendments requiring the release of pretrial detainees on the completion of certain duration in custody. In 2008, with the aim of avoiding unnecessary arrests, a further amendment was made to Section 41 to emphasise the importance of investigation before arrest. Notwithstanding these changes, the number of pretrial detainees has been increasing, as shown in Table 4.

The Supreme Court observed in 2012 the following:

We find no flaws in the provisions in the statutes books, but the devil lurks in the faithful application and enforcement of those provisions. It is common knowledge, of which we take judicial notice, that there is a great hiatus between what the law stipulates and the realities on the ground in the enforcement of the law (Mohammed Kasab v State of Maharashtra 2012).

This section will examine the possible reasons for this situation. It will focus on the functionaries in the criminal justice system (the police, prosecutors, judiciary and prison officials); and the socioeconomic profile of the pretrial detainees, manifest in their ignorance

¹⁵ HRLN, *supra* note 33.

¹⁶ UNDP-MARG, *supra* note 36, at 131.

Table 4 Annual and biennial changing prisoner and pretrial detainee numbers in India, 2004–2012

Year	Number of prisoners	Number of pretrial detainees	PTD/imp (% of prison population)
2004	331,391	217,130	65.5 %
2005	358,120	237,076	66.2 %
2006	373,271	245,244	65.7 %
2008	384,753	257,928	67.04 %
2010	368,998	240,098	65.1 %
2012	385,135	254,857	66.2 %

Source: NCRB, Prison Statistics India

about rights, inability to pay bail bonds and effectively access legal aid. The analysis should be read keeping in mind that causation cannot always be easily established and not all hypotheses are empirically verifiable. In a few situations therefore, I have made an argument, relying on my own experience.

Police

Corruption

A major source of police corruption stems from their powers to arrest (Arnesh Kumar v State of Bihar 2013; Joginder Kumar v State of Uttar Pradesh 1994c). As per the 2013 Global Corruption Barometer, a worldwide public opinion survey released annually by Transparency International, 75 % of the 1025 respondents interviewed felt that the police were ‘corrupt/extremely corrupt’, second only to political parties, polling at 86 % (Transparency International 2013a; Transparency International 2013b).

During a month long research project at the National Judicial Academy, Bhopal in 2008, I was interviewing police officers to understand the causes for delays in the lower courts. Conversations with police officers revealed four types of existing corruption, of which only the final one was considered taboo:

- *Nazrana*: money paid for future work, to keep the police in good books.
- *Shukrana*: money paid to show appreciation for the work already done by them.
- *Hakrana*: money paid to do the present work. E.g. ‘If I help you, I want Rs. 5000.’
- *Zabrana*: when the police start negotiating. E.g. ‘Rs. 5000 not enough, I want Rs. 10,000.’

It is important to bear in mind that this is merely illustrative and might not be representative of the type or cause of corruption in the rest of the country.

Poor Resource Allocation and Working Conditions

The common story, which emerged from the project at the National Judicial Academy, was that police officers are understaffed, overworked and inadequately paid. In fact, the Bureau of Police Research and Development (BPR&D) in its 2012 Report noted while there was only one police officer for 761 people, there were three police officers for every ‘protected person’

(ministers, members of parliament/legislative assemblies, judges, bureaucrats).¹⁷ This represents a bigger problem, being the lack of formal separation of their investigatory and security functions. Time spent on administrative and security duties (maintaining law and order, providing VIP security, and stopping unlawful assemblies) leave the police with lesser time for investigation to solve cases.

This simple fact has big implications—delay in investigation leads to delay in the conclusion of trial. However, the police are quick to arrest persons to demonstrate the (un)successful progress of their investigation. As we shall see below, often those arrested are poor, vulnerable and on a police list ('history sheet') of suspected criminals. They are ignorant about their rights, do not have access to a legal aid lawyer and remain in prison because no one tracks their legal status/detention period.

Apart from that, the police in each state keep a record of antisocial or dangerous elements, i.e. persons with an arrest record. For instance, Rule 1052(1) of the Karnataka Police Manual states that a 'history sheet' should be maintained with the names of all those residing within the permanent or temporary jurisdiction of the police station who 'are known or are believed to be addicted to or aid, or abet, the commission of crime...irrespective of whether they have been convicted or not' [emphasis supplied]. In practice, once these persons get on a police list, they are under constant surveillance, harassed when the police are looking for suspects and arrested under the CrPC's preventive detention powers.¹⁸

Misuse of the Powers of Arrest

Arbitrary arrests and prolonged judicial custody are common, especially in areas marked with political unrest (Saxena 2008). In *Joginder Kumar v State of Uttar Pradesh*,¹⁹ a three Judge Bench of the Supreme Court referred to the Third National Police Commission Report, which states that 60 % of police arrests are either 'unnecessary or unjustified' and that such unjustified action (and continued detention) accounts for 43.2 % of the prison expenditure. A majority of the arrests are for 'very minor prosecutions' and are, therefore, not as necessary for crime prevention. More importantly, the report concludes that arrest powers are one of the chief sources of corruption in the police (Arnesh Kumar v State of Bihar 2014; Joginder Kumar v State of Uttar Pradesh 1994b).

To put this in context, three out of the five times a police officer starts an investigation, arrests a person, files a charge sheet and takes them to court; the person should not have been arrested at all. NCRB data, tabulated below, gives a better perspective about the increase in the number of arrests for all crimes, particularly for crimes under the Indian Penal Code (Table 5).

Although the total number of persons arrested has reduced from 2010 to 2012, there is a marked increase in the persons arrested under crimes covered by the Indian Penal Code. Interestingly, in 2012, the highest number (17.5 %) of arrests were for the offence of hurt, followed by the offence of rioting (10.6 %). There were 2.1 % arrests for murder and 2.5 % for attempt to commit murder (National Crime Records Bureau 2012a). Based on the data, on average 1.1 to 1.4 persons were arrested for every case under special and local laws and the Indian Penal Code, respectively, in 2012.

¹⁷ As per the Bureau, there is one police officer for 761 persons, against a sanctioned strength of one officer for 568 persons. Conversely, there are 47,557 officers guarding 14,842 protected persons (Bureau of Police and Research and Development 2012; Zee Media Bureau 2013).

¹⁸ For further details see Satish, *supra* note 28, at 143.

¹⁹ (1994) 4 SCC 260.

t5.1 **Table 5** Total number of arrests, 1995–2012

t5.2	Year	Total number of persons arrested (Indian Penal Code + special and local laws)	Persons arrested for Crimes under the Indian Penal Code
t5.3	1995	7,229,051	2,587,739
t5.4	2000	6,622,505	2,675,923
t5.5	2004	7,317,839	2,660,910
t5.6	2010	7,789,937	2,947,122
t5.7	2012	7,420,091	3,270,016

Source: NCRB, Crime in India

The Supreme Court has repeatedly castigated the police for ‘irrational and indiscriminate arrests’ which constitute a gross violation of human rights (SS Mhetre v State of Maharashtra 2011). In its July 2014 judgment, the court criticised the police’s (mis)use of arrest powers and the failure of magistrates to check it (Arnesh Kumar v State of Bihar 2014). It observed that this contributes to a sense of ‘arrogance’ and a ‘lucrative source’ of police corruption. Despite laws prohibiting routine arrests on mere allegations or accusations,²⁰ the Court noticed no improvement, since in its ‘experience’, detention continues to be ‘authorised in a routine, casual and cavalier manner.’ Consequently, the court directed police officers to not automatically arrest the accused and to comply with the amended CrPC or face departmental action or contempt proceedings.

Unfortunately, this practice of arbitrary arrests speaks to the larger problem of pretrial detention—ever-increasing number of arrests and, hence, persons incarcerated, overcrowds prisons; makes them unmanageable and is not compensated by the number of pretrial detainees being acquitted or released on bail. The situation is exacerbated once we examine the demographic profile of those arrested (in Tables 10, 11 and 12)—nearly three quarter of pretrial detainees are illiterate or have studied below class X, and they disproportionately comprise members of the minority or historically disadvantaged communities (the scheduled castes/tribes). This assumes importance when one considers the consequences of imprisonment and its long-term impact.

Of particular relevance to this article in the context of extraordinary laws and arbitrary arrests is the 2014 amendment to the Karnataka Goonda Act, 1985, which now permits the preventive detention of ‘acid attackers, depredators of environment, digital offenders, land grabbers, money launderers, sexual predators’ in addition to ‘bootlegger, drug-offender, gambler, goonda, immoral traffic offender, and video or audio pirate’ for up to one year with a view to ‘prevent him from acting in any manner prejudicial to the maintenance of public order.’²¹ Acting in such a prejudicial manner is defined to include conduct when the person is ‘engaged or is making *preparations* for engaging’ in these proscribed activities.²² The extremely broad scope of the act in invoking an exceptional police power is problematic. Further, the public interest justification to preventively detain those who *may* be digital

²⁰ Sections 41 and 41A of the Criminal Procedure Code, which were amended in 2008 and 2005, respectively.

²¹ Sections 3 and 17 of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, [Immoral Traffic Offenders, Slum-Grabbers and Video or Audio Pirates] Act, 1985 (*hereinafter*, ‘Karnataka Goonda Act’). See <<http://altlawforum.org/pedagogy/karnataka-amendments-to-goonda-act/>> for the amendment.

²² Section 2 of the Karnataka Goonda Act, 1985.

offenders, depredators of environment or engage in copyrights violation is suspect and amounts to prior restraint. Similarly, sexual and cyber crime (or digital) offenders have also been brought under the purview of preventive detention laws in Tamil Nadu (Ilangovan 2014). Preventive detention here can thus be used as a tool for harassment and the vague wording of the statutes contribute to a large number of pretrial detainees, without these accused being tried or even committing any offence.

Shortage of Police Officers

A large part of the police's problems stem from the absolute shortage of officers, which in the Indian context impedes efficient investigation, results in adjournments due to absence during trial and the non-production of the accused before the magistrate.²³ The figures are tabulated in Table 6.

Evidently, India (along with Bangladesh) has one of the lowest police-population ratios in the world—131.1 against a UN norm of 222 per 100,000 (Shamshur and Rabb Khan 2007). Further, it performs poorly even when measured against its own standards, set by the Bureau of Police Research & Development²⁴ (Table 7).

The above figures hide the low level of female officers in the country—in 2011 only 5 % of the total police force comprised female constables (Malvika Vyawahare 2013), despite the high incidence of crimes against women. They are also silent on the inequitable intra-country distribution. For instance, Bihar, with the second largest number of pretrial detainees amongst all states, has a police population ratio of 67 per 100,000 (National Crime Records Bureau 2012b). Below, Table 8 (National Crime Records Bureau 2012c; National Crime Records Bureau 2012d; Bureau of Police Research and Development 2012) compares the 2012 pretrial detention rates amongst different states and attempts to demonstrate a correlation between the pretrial detention figures (arranged in descending order) to the state population, its position in the Human Development Index, incidence of crimes, work load and strength of the police force.

The table reveals that although causation cannot be established, the high proportion of pretrial detainees in the prison population is correlated to the poor performance of the State in its Human Development Index, the higher incidence of crime and fewer police officers. It thus provides a starting point for identifying areas of reform.

Prosecutors

The office of the prosecutor in India is often a neglected department, and the shortage of prosecutor constitutes another source of delay in the conclusion of trial. The Delhi High Court *suo motu* examined the appointments and working conditions of public prosecutors in March 2014. The *amicus* pointed out that the prosecutors' allowance to purchase laptops did not include payment for internet facilities and legal databases, they did not have exclusive office space in courts and they kept losing files because of insufficient file space (Court on its own motion v State 2014). While directing the state to have a back up of 10 % of the strength in every district, the court noted the following:

²³ Saxena, *supra* note 44, at 60.

²⁴ BPR&D, *supra* note 42. See also, DNA, *supra* note 42.

Table 6 Current police personnel numbers and police-population ratios in South Asia

South Asian countries	Total police personnel	Rate per 100,000 population
Bangladesh	139,546 (2013)	89.1
India	1,580,311 (2010)	131.1 with only 12.5 women officers per 100,000 females
Pakistan	354,221 (2011)	204.05
Nepal	56,064 (2006)	218.7
Sri Lanka	63,984 (2004)	324.2

Sources: Network for Improved Policing in South Asia (Bangladesh <http://www.nipsa.in/bangladesh>), United States Institute for Peace 2011 (Hassan Abbas, Reforming Pakistan's police and law enforcement infrastructure: is it too flawed to fix?), UN Office on Drugs and Crime (UNODC), Criminal justice system resources, crime and criminal justice statistics, <https://www.unodc.org/unodc/data-and-analysis/statistics/crime.html>

One of the pre-dominant cause(s) for delay in disposal of criminal case is due to shortage of public prosecutors. It is quite shocking to learn that some of the public prosecutors have been burdened to take care of the work of two criminal courts. This lackadaisical and apathy of the Government in not filling up of the vacancies on the posts of Assistant Public Prosecutors/Additional Public Prosecutors is quite intriguing and appalling. It is a matter of great concern that for the timely appointment of public prosecutors, this court has to give directions from time to time to GNCT of Delhi.²⁵

The office of the prosecutor in India (similar to Pakistan and Bangladesh) is not a prestigious office as in the USA and thus faces problems of quality. The incentives of prosecutors' to engage with the system, collaborate with the police (since they do not have independent investigatory powers),²⁶ cooperate with the magistrates and review the case of the accused are low. Furthermore, they are appointed and transferred by the executive and can be susceptible to political interference. This affects the trial and then indirectly contributes to the problems of pretrial detention.

The Judiciary

Delays in the conclusion of trial, which resulted in many innocent persons spending time in pretrial detention, originally prompted the 2005 amendments to the CrPC, mandating the release of indigent persons accused of bailable offences within a week and specifying the maximum period for which persons could be detained pending trial.²⁷ Unfortunately, despite various efforts, the situation has not improved.

India currently has a backlog of over 30 million cases, with 64,330 cases pending before the Supreme Court as of 1 April 2014 (Supreme Court of India 2014). As per the National Court Management Systems Report, nearly 30 % of the cases in 2011 were more than 5 years old. Its 'most conservative estimate' is that the next three decades will see the number of cases shoot up to 150 million, requiring 75,000 judges, against the 2011 sanctioned strength of 18,871 judges (Supreme Court of India 2012).

²⁵ *Id.*

²⁶ However, they provide legal services and opinions to the Central Bureau of Investigation. See UNAFEI, *The Relationship of the prosecution with the police and investigative responsibility*, 107th International Training Course: Reports of the Course, <http://www.unafei.or.jp/english/pdf/RS_No53/No53_29RC_Group1.pdf> at 309.

²⁷ Sections 436 and 436A of the Criminal Procedure Code, 1973.

Table 7 Current strength of the Indian police force compared to its sanctioned strength and the UN norm

Actual practice	1 officer per 761 people
Bureau of police's own norm	1 officer per 568 people
UN norm	1 officer per 450 people

There have been many efforts to increase the judge-population ratio from 10.5 to 50 judges per million of population, based on the Law Commission of India's Recommendations in its 120th Report in 1987 and the Supreme Court's directives in *All India Judges' Association v Union of India* (Law Commission of India 1987; All India Judges v UOI 2002). Nevertheless, in 2010, the judge-population ratio remained at 10.5 judges per million of population (Planning Commission of India 2011) against Germany and France's ratio of 45 and 80 judges per million population (International Monetary Fund (IMF) 2010a). More importantly, however, attempts at increasing the number of judges per million population does not address the underlying (and continuing) causes for backlog, especially when judicial vacancies continue to remain a problem. Table 9 demonstrates the problem of vacancies, which extend up till the Indian Supreme Court.

The judiciary thus needs to examine other solutions such as court and case management to solve the underlying causes of delay, rather than simply focussing on the more visible and expensive (although important) infrastructural changes of increasing courtrooms and appointing judges. Nevertheless, simultaneously, the courts have to focus on writing better judgments while deciding bail applications. Too often, courts grant bail without considering the economic circumstances of the accused. This leads to a strange situation wherein the accused, though legally granted bail, cannot be released because of their inability to post the bail bond. The matter is exacerbated by the lack of action and coordination by prison officials to keep track of the period of detention for each pretrial detainee. To this issue, we now turn.

Prison Officials

Prison officials are one of the most important, and often the most neglected, components of the pretrial detention system.

Given that prisons is a state subject,²⁸ their administration varies across states and depends greatly on the state's budget, official strength, training and official commitment. For instance, the 2012 NCRB Prisons Statistics reveals a wide variation in actual and sanctioned strength of prison staff. Thus, Bihar only has 21.1 % of the sanctioned officials while Madhya Pradesh has 92.2 %, against an all India average of 66.3 % (50,358 officers against a sanctioned strength of 75,971) (NCRB 2012).

Often therefore, it is apathy and overwork, rather than corruption, which causes many cases to fall through the cracks. The ability of the accused to benefit from the amendments to the CrPC *vides* ss. 436 and 436A (on the release of persons who cannot afford bail or have spent certain time in custody) depends on their ability to successfully take their case before the court. In practical terms then, this depends on the availability of lawyers; the effectiveness of the state/district legal aid system; the ability and willingness of the prison officials to keep track of

²⁸ The Constitution divides matters into union lists, state lists and concurrent lists based on which entity (the centre or the states) has jurisdiction to legislate on those matters. Prisons are on the state list and criminal law on the concurrent list.

Table 8 Intra-state comparison on various factors for 2012

State	Proportion of pretrial detainees prisoners in 2012	Estimated mid-year population (in thousands)	Pretrial detainees as a proportion of the population	HDI rank as of 2008 (out of a total 23 states)	Incidence of violent IPC crimes (% of all India violent crimes) ^a	Total cases for investigation (including pending from last year)	No. of police officers per 100,000 population	No. of cases under the Indian Penal Code per officer
Uttar Pradesh	53,821 (21.1 %)	205,426	0.0261 %	18	33,824 (12.3 %)	1,858,747 (25.99 %)	89	1.7
Bihar	24,389 (9.5 %)	99,457	0.025 %	21	29,842 (10.8 %)	253,212 (3.5 %)	67	4.3
Madhya Pradesh	17,619 (6.9 %)	73,730	0.024 %	20	15,228 (5.5 %)	337,720 (4.7 %)	104	4.1
West Bengal	13,977 (5.5 %)	90,595	0.015 %	13	22,361 (8.1 %)	270,851 (3.8 %)	98	3.8
Maharashtra	16,426 (6.4 %)	114,697	0.014 %	7	26,972 (9.8 %)	496,930 (6.9 %)	162	1.8
Kerala	4165 (1.6 %)	34,882	0.012 %	1	14,902 (5.4 %)	555,197 (7.8 %)	130	4.9
Gujarat	6613 (2.6 %)	60,062	0.011 %	11	7652 (2.8 %)	403,866 (5.6 %)	114	2.8
Andhra Pradesh	8551 (3.4 %)	85,744	0.009 %	15	12,431 (4.5 %)	328,632 (4.6 %)	113	3.1
All India average or total	254,857	1,213,370			275,165	7,150,502	138	2.5

^a Violent crime comprises murder, attempt to murder, culpable homicide not amounting to murder, rape, kidnapping, dacoity (including preparation and assembly), robbery, riots, arson and dowry death

Table 9 Court wise breakdown of judicial vacancies, 2012–2013

Court	Sanctioned strength	Working strength	Vacancies
District and subordinate courts	19,238	14,942	4296
High courts	906	640	266
Supreme Court	31	29	02
Total	20,175	15,611	4564

Source: Supreme Court of India (2013)

the legal status, including time in custody, of each prisoner and the detainees' awareness about their rights. 481
482

Ignorance About Rights 483

Backlog, shortage of officers and corruption are worsened by many pretrial detainees being ignorant about their rights and being unable to avail of the benefits of the liberal provisions of bail law. For instance, Amnesty India's work with pretrial detainees in Karnataka confirms that most are not aware of their rights and the recent legislative amendments (Divya Gandhi 2014). The narrative of a majority of India's pretrial detainees being poor and marginalised is not merely conjectured but is based in hard facts, as shown in Tables 10, 11, 12 and 13. 484
485
486
487
488
489

Thus, in 2013, 71 % of the pretrial detainees were illiterate or had studied below class X. Even worse is the comparison of the illiteracy rates amongst the pretrial detainee population in India (28.9 %) with the corresponding national average (25.96 %) and national male illiteracy rate (17.9 %, which is important because 95.4 % of 2013's pretrial detainees were males), as per the national Census 2011 data (Government of India 2001a). This shows that illiterate males are disproportionately represented in pretrial detention and are more likely to be in prison on trial, than outside. Being uneducated or poorly educated, they may find it harder to navigate the criminal justice system. 491
492
493
494
495
496
497
498
499

Simultaneously, social status also plays a role in determining who gets arrested, released and how quickly. Minority religions and historically discriminated castes too are disproportionately represented in the pretrial detention population, compared to their proportion in the overall population. 500
501
502
503

Table 10 Educational qualifications of pretrial detainees, 2000–2013

	Illiterate	Below class X	Class X to below graduate	Graduate	Postgraduate	Holding a tech degree or diploma
2000	80,168 (41.4 %)	70,639 (36.5 %)	32,506 (16.8 %)	7534 (3.9 %)	2238 (1.2 %)	542 (0.3 %)
2004	83,572 (38.5 %)	89,000 (40.98 %)	33,984 (15.6 %)	7936 (3.7 %)	1690 (0.8 %)	948 (0.4 %)
2010	78,836 (32.8 %)	102,098 (42.5 %)	44,594 (18.6 %)	10,232 (4.3 %)	2893 (1.2 %)	1445 (0.6 %)
2013	80,393 (28.9 %)	117,373 (42.1 %)	56,806 (20.4 %)	16,233 (5.8 %)	5056 (1.8 %)	2642 (0.9 %)

Source: NCRB, Prison Statistics India

Table 11 Religious affiliations of pretrial detainees, 2000–2012

Year	Hindu	Muslim	Sikh	Christian	Others
2000	124,717 (64.4 %)	48,229 (24.9 %)	7172 (3.7 %)	6015 (3.1 %)	7494 (3.9 %)
2004	151,119 (69.6 %)	48,917 (22.5 %)	8177 (3.8 %)	7248 (3.3 %)	1669 (0.8 %)
2010	167,813 (69.8 %)	53,312 (22.2 %)	8686 (3.6 %)	7198 (2.99 %)	3089 (1.3 %)
2012	178,119 (69.9 %)	53,638 (21 %)	10,128 (3.97 %)	8929 (3.5 %)	4043 (1.6 %)

Thus, Table 11 below illustrates that in 2001, as per the Indian census, while 80.5 % of the population was Hindu and 13.4 % was Muslim, only 64.4 % of the pretrial detainees were Hindus and 24.9 % were Muslims. Similarly, there was an overrepresentation of Christians (3.1 % against an overall population of 2.3 %) and Sikhs (3.7 % against a population of 1.9 %) in the pretrial detention population in 2000 (Government of India 2001b; NCRB 2013). Although the 2011 census data does not release the official breakdown of religion, 2012 Pew Research Data reveals that Muslims in 2012 constituted 14 % of the total population (Pew Research 2012) and were 21 % of the pretrial detention population.

A similar story of overrepresentation arises amongst the lower castes. In the 2011 census, the scheduled castes and tribes comprised around 25 % of India's population (16.6 % scheduled castes and 8.6 % scheduled tribes) (Express News Service 2013), but constituted more than a third (35.7 %) of the pretrial detention population in 2012 (see Table 12). Scheduled castes and tribes have been historically disadvantaged and are often considered 'untouchables' as part of Hinduism's caste system—perhaps explaining such overrepresentation.

Inability to Pay the Bail Bond

In many cases, pretrial detention is caused by the inability of the accused to pay the high bail bond imposed by the court (Stanley Pinto 2014), disregarding legislative amendments and Supreme Court directives (Moti Ram v State of Madhya Pradesh 1978). Courts sometime mechanically fix the amounts of the bail bonds. They rarely, if ever, give reasons for ordering the specific amount, and do not direct attention to the economic circumstances of the accused. It is thus difficult to estimate the number of persons remaining in pretrial detention because of their inability to pay the bond.

Data on this is not officially tabulated, although 'Tihar Jail', the Central prison in India, records the income levels of all its prisoners. Even though not disaggregated on the basis of convicts and pretrial detainees, it is still informative given that 74.8 % of Tihar inmates are pretrial detainees. The data below shows that most prisoners are poor—nearly 77 % earn less than Rs. 50,000 (or \$830) annually and only 8 % earns more than Rs. 100,000 (\$1666) annually.

Such prisoners are often unable to furnish the requisite bail bond and hence remain in prison, despite having been granted bail. Amnesty India has identified the inability to afford bail as an important explanation for the large number of pretrial detainees and is considering setting up a 'bail fund' to help.²⁹

²⁹ Pinto, *supra* note 80.

t12.1 **Table 12** Caste breakdown of the pretrial detainees, 2000–2012

t12.2	Year	Scheduled castes	Scheduled tribes	Other backward classes (OBCs)	Others (general category)	Total no. (for which data available)
t12.3	2000	43,056 (23.4 %)	25,063 (13.6 %)	54,628 (29.7 %)	61,218 (33.3 %)	183,965
t12.4	2004	44,470 (21.6 %)	25,073 (12.2 %)	55,080 (26.8 %)	81,033 (39.4 %)	205,656
t12.5	2010	50,960 (21.96 %)	29,709 (12.8 %)	70,123 (30.2 %)	81,219 (35 %)	232,011
t12.6	2012	57,197 (22.4 %)	33,900 (13.3 %)	75,723 (29.7 %)	88,037 (34.5 %)	254,857

Source: NCRB, Prison Statistics India, Table 5.2

Unfortunately, there is no data to understand the prevalence of this phenomenon. In such situations, the role of prison officials and legal aid boards assumes importance; they can monitor the status of pretrial detainees and ensure timely release.

Inability to Effectively Utilise the Legal Aid Provisions

As Human Rights Law Network notes, the efficient functioning of the legal aid system is hampered by the following:

- the inaccessibility of the poor to lawyers, an almost absent pro-bono culture, the complexity of the system, the inordinate delays, the lack of adequate legal training, corruption and a failure to implement the law.³⁰

First, district legal services authorities are overworked and understaffed. They are expected to identify, and provide legal aid, organise *Lok Adalats* (‘peoples’ courts’) and monitor the implementation of various government schemes, such as the eradication of child labour (Government funds not used for student welfare: Court 2011). Further, inexperienced financial managers impede their functioning³¹ and most lawyers get paid a paltry sum of Rs. 500 (approximately \$9).³²

Secondly, there is insufficient public awareness about the existence and authority of the legal services authorities; often all the participants in legal awareness camps are lawyers. In fact, UNDP found that ‘nearly all’ of the 532 women interviewed from the lower economic strata ‘had no idea’ about their functions and ‘most of them’ had not even heard about these authorities.³³

Finally, there is no monitoring system in place—there is no case tracking system to check the progress of a legal aid case; district and village level legal service authorities are not informed about the outcome of a case, and reporting obligations between the paralegals and these authorities are not being followed.³⁴ This adversely affects incentive systems and the ease in accessing legal aid, thereby, contributing indirectly to the problem of pretrial detention.

³⁰ HRLN, *supra* note 33.

³¹ A UNDP study on the needs assessment study of various LSAs found that many of the Taluk and District level LSAs lacked telephones, computers, vehicles and support staff (including for accounts). UNDP-MARG, *supra* note 36, at 131.

³² UNDP-MARG, *supra* note 36, at 5.

³³ UNDP-MARG, *supra* note 36, at 6, 132.

³⁴ UNDP-MARG, *supra* note 36, at 131.

Table 13 Tihar Jail income breakdown of pretrial detainees at the end of 2012

Annual income grade (INR)	Total (%)
Grade A (Up to 10,000)	2287 (21 %)
Grade B (10,001–30,000)	2309 (21.2 %)
Grade C (30,001–50,000)	3767 (34.7 %)
Grade D (50,001–100,000)	1650 (15.2 %)
Grade E (100,001–200,000)	660 (6.1 %)
Grade F (200,001–400,000)	124 (1.1 %)
Grade G (400,001–above)	59 (0.5 %)
	10,856

Source: Government of Delhi (*Prisoner profile: Tihar Central Jail*, http://www.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Prisoner+Profile)

Grade A, or Rs.10,000 is approximately \$167; grade B is approximately between \$170–\$500; grade C is approximately between \$500–\$830; grade D between \$830–\$1666; grade G is above \$6665

Analysis: Explaining the High Incidence of Pretrial Detention and Examining Possible Solutions

566

567

Despite liberal laws and jurisprudence pointing towards the grant of bail as a rule and pretrial detention being an exception, approximately two thirds of India's prisoners—double the global average—are currently awaiting trial. This is a damning indictment of the Indian criminal justice system. While the above section discussed the role of each criminal justice functionary, this section conducts a more systemic analysis to characterise the working of the system as a whole. It identifies the problems of corruption, inadequate resources and lack of coordination as causes for the high incidence of pretrial detention. In doing so, it also describes various successful reform efforts undertaken in India and neighbouring Pakistan and Bangladesh.

568

569

570

571

572

573

574

575

576

Corruption

577

Corruption has a direct impact on the number of pretrial detainees—it facilitates the payment of bribes to police officers to (not) register a crime, (not) record an arrest and be released from prison. Corruption can also involve bribes to judges for grant of bail, evidence tampering and intimidation of witnesses and victims, misutilisation of legal aid funds and non-implementation of other laws. In lower middle-income countries such as India, it unduly affects the poor. On corruption, India's performance as per the various Transparency International corruption surveys in 2013 is shown in Table 14.

578

579

580

581

582

583

584Q12

According to Transparency International's Corruption Perception Index 2013, India was ranked at 94 of 177 countries, Pakistan at 127 and Bangladesh at 136. Even the Global Corruption Barometer 2013 results reveal that the police was considered the most corrupt institution in Pakistan and Bangladesh and the second most corrupt institution in India (Transparency International 2013c; Transparency International 2013d). Figure 1 corroborates that payment of bribes to obtain favourable decisions (although not restricted to criminal cases) is not uncommon in India and is above the global average.

585

586

587

588

589

590Q13

591

592

t14.1 **Table 14** Performance of India on various corruption barometers

t14.2	Country	Corruption Perception Index rank (out of 177)	Control of corruption percentile rank	% of people reported paying a bribe to the police ^a	% of people reported paying a bribe to the Judiciary ^a	Institution perceived to be most affected by corruption
t14.3	India	94 with a score of 36/100	36 %	62 %	36 %	Political parties (86 % of the respondents)

Sources: Control of Corruption Index, 2010; Corruption Perceptions Index, 2013; Global Corruption Barometer, 2013

^a These results are shown only for those who came into contact with the police and the judiciary

Given that corruption is also a problem in Pakistan, particularly amongst the subordinate judiciary (Manzil Pakistan 2013; US State Department 2013), it is useful to see Pakistan’s successful judicial reform effort through its National Judicial Policy of 2009, which has somewhat reduced the incidence of judicial corruption through the establishment of ‘NJP Implementation Cells’ in various high courts.³⁵

First, the National Judicial Policy’s provisions involve establishing anti-corruption cells in each high court (Supreme Court of Pakistan 2013a; Supreme Court of Pakistan 2013b), declaration of assets, surprise inspections and monitoring and supervision by Member Inspection Teams. *Second*, any subordinate judge may be asked to send a copy of their bail order for further scrutiny. Thus, judges’ performance and, hence, promotions are often monitored. *Third*, in practice, high courts have started requiring monthly progress reports from lower courts indicating their institution and disposal rates and have taken disciplinary action against judges for corruption (Senior Correspondent 2011). *Finally*, salaries of subordinate court judges have increased—since 2008 in Punjab (Pakistan), sessions judges now earn Rs. 120,000 per month (approximately \$1215), instead of Rs. 28,000 (approximately \$2300) (Amir Riaz 2008).

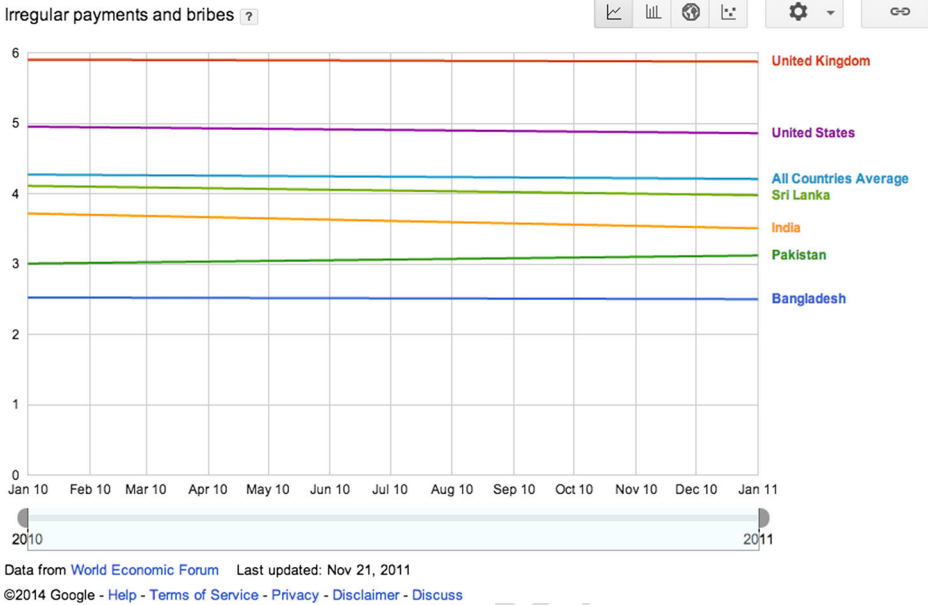
Shortage of Human, Physical and Monetary Resources

The fact of India’s public institutions being understaffed is best illustrated in Table 15 for the police and Judiciary.

Combining investigatory and law and order duties further aggravate the problem of an understaffed police force. This affects the reliability of police services (in terms of registering complaints, investigation, arrests and even escorting the accused to court for hearings)—all having a direct bearing on the speed of investigation and trial and, therefore, the number of pretrial detainees (Fig. 2).

The judiciary fares no better, with the judge population ratio about 13 per million of population (Committee on Empowerment of Women 2012), being far below other countries (Table 16). More significantly, this does not even reveal the problem of judicial vacancies discusses above in Table 9.

³⁵ *NJP Implementation Cell*, Lahore High Court, <http://lhc.gov.pk/?page_id=3033>.



Q14

Fig. 1 Irregular payment and bribes by firms, for *inter alia*, obtaining a favourable judicial decision. Source: World Economic Forum data

The shortage of physical, human and monetary resources combine to reduce the incentive of the functionaries of the criminal justice system. Their consequent apathy means that fewer persons are arrested, prosecuted and convicted and many pretrial detainees are eventually acquitted. Since convictions are uncommon (at 37 %), pretrial detention starts being viewed and used as a punitive measure, creating a disjuncture between the liberal theory and the harsh practice of law.

Solutions to the problem of judicial backlog (of over 30 million cases) and understaffed public institutions undoubtedly lie in visible and expensive infrastructural changes of increasing courtrooms and appointing judges/police/prosecutors/prison officials. Nevertheless, they have to go beyond that as well—reforms have to start addressing the underlying causes for the inefficient functioning of the criminal justice system.

One part of the answer lies in improving the access to lawyers and paralegals.

Based on a needs assessment study of various legal services authorities conducted with the Indian government, the UNDP recommended instituting a systematic empanelling process for lawyers, ensuring diversity of representation and introducing monitoring and evaluation mechanisms.³⁶ It identified best practices including the following:

- Training programme for empaneled lawyers and paralegals;
- Internship programmes and student literacy missions;

³⁶ UNDP-MARG, *supra* note 36.

t15.1 **Table 15** Current police personnel numbers and police-population ratios

t15.2	Countries	Total police personnel	Rate per 100,000 population	Police to population ratio (2009)
t15.3	India	1,580,311 (2010)	131.1	1:728 (1 police officer per 728 population) although in 2012 this worsened to 1:761
t15.4	Pakistan	354,221 (2011)	204.05	1:625
t15.5	Bangladesh	139,546 (2013)	89.1	1:1200
t15.6	Brazil	275,571 (2010)	141.2	
t15.7	Russia	779,846 (2010),	543	
t15.8	USA	705,009 (2010),	225.8	

Sources: Network for Improved Policing in South Asia (NIPSA), <http://www.nipsa.in/bangladesh>; UK COI Report for Bangladesh (UK Border Agency 2011); USIP (*supra* note 56, at 6); and UNODC (*supra* note 57)

- Assistance to rape victims and appointment of women lawyers for women and child victims; 643
644
- Video conferencing facilities and toll free helplines; and 645
- Legal empowerment schemes. 646

The Delhi Legal Services Authority has three types of paralegals: community 647
paralegals, student paralegals and jail inmate paralegals (inmates helping other inmates 648
on legal issues.³⁷ 649

Similarly, in Bangladesh, the Improvement of the Real Situation of Overcrowding in 650
Prisons (IRSOP) Project run by the German development corporation GIZ with the Home 651
Affairs Ministry and prison authorities established paralegal aid services working in three 652
prisons (Dhaka Central Jail, Bogra and Madaripur District Prisons) via a pilot project. The 653
paralegals administered a census of the prison population to understand their legal status by 654
collecting the following information: 655

- The proportion of the prison population which was 656Q18
 - poor, 657
 - with legal representation, 658
 - unable to afford bail, and 659
 - overstaying the terms of their warrant; 660
- The average time spent in custody as an pretrial detainees; and 661
- The total number of women and children (BMZ (Federal Ministry of Germany for 662
Economic Cooperation and Development) 2013). 663

This information was distributed to the lawyers, prosecutors, police officers, prison officials 664
and judges, who then constituted a Case Coordination Committee to meet monthly to decide 665
on the relevant course of action and to measure their performance against the baseline census 666
data. Simultaneously, the project—led by judges, magistrates, police officers and prison 667
officials—also trained paralegals to give legal assistance to the prisoners and their families. 668

³⁷ *Ibid.*, at 118.

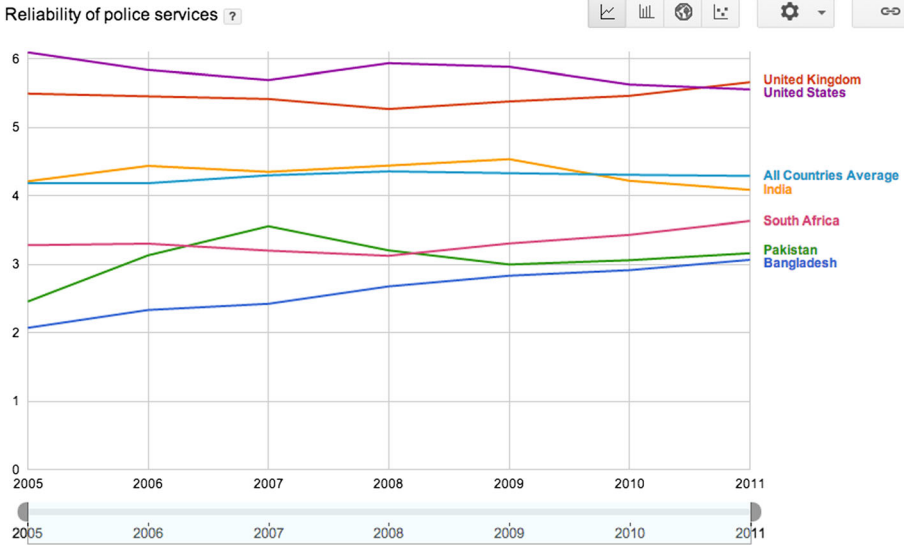


Fig. 2 Reliability of police services

This involved holding ‘court yard clinics’ to inform the prisoners about basic legal procedures commencing from the point of arrest to appeal, to enable them to represent themselves in case they could not access free legal aid. In many cases, paralegals also helped contact a prisoner’s family (or the foreign embassy in case the detainees were foreigners) and provided legal or social support on release. Even lawyers, prosecutors and prison officials were required to undertake training.

The combined efforts above achieved the release of over 2500 prisoners and, more importantly, increased trust and collaboration between the various stakeholders, which eventually increased transparency and effectiveness of the entire criminal justice system.³⁸

The second part of the solution lies in improving capacity building and infrastructure. For instance, in Pakistan, GIZ started the Support to Punjab Prosecution Service (SPSS) Project focusing on capacity building, training and infrastructure development. It developed three different modules:

- Induction training for the relatively junior prosecutors;
- Expert training for the senior prosecutors; and
- ‘Training of Trainers’ for those senior prosecutors selected to become ‘Master Trainers’, and eventually in-house faculty.

Training modules were specifically developed by experts, academics and lawyers, and covering topics like criminal procedure, evidence, advocacy, ethics and forensic accounting (GIZ 2013). The project also helped establish the first fully furnished and equipped training

³⁸ *Ibid.*

Table 16 Current judge to population ratios in India compared to other countries

Countries	Judge-population ratio (number of judges per million)
India	13
Germany	45
Australia	58
Canada	75
France	80
UK	100

centre, the Centre for Professional Development, along with setting up a ‘model prosecution office’ to improve mechanisms of data collection and evaluation, case management, monitoring and evaluation. Emphasis was placed on increasing the collaboration between the police and prosecutors and between judges and prosecutors for pre-trial and in-trial work.³⁹

Finally, long-term systemic changes such as court and case management, bail judgments, considering the economic circumstances of the accused, and circumspection towards quick-fixes with fewer procedural safeguards, such as *jail-adalats* (‘prison courts’) and plea bargaining are necessary.

Governance Issues and a Lack of Coordination

While laws, policies and judicial directives seek to facilitate the early release of pretrial detainees, they are impeded by non-implementation, in part due to the lack of coordination amongst various agencies such as the police and prison officials.

A possible solution can be found in the efforts of the Commonwealth Human Rights Initiative’s project to improve the situation by institutionalising prison visits. The project used an official visitors’ programme in 22 prisons in Chhattisgarh, 26 in Rajasthan, and 27 in Madhya Pradesh between 2001 and 2005. Their prognosis was that regular prisons visits would enable better coordination amongst the various functionaries of the criminal justice system, facilitate monitoring and evaluation and ensure implementation of deadlines. These prison visits were combined with ensuring legal aid and more police personnel to escort the accused. Further, the project officers often submitted reports of their prison visits to the state governments and conducted training workshops, advocating for better local and policy coordination. Although causality could not be attributed, they found a declining trend in the number pretrial detainees in the three states they worked in.⁴⁰ Such an approach seems favourable if one considers the solution lies in ensuring access to legal aid, improving the coordination amongst different officials and regularly monitoring and evaluating the prisons.

Conclusion

This article has attempted to problematise the issues of pretrial detention in India by identifying different causal factors and examining the functionaries of the criminal justice system and the

³⁹ GIZ, *supra* note 108.

⁴⁰ Saxena, *supra* note 44, at 67.

profile of pretrial detainees. It then identified certain systemic issues that contribute to the problem. The article concludes with describing namely, the high incidence of corruption, inadequate human, physical and monetary resources and the problems caused due to a ineffective coordination—and described successful reform efforts in India and neighbouring countries (with similar problems) such as Pakistan and Bangladesh.

Nevertheless, the relationship between the different causal factors and how they interact with, and are influenced by, each other needs clarification and further research. It is clear, however, that the factors described above do not operate independently. For instance, a lack of human resources leads to judicial backlogs, which result in cases not being called or being inordinately delayed (Sandefur et al. 2011; OSF 2012). Shortage of resources and people makes it difficult to find police officers to accompany the accused, causing the pretrial detention to be routinely extended without the accused's appearance (Saxena et al. 2005). Even poor coordination amongst the prosecutors, police and prison officials leads to oversight regarding the legal status of various pretrial detainees, especially those who have been in prison for longer than the maximum sentence. Thus, governments need to go beyond quick fixes to understand the underlying reasons for the problem to resolve them.

Consequently, solutions to tackle the problem of excessive pretrial detention require a holistic approach and knowledge, backed by empirical and academic research, of how the different components of the criminal justice system interact together. Empirical and other research is required to determine whether police corruption is merely a consequence of low pay, or is it caused by a combination of low incentive structures, lack of oversight and a culture of impunity? Is the sanctioning of more money to build courtrooms and appoint judges reduce backlog, or does it require case management to allow judges to control their dockets and take action when the accused is not produced before them?

The answer lies not just in broad, larger-scale reform of more courtrooms and judges but also in improving coordination, collecting data, conducting research and monitoring the implementation of reform efforts. More effort needs to be spent in understanding the scope and extent of the problem in terms of intra-country variation and the practice on the ground. Emphasis should be on the publication of data and ensuring the implementation of existing provisions and directives, instead of merely starting new initiatives.

Pretrial detention, as an issue in India, has not generated a lot of interest amongst the public and political spectrum. That needs to change, both domestically and internationally, for reforms to be effective.

References

- Ajeet v State of Uttar Pradesh. (2012). ACR 2636 (3) (Allahabad High Court). 754
 All India Judges v UOI. (2002). 4 SCC 247. 755
 Amir Riaz. (2008). Three fold increase in judges salaries. The Nation, 17th June, <http://www.nation.com.pk/politics/17-Jun-2008/Threefold-increase-in-judges-salaries>. 756
 Amnesty International. (2014) Karnataka's undertrials suffer due to faulty prison systems, 20th July, <http://436a.in/karnatakas-undertrials-suffer-due-to-faulty-prison-systems/>. 757
 Antulay, A.R., Nayak, R.S. (1992). 1 SCC 225. 758
 Armesh Kumar v State of Bihar. (2013). Criminal Appeal No. 1277 of, decided on 02.07.2014. 760
 Armesh Kumar v State of Bihar. (2014). 8 SCC 273. 761
 762

- BMZ (Federal Ministry of Germany for Economic Cooperation and Development). (2013). Promising practices: on the human rights-based approach in German Development Cooperation; Justice reform: improving the situation of overcrowding in prisons in Bangladesh. http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/promising_practices_justice_reform_in_bangladesh.pdf.
- Bureau of Police Research & Development. (2012). Table 1.1.
- Bureau of Police, Research & Development. (2012) Data on police organization in India, Ministry of Home Affairs. <http://bprd.nic.in/showfile.asp?lid=1047>, at 3, 112.
- Committee on Empowerment of Women. (2012-2013). 19th report on victims of sexual abuse and trafficking and their rehabilitation, Parliament of India, Lok Sabha, <http://www.scribd.com/doc/193331183/VICTIMS-OF-SEXUAL-ABUSE-AND-TRAFFICKING>>, at para 2.8.
- Court on its own motion v State. (2014). Criminal Writ Petition 1549/2009 decided by the Delhi High Court on 14.03.
- Divya Gandhi. (2014). 65 % of prisoners in undertrials, The Hindu, 23rd July, <http://www.thehindu.com/news/national/karnataka/65-of-prisoners-in-india-are-undertrials/article6238717.ece>.
- Express News Service. (2013). SCs, STs form 25 % of population, says Census 2011 data. The Indian Express. <http://archive.indianexpress.com/news/scs-sts-form-25-of-population-says-census-2011-data/1109988/>.
- GIZ. (2013). SPSS Project. <http://www.giz.de/de/downloads/giz2013-en-spps-punjab-prosecution-service.pdf>.
- Government funds not used for student welfare: court. (2011). Times of India, 9th July, <http://timesofindia.indiatimes.com/city/chennai/Govt-funds-not-used-for-student-welfare-Court/articleshow/9157095.cms?referral=P>.
- Government of India. (2001). Religious composition, census data, http://censusindia.gov.in/Census_Data_2001/India_at_glance/religion.aspx.
- Government of India. (2001). Religious composition, census data, http://censusindia.gov.in/Census_Data_2001/India_at_glance/religion.aspx
- Haradhan Saha v State of West Bengal. (1975). 3 SCC 198.
- Hema Mishra v State of Uttar Pradesh. (2014). The Court's exhortations against "routine" arrests were repeated. 4 SCC 453.
- Human Rights Watch. (2010). The Price of freedom: bail and pretrial detention of low income non felony defendants in New York City 63 http://www.hrw.org/sites/default/files/reports/us1210webwcover_0.pdf.
- Ilangovan Rajasekaran. (2014). Alarming act, frontline, 3rd October, <http://www.frontline.in/the-nation/alarming-act/article6412617.ece>.
- Inder Mohan Goswami v State of Uttaranchal. (2007). 12 SCC 17.
- International Monetary Fund (IMF). (2010). Pakistan: poverty reduction strategy paper. <http://www.imf.org/external/pubs/ft/scr/2010/cr10183.pdf>, at para 12.8.3.2.
- International Monetary Fund (IMF). (2010). Pakistan: poverty reduction strategy paper, <http://www.imf.org/external/pubs/ft/scr/2010/cr10183.pdf>, at para 12.8.3.2.
- Joginder Kumar v State of Uttar Pradesh. (1994). 4 SCC 260 laid out extensive guidelines governing arrest powers and procedures to be followed by the police.
- Joginder Kumar v State of Uttar Pradesh. (1994). 4 SCC 260.
- Joginder Kumar v State of Uttar Pradesh. (1994). 4 SCC 260 citing the Third Police Report.
- Joginder Singh. (2013). Justice is crumbling but no one bothers, The Daily Pioneer, 17th March, <http://www.dailypioneer.com/columnists/edit/justice-is-crumbling-but-no-one-bothers.html>.
- Kelkar, R.V. (2008). Criminal Procedure 269. In: K. N. C. Pillai (ed). 5th edn.
- Lalita Kumari v State of Uttar Pradesh. (2014). 2 SCC 1.
- Law Commission of India. (1987). 120th report on manpower planning in the judiciary: a blueprint, <http://lawcommissionofindia.nic.in/101-169/Report120.pdf>>, at 3.
- Malvika Vyawahare. (2013). New York times. India's police force lags much of the world. 16th January, <http://india.blogs.nytimes.com/2013/01/16/india-has-one-of-the-lowest-police-population-ratios-in-the-world/>.
- Manzil Pakistan. (2013). A study on criminal law and prosecution system in Pakistan. <http://www.manzilpakistan.org/wp-content/uploads/2014/01/Law-and-Justice-Study-on-Criminal-Prosecution.pdf>, at 9.
- Md. Shariful Islam. (2010). Politics corruption nexus in bangladesh: an empirical study on the impacts on judicial governance, Asian Legal Resources Centre, <http://www.ahrchk.net/pub/pdf/ALRC-PUB-001-2010-BN-Politics-Corruption.pdf>.
- Mohammed Ajmal Kasab v State of Maharashtra. (2012). 9 SCC 234.
- Mohammed Kasab v State of Maharashtra. (2012). 9 SCC 234, at para 476.
- Moti Ram v State of Madhya Pradesh. (1978). 4 SCC 47.
- Mrinal Satish, Bad characters, history Sheeters, budding Goondas and Rowdies. (2010). Police surveillance files and intelligence databases in India. Natl. L. School of India Rev 23(1) 133-143.
- National Crime Records Bureau. (2012). Crime in India, Table 12.1.
- National Crime Records Bureau. (2012). Crime in India. Table 17.5.

- National Crime Records Bureau. (2012). Crime in India. Tables 3.1, 12.3, 12.7 and 17.5. 823
- National Crime Records Bureau. (2012). Prison Statistics India. Tables 3.2 and 11.1. 824
- National Legal Services Authority. (2010). 1 Newsletter. 825
- National Legal Services Authority (NALSA). (2013). Right to Information. lawmin.nic.in/rti/nalsa-rti.doc, 826
- Human Rights Law Network, National Consultation on Prison Legal Aid, April, <http://www.hrln.org/hrln/prisoners-rights/reports/1351-national-consultation-on-prison-legal-aid-13th-a-14th-april-2013-new-delhi.html>. 827
- NCRB. (2012). Prison Statistics India, Table 11.1. 828
- NCRB. (2013). Prison Statistics India, Table 5.2. 829
- OSF. (2012). The Role of lawyers and paralegals, <http://www.opensocietyfoundations.org/sites/default/files/improving-pretrial-justice-20120416.pdf>. 830
- Panchanan Mishra v Digambar Mishra. (2005). 3 SCC 143. 831
- Parwini Zora. (2005). Fifty four years in jail without trial: the plight of prison inmates, counter currents, 26th August, <http://www.countercurrents.org/hr-zora260805.htm>. 832
- Pew Research. (2012) Pew Research Religion and Public Life Project. The global religious landscape: Muslims. <http://www.pewforum.org/2012/12/18/global-religious-landscape-muslim/>. 833
- Planning Commission of India. (2011). Department of justice, report of the working group for the twelfth five year plan (2012-2017), September. http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wg_law.pdf. at 4. 834
- Pramod Kumar Saxena v Union of India. (2008). 9 SCC 685. 835
- PTI. (2010). 8,000 anti-socials arrested ahead of Ayodhya verdict, 27th September, The Hindustan Times. <http://www.hindustantimes.com/india-news/bhopal/8-000-anti-socials-arrested-ahead-of-ayodhya-verdict/article1-605286.aspx>. 836
- PTI. (2014). Lok Sabha Elections 2014: 1.86 lakh persons under preventive arrest ahead of Gujarat polls. 27th April, http://articles.economictimes.indiatimes.com/2014-04-27/news/49437673_1_gujarat-polls-state-election-commission-country-made-liquor. 837
- Raghuvansh Dewanchand Bhasin v State of Maharashtra. (2012). 9 SCC 791. 838
- RD Upadhyay v State of Andhra Pradesh. (2007). SCC 337 (15). 839
- Sandefur, J., Siddiqi, B., Varvaloucas, A. (2011). Baseline evaluation report. (unpublished draft, Open Society Justice Initiative, cited from OSJI, Improving Pretrial Justice. 840
- Saxena, R. K. (2008). Catalyst for change: effect of prison visits on pretrial detention in India, open society justice initiative, spring. http://www.opensocietyfoundations.org/sites/default/files/Justice_Initiati.pdf at 60. 841
- Saxena, supra note 44, at 60; Baguenard, et al. (2005). Activating the criminal justice system in Bangladesh. 842
- Senior Correspondent. (2011). Senior civil judge dismissed, notices issued to two others. The News, 11th December, <http://www.thenews.com.pk/Todays-News-5-81711-Senior-civil-judge-dismissed-notices-issued-to-two-others>. 843
- Shamshur, M., Rabb Khan. (2007). Poor policing and weak intelligence gathering, institute for peace and conflict studies, 10th October, <http://www.ipcs.org/article/india/poor-policing-and-weak-intelligence-gathering-2391.html>. 844
- SS Mhetre v State of Maharashtra. (2011). 1 SCC 694. 845
- Stanley Pinto. (2014). Amnesty India mulls bail fund to rescue undertrials, The Times of India, 8th January, <http://timesofindia.indiatimes.com/india/Amnesty-India-mulls-bail-fund-to-rescue-undertrials/articleshow/28528191.cms>. 846
- State of Rajasthan v Balchand. (1977). 4 SCC 308. 847
- Sundeeep Kumar Bafna v State of Maharashtra. (2014). The Supreme Court has held that the accused can be released on bail during the 60 or 90 day period. STPL (Web) 209 SC. 848
- Supreme Court of India. (2012). National court management systems: policy and action plan, September, <http://supremecourtsofindia.nic.in/ncms27092012.pdf>, at 5. 849
- Supreme Court of India. (2013). Court News, 8(4) http://supremecourtsofindia.nic.in/courtnews/2013_issue_4.pdf. 850
- Supreme Court of India. (2014). Summary: types of matters in Supreme Court of India as on 01.04. http://www.supremecourtsofindia.nic.in/p_stat/pm01042014.pdf. 851
- Supreme Court of Pakistan. (2013). Meetings of the National Judicial (Policy Making) Committee, 23rd November. <http://www.supremecourt.gov.pk/web/page.asp?id=1696>. 852
- Supreme Court of Pakistan. (2013). Meetings of the National Judicial (Policy Making) Committee, 10th December, <http://www.supremecourt.gov.pk/web/page.asp?id=1715>. 853
- The Supreme Court. (1997). DK Basu v State of West Bengal.1 SCC 416. 854
- Transparency International. (2013). Global Corruption Barometer: India, <http://www.transparency.org/gcb2013/country/?country=india> 855

- Transparency International. (2013) Global Corruption Barometer, data and methodology. http://www.transparency.org/gcb2013/in_detail. 883
- Transparency International. (2013). Corruption perception index. <https://www.transparency.org/cpi2013/results>. 885
- Transparency International. (2013). Global Corruption Barometer, <http://www.transparency.org/gcb2013/countries>. 886
- UK Border Agency. (2011). Bangladesh: country of origin information report. 23rd December, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310010/Bangladesh_COI_report_2011.pdf> at para 8.03. 887
- UNDP-MARG. (2012). Needs assessment study of the legal services authorities in the states of Madhya Pradesh, Jharkhand, Bihar, Uttar Pradesh, Odhisha, Rajasthan and Chhattisgarh, Government of India, <http://www.in.undp.org/content/dam/india/docs/DG/needs-assessment-study-of-selected-legal-services-authorities.pdf> at 132. 888
- United States Institute of Peace. (2011) <http://www.usip.org/sites/default/files/resources/sr266.pdf>, at 6. The population for 2011 is taken as 173.59 million as per UN estimates. This means that the number of police men per 100,000 population is 204.05. 889
- US State Department. (2013). Pakistan human rights report, <http://www.state.gov/documents/organization/220614.pdf>>, at 17. 890
- Utkarsh Anand. (2014). SC: Release undertrials who have served half their jail terms, The Indian Express, 5th September, <http://indianexpress.com/article/india/india-others/sc-release-undertrials-who-have-served-half-their-jail-terms/>. 891
- Vrinda Bhandari. (2014). On trial, the criminal justice system, The Indian Express, 25th September, <http://indianexpress.com/article/opinion/columns/on-trial-the-criminal-justice-system/>. 892
- Yumman Ongbi Lembi Leima v State Of Manipur. (2012). 2 SCC 176. 893
- Zee Media Bureau. (2013). Police to people ratio: 3 cops for every VIP but just 1 for 761 commoners, Daily News & Analysis (DNA), 25th August, <http://www.dnaindia.com/india/report-police-to-people-ratio-3-cops-for-every-vip-but-just-1-for-761-commoners-1879695>. 894
- 895 Q20
- 896
- 897
- 898
- 899
- 900
- 901
- 902
- 903
- 904
- 905
- 906
- 907
- 908
- 909