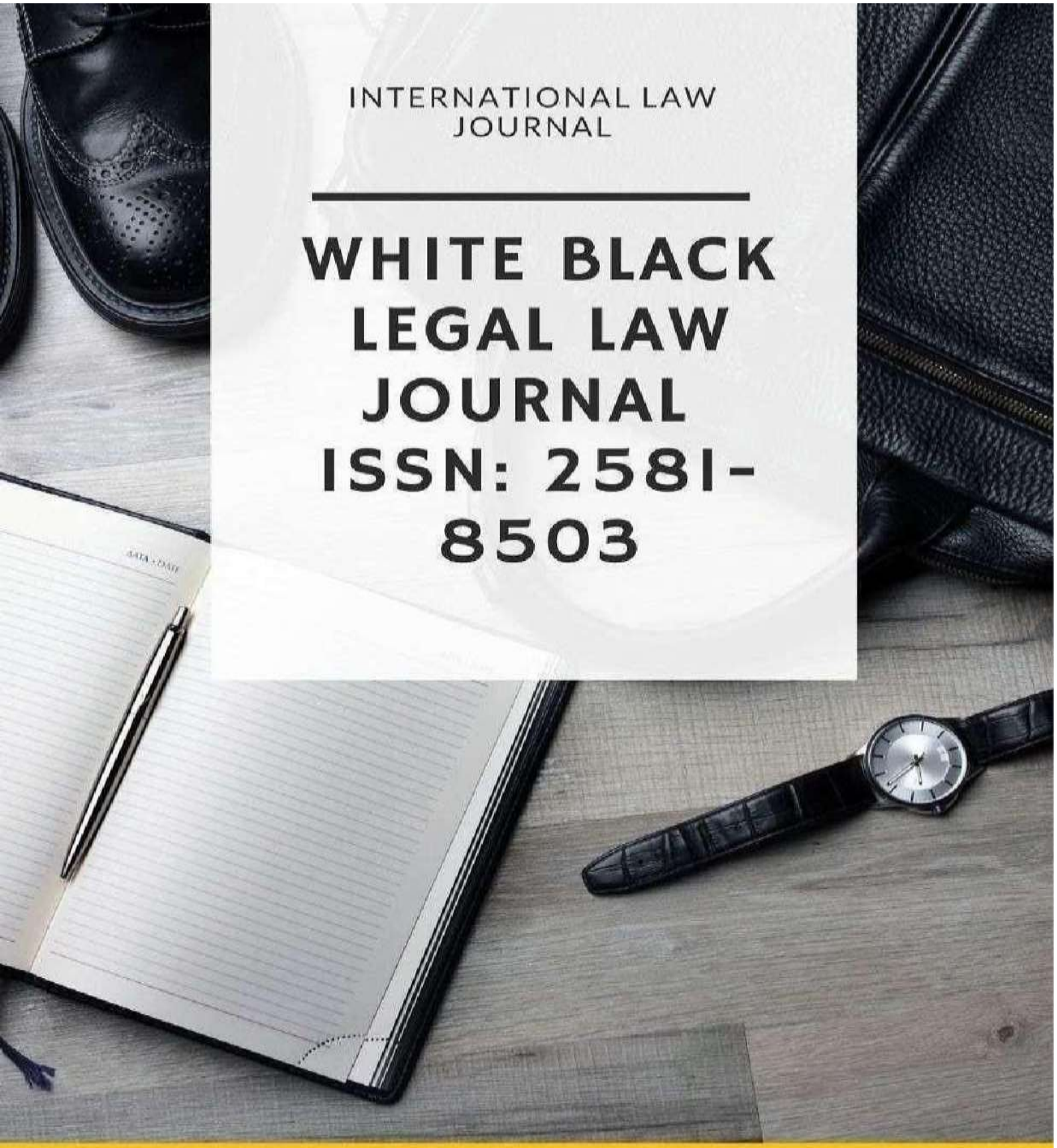

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GLOBAL PERSPECTIVES ON PRETRIAL DETENTION: INITIATIVES, CONSEQUENCES AND COMPARATIVE ANALYSIS OF INDIA, USA, AND RUSSIA

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Abstract

The issues related to pretrial detention in the United States, India, and Russia will be addressed in this research. The three selected nations contain a population of almost 1.9 billion people or 24 percent of the entire population of Earth. Pretrial detention is a huge and complex problem, which, according to the United Nations report, involves holding 28.8 million people in various penal institutions across the world. About one-third or 9.5 million people out of these numbers are unconvicted prisoners who wait for the trial in pretrial detention. There are several conclusions, which have been made by means of analysis. First, pretrial detainees are often subjected to arbitrary and unequal treatment, which raises important human rights issues, mostly concerning the right to liberty and the right to fair trial. Second, pretrial detention affects certain segments of the population, mainly racial and religious minorities and people who criticize the authorities, while thousands of people currently in pretrial detention facilities could be safely released because their presence does not put society in danger. Therefore, there are several possible changes to the law that include allowing only individuals accused of serious crimes be detained, abandoning the need for paying money before being released from custody, and introducing more humane conditions of pretrial detainment. Courts could ensure the availability of legal help for suspects and reduce the waiting period until trial. Community-based detention and supervision could also serve as a means for ensuring suspects' appearances in court. Hence, a choice should be made whether to treat people fairly before their conviction or to continue depriving them of liberty. The problem of pretrial detention has become a pressing issue because the deprivation of liberty of individuals before conviction for crime represents one of the most controversial aspects of criminal justice.

This research project will analyze the issues related to pretrial detention in three nations, including the United States, India, and the Russian Federation. The three countries together make up 24 percent of the world's population, while the total number of unconvicted suspects who have been remanded in custody before the start of the trial is close to 9.5 million people. The use of pretrial detention is significantly different in each nation, because in India, about 76

percent or 439,000 prisoners are undertrials, which leads to severe overcrowding with facilities operating at 120.8 percent of maximum capacity. Similarly, in the United States, almost 70 percent or 467,600 of jail inmates belong to the category of undertrials. As for Russia, reliable data cannot be easily acquired due to the country's political situation, but it is known that about 1,400 people are imprisoned for political reasons, of which about 28 percent await the start of their trial. Thus, the dissertation's main conclusions are the following: first, pretrial detention raises serious human rights concerns, namely violations of the right to liberty and the right to fair trial. Second, pretrial detention does not affect all groups equally, having a disproportionately high effect on people belonging to certain racial, religious or other minority groups, as well as those individuals who criticize the current regime of power. Third, numerous people who are now held in pretrial detention could be safely released because their detention does not put society at risk.

Several changes to the current legal regulations have been suggested. First, laws should be modified to allow remand into custody of only those individuals who are accused of very serious crimes. Second, money bail requirements should be canceled, and legal systems could move to non-payment-related terms of pretrial detention. Third, the right to legal assistance and a reduction in the waiting time until the beginning of the trial are also necessary. Fourth, community-based support could serve as an alternative to pretrial detention in numerous cases. Overall, pretrial detention is a matter of values and political decisions of society. The choice should be made between accepting people as free rights-holders who are not guilty of committing any crimes until proven guilty or punishing individuals even before their trial takes place. Fortunately, this option is not inevitable, and the problem in question should be fixed as soon as possible.

Three nations have been selected for the analysis, namely the United States, India, and Russia, as they provide a good opportunity to compare three countries that differ in their legal and political systems and demographic importance. Together, the three nations make up 24 percent of the entire population of Earth, which is equal to about 1.9 billion people.

Chapter 1

Introduction

1.2 Problem Statement: The Multifaceted Crisis of Pretrial Detention

The BharatiyaNagarik Suraksha Sanhita[1], 2023, is rife with contradictions, including measures

[1] Bharatiya Nagarik Suraksha Sanhita, 2023,187 (India).

that appear progressive as well as expansions of police authority, potentially eroding judicial oversight, especially in connection with the timing and duration of police custody as specified in Section 187. The United States enacted the Bail Reform Act[2] of 1984, which includes numerous procedural protections, including a mandatory detention hearing, the right to a lawyer, and a clear and convincing evidentiary standard for detention based on the danger posed to the community, although in actuality practice in many jurisdictions differs greatly. Racial bias is an issue because bail assessment tests used to determine whether a defendant would be granted bail tend to reinforce racial biases, meaning that the risk levels assigned defendants from minority communities are greater compared to similar defendants from white communities even if legally relevant factors are controlled for, as documented in 2024 by Human Rights Watch. Furthermore, the continuation of cash bail in certain jurisdictions makes the ability of a defendant or his or her family to post bail the critical variable in whether the person is incarcerated pretrial, thereby turning the bail process into one of economic discrimination. In Russia, the discrepancy between law and practice is especially great because while Chapter 13 of the Criminal Procedure Code requires the authorization of pretrial detention by a court and specifies maximum durations, in practice prosecutors retain control over the decision and court review is simply a formality; courts authorize pretrial detention in over 90 percent of requests, suggesting they are little more than rubber stamps for executive power. The role of courts as an independent check on arbitrary detention has been questioned by several human rights organizations in connection with the use of pretrial detention as political pressure tactics, as well as allegations of torture and ill-treatment in SIZOs. Furthermore, in addition to pretrial detention, there have been reports that prosecutors circumvent legal time limits for pretrial detention by "rotating charges": filing new charges just ahead of a person's release date in order to keep them detained, as reported by Human Rights[3] Watch in 2024.

Lastly, from the human perspective, pretrial detention is damaging to individuals, their families, and their communities because financially pretrial detainees tend to lose their jobs, savings, and housing, while their family members must spend funds on legal services, transportation to distant facilities, and basic necessities that cannot be supplied in prison, exacerbating poverty. In terms of psychology, the experience of imprisonment, particularly in overcrowded, unsanitary, and violent environments, often leaves a profound psychological scar

[2] Bail Reform Act of 1984, 18 U.S.C. 3141–3150 (1984).
[3] Human Rights Watch, *World Report 2024: Events of 2023* (New York: Human Rights Watch, 2024), 215-220.

that persists beyond release, while socially the isolation of detainees, particularly those who play a primary role in raising children, breaks vital connections and impedes their development, with long-term negative consequences for child welfare. These consequences demonstrate that pretrial detention is anything but neutral – a procedural instrument – but rather a destructive intervention with life-altering effects that precede any adjudication of guilt.

The problem is especially pronounced in Uttar Pradesh, which currently houses over 110,000 undertrials in jails, making it the largest single concentration of persons awaiting trial anywhere in the world. In comparison, some 70 percent of those, around 467,600 people, in U.S. local jails as of mid-2023 are unconvicted and awaiting trial, according to the Bureau of Justice Statistics in 2023. Pretrial detention[4] is an integral part of the criminal justice system in the United States and is regulated in particular by the Bail Reform Act of 1984[5], which allows judges to order preventative detention based on assessments of dangerousness. For this reason, the median period of time in custody prior to pretrial release has risen to 32 days in 2023, 7 days above the previous median period over the preceding 8-year period, indicating an unmistakable trend toward increased periods of pretrial detention, according to the U.S. Bureau of Justice Statistics in 2023. The monetary cost for defendants' families is enormous, as the median bail for felony offenders is $10,000, representing several months' worth of income for the poorest among them, according to the Prison Policy Initiative in 2023. Conversely, in Russia, reliable data on pretrial detention is lacking, since the government ceased releasing any publicly accessible prison statistics starting from early 2023, although evidence suggests that many people are detained in SIZOs pending the conclusion of investigations and trial, according to Human Rights Watch in 2024.

The crisis of pretrial detention, which this chapter examines in terms of its structural, procedural, and human dimensions, amounts to a fundamental breach of the presumption of innocence. Not only does it worsen poverty, deny due process of law, but also violate human rights in a manner deeply incompatible with democratic governance. First, the structural problem facing pretrial detention is clear. As of 2025, undertrials made up 76 percent of the prison population in India, which is 439,000 out of the 577,000 total prison population, according to the Prison Policy Initiative[6] in 2023. In other words, three in four prisoners are awaiting trial, violating the decades-long principle that "bail is the rule and jail is the

[4] Amnesty International, *Guilty Until Proven Innocent: The Global Crisis of Pretrial Detention* (London: Amnesty International, 2023), 45.
[5] Criminal Procedure Code of the Russian Federation, No. 174-FZ, Chapter 13 (2001).
[6] Human Rights Watch, *"Rotating Charges": The Misuse of Criminal Procedure in Russia* (March 2024).

exception." Indeed, on current trends, the number of undertrials is expected to increase to 500,000 by 2026, thus worsening an already serious overcrowding problem since Indian prisons operate at 120.8 percent of capacity and certain facilities are housing four times as many people as they were designed for. The pretrial detention problem is exacerbated by the recent wave of politically motivated prosecutions, as convictions in politically charged offenses grew by 30 percent in 2024 relative to the preceding year, according to Human Rights Watch in 2024[7]. Furthermore, as of December 2024, there were some 1,400 people imprisoned in politically motivated cases, nearly 28 percent in pre-trial detention under conditions that international monitors describe as woefully inadequate in terms of human rights protection.

Procedurally, too, the reality falls far short of legislation, as the Supreme Court of India in Satender Kumar Antil[8] v. CBI, despite having developed a detailed procedure for restricting unnecessary arrest and detention, continues to remand accused persons to custody. Similarly, despite the Supreme Court's admonition that arrest should be employed only in exceptional circumstances, police and investigative authorities continue to routinely make arrests, according to the Supreme Court of India in 2021[9].

1.3 Research Objectives and Scope

This dissertation will be guided by the following six research questions:

1. What are the characteristics of pretrial detention laws in India, the United States, and the Russian Federation, in terms of their content, focus, and context, taking into account their political, historical, and institutional features?
2. What is the reality of pretrial detention in India, the United States, and the Russian Federation, from 2024 to 2025, in terms of the aggregate rate of detention, demographic trends, and any indications of structural injustices?
3. How accurately do the pretrial detention laws reflect reality in each country, and what are the systemic obstacles to obtaining justice in each country?
4. What are the implications of pretrial detention in terms of human rights, including the violation of the International Covenant on Civil and Political Rights (ICCPR[10]), the

[7] Vera Institute of Justice, *The Human Cost of Pretrial Detention* (New York: Vera Institute, 2024), 12-15.
[8] Prison Policy Initiative, *The Steep Cost of Pretrial Detention for Families* (2023).
[9] National Crime Records Bureau (NCRB), *Prison Statistics India 2022* (New Delhi: Ministry of Home Affairs, 2023).
[10] ICCPR, *supra* note 15, art. 14(2).

UN[11] Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), and other applicable international documents?

5. What are the socioeconomic implications of pretrial detention, including effects on employment, family stability, education, and prospects for reintegration into society after release?
6. What pretrial detention reform initiatives have been undertaken recently in India, the United States, and the Russian Federation, and what evidence is there that they have succeeded in reducing unnecessary pretrial detention?

1.4 Rationale for Comparative Study and Significance of Findings

There are various reasons why the dissertation focuses on three particular countries, namely, India, the United States, and the Russian Federation, both geographical and institutional, among others, since together the three nations offer good grounds for comparison in that they confront a similar dilemma: under what conditions may the state deprive an accused of liberty until conviction of the alleged crime. Geographically and demographically, the three nations are located across the world and altogether represent the population of billions: India, the world's largest democracy and home to 1.4 billion people, faces significant challenges in its criminal justice system due to the sheer size of its population, religious, linguistic and caste diversity, and institutional capabilities. By comparison, the United States, whose population is approximately 330 million, is the wealthiest nation in the world and has always stood out as a global outlier when it comes to incarceration rates and a testbed for pretrial reform initiatives. The Russian Federation, whose population is approximately 144 million, comprises a completely different geopolitical and legal entity, allowing for comparison in a system where pretrial detention takes place without effective judicial scrutiny and with significant executive control of the judiciary. Overall, the three states combine some 1.9 billion people, or approximately 24 percent of the global population[12].

To begin with, the USA serves as a model of Anglo-American common law country that operates on federal constitutionality, possesses a rich tradition of individualism and due process, and has a specific provision against excessive bail as prescribed by the Eighth Amendment of the American Constitution, whereas India is an example of a common-law

[11] United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*: resolution adopted by the General Assembly, 6 October 2010, A/C.3/65/L.5.

[12] Bureau of Justice Statistics, *Jail Inmates in 2023 – Statistical Tables* (Washington, DC: U.S. Department of Justice, 2023), 4.

country, having incorporated this legacy in the country's own constitutional tradition and evolving statutory framework, most notably as reflected in the latest introduction of Bharatiya Nagarik Suraksha Sanhita[13] (BNSS) 2023, which replaced the earlier Code of Criminal Procedure 1973[14]. By contrast, Russia is a model of a country with civil law heritage influenced significantly by Soviet legal tradition, a different balance of state power and personal rights, greater role of prosecution, and lower role of judiciary, hence this variety opens many opportunities for comparative analysis of ways to manage trade-offs between public safety, state power and personal freedom. Finally, all three countries are at a critical crossroads in terms of pretrial detention because, first, US states like Illinois and New York are now experiencing profound transformation of their pretrial practice, with Illinois doing away with cash bail completely, and New York restricting its application to a number of serious crimes, providing thereby a useful experimental environment for observing changes to traditional pretrial practices; second, India's recent adoption of the BNSS in 2023 is another important event that could mark a turning point in pretrial reform, even though the implementation of these reforms remains uncertain, and, finally, Russia is the place with a lot of pressure on the pretrial detention regime from international human rights community[15], and domestic concern over the misuse of pretrial detention for political purposes; as such, Russia is an excellent example of how pretrial detention works – and how difficult it is to reform – in context of very weak political will and lack of judicial independence. Consequently, this case presents a significant challenge to comparative study.

1.5 Research Design

The methodology of this dissertation is characterized by mixed-method, comparative research design combining doctrinal legal analysis, statistical evaluation, and qualitative assessment of case law and reform experience. Such research design aims at achieving compatibility between two objectives – the breadth of a wide cross-country comparison, and depth of analysis of how pretrial detention practice operates in each specific jurisdiction. Legal analysis is performed directly on the basis of relevant primary materials, such as constitutional provisions, statutes, procedural codes, and court decisions; it is both comparative in that it identifies the similarities and differences between the three studied jurisdictions, and contextual in that it interprets the legal texts in the light of political, social and institutional context of pretrial detention in

[13] Bureau of Justice Statistics, *Trends in Pretrial Detention, 2015-2023* (2023).
[14] Code of Criminal Procedure, 1973, § 41A (Notice of appearance before police officer).
[15] Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2023*

respective jurisdictions. It traces how pretrial detention law evolved from its origins until today, identifying key transformations and driving factors, and it discusses in detail the interpretation of statutory law by courts, influence of procedural rules on pretrial release/bail decision-making, and the availability of relevant constitutional protections in each jurisdiction. Empirical analysis is based on quantitative information on pretrial detention rates, demographic profile of pretrial arrestees/detainees, duration of pretrial detention and dynamics during 2024-2025. To the extent possible, the dissertation utilizes official statistics (India prison statistics and U.S. Bureau of Justice Statistics), whereas Russian figures come from non-official credible sources (international monitors and human rights organization). The focus of statistical analysis is on issues of disparity and inequality, especially on the question of how pretrial detention is related to the factors like race, ethnicity, caste, gender and socio-economic background. This analysis is conducted in an international human rights perspective[16]. The dissertation relies on the use of key international instruments like the International Covenant on Civil and Political Rights[17], UN Mandela Rules and Bangkok Rules, and discusses extent to which each jurisdiction lives up to these standards. Where there are notable deviations in terms of law and practice, they are analyzed. Importantly, the dissertation does not confine itself only to issues of formal compliance "on paper", but looks at whether human rights protections are effectively observed in daily practice of pretrial detention in each jurisdiction.

CHAPTER 2: THEORETICAL FRAMEWORKS AND INTERNATIONAL STANDARDS

2.1 Theoretical Frameworks Underpinning Pretrial Detention

From the theoretical perspective, the analysis of pretrial detention will require the application of various approaches and frameworks to pretrial detention because each approach highlights certain elements of pretrial detention that cannot be ignored when analysing the practice. Constitutional law, theories of criminal procedure, human rights jurisprudence, theories about the impact of imprisonment on public safety, and sociological theories of state power and social control will all be employed, because each theoretical paradigm highlights a different aspect of the problem and they all sometimes conflict with one another. However, the initial perspective from which pretrial detention is examined is that of constitutional law and human rights and

[16] Human Rights Watch, *Data Blackout: The Disappearance of Russian Judicial Statistics* (January 2024).
[17] Code of Criminal Procedure, 1973,436A (India).

liberties, as the underlying principle of both liberal democracy[18] and human rights is straightforward: personal liberty is a basic right and can be interfered with by the state only when there is clear legal justification for doing so, the aim is justified, and the interference is proportional; therefore, pretrial detention is necessarily a constitutional issue, because the person in question has not been found guilty and is presumed to be innocent, yet the state still wants to detain this person prior to a finding of guilt on suspicion. From the rights-based perspective, this detention could only be justified under strict conditions: the reason(s) for detention must be clearly identified, defined, and narrow, the procedures must be fair, and the restriction must be proportionate in light of the risk that the state tries to manage.

The rights-based approach is based on the Eighth Amendment's prohibition of excessive bail and Fifth Amendment's protection of the right to due process, and, on this approach, bail is a right to freedom of an individual, not a privilege granted in the court's discretion, which is why releasing a suspect into the custody of his or her family before trial, or the presumption of liberty, is the default position, unless it is restricted and justified; as explained in Stack v. Boyle (1951), the bail has to be fixed at a minimum required to secure the attendance of the accused at trial, and, importantly, the presumption is that the defendant would show up, as pointed out by the Vera Institute of Justice (2024). Pretrial detention in India would also be considered a violation of rights, because Articles 19, 21, and 22 protect individuals' rights to liberty, freedom from arbitrary detention, due process, and life; hence, the Supreme Court of India has a rich tradition of interpreting Articles 19, 21, and 22 as the guarantors of personal freedom protected against unreasonable abridgement, and only when personal freedom is restricted in a way that is necessary and proportionate and not arbitrary. Consequently, as long as pretrial detention violates these criteria, it cannot be imposed on a citizen of India.

Parallel to this approach is the duty-centred approach that focuses more on the goals and interests of the state that seeks to balance the interest in protecting the liberty of individuals from undue interference against the interests of crime prevention and ensuring public safety; the former is still the baseline that needs to be respected unless it is not in conflict with the other interests of the state. According to the theory, the state is responsible for the protection of the liberty of individuals from the state but is also obligated to protect the people from criminals and serious harm that they might cause to the general public. As such, there are specific cases when pretrial detention can be justified, including the need to prevent the escape

[18] International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171.

of the defendant from custody, to ensure that there is no interference with witnesses and evidence, and to avoid any demonstrable threat to the community from a defendant that has committed a serious offense; however, even on this approach, detention must be justified on the basis of an individualised risk assessment[19], as opposed to using such proxies as poverty and social disadvantage or blanket risk algorithms and categories.

Through both frameworks runs the presumption of innocence, which is recognised internationally by the International Covenant on Civil and Political Rights and is a fundamental element of any constitution, because it makes a distinction between a convicted individual and a defendant. This is why any suspicion that a suspect might engage in criminal activity, even if it is serious enough to warrant preventive detention, should not be enough to deprive a person of his/her liberty and treat them as a dangerous criminal, and the burden of proof rests with the state; thus, the presumption is in favour of release and liberty, which is not something that preventive detention respects. It is not surprising that preventive detention[20] creates the tension between these two paradigms most prominently, especially in legal systems that officially allow preventive detention; advocates of preventive detention state that pretrial detention can be justified, if the evidence of imminent danger is compelling, whereas opponents of preventive detention say that, through prolonged or systematic preventive detention, the presumption of innocence becomes a legal fiction.

The tension outlined above should always be kept in mind, because understanding pretrial detention requires an examination of these conflicting perspectives on the phenomenon.

2.2 International Legal Standards: ICCPR and the Mandela Rules

It is difficult to understand and assess the nature of pretrial detention in India, the United States, and the Russian Federation without taking international legal standards into account. Two major documents are essential in this context, because they generate certain obligations on states to respect international standards, and they are the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Standard Minimum Rules for the Treatment of Prisoners, better known as the Nelson Mandela Rules. Adopted in 1966 and entering into force in 1976, the ICCPR is the most detailed document on civil and political rights and all three countries discussed in this dissertation are parties to it, namely, India became a party to the Covenant in 1979 without reservations, the United States ratified it in 1992 with some

[19] India Const. art. 21 (Protection of life and personal liberty).
[20] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (India).

reservations on issues related to the death penalty and some other provisions, and the Russian Federation entered into it in 1998 in place of the Soviet Union. Although the latter withdrew from the European Court of Human Rights in 2022, it is still subject to ICCPR, which establishes certain rights.

With regards to pretrial detention, ICCPR contains two articles that are relevant in this context. Firstly, Article 9 states that everyone has the right to liberty and security of person and that no one can be deprived of liberty except in accordance with laws establishing grounds and procedure for deprivation of liberty. These provisions do not automatically prohibit pretrial detention, as they merely establish the following two criteria: the reason(s) for deprivation of liberty must be established by law and the procedure must be legal as well. The latter also entails that detention must be justified by a valid reason that can be demonstrated and proven, and Article 14 contains fair trial guarantees that include the presumption of innocence, according to Article 14(2) of the ICCPR, that "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." Other provisions listed in Article 14(3) include the right to be notified of charges, to have enough time and resources to prepare a defence, to have legal representation, and to have a chance to confront witnesse[21]s.

These principles are explicated in detail by the United Nations Human Rights Committee in General Comment No. 35 that explains what they imply in the case of pretrial detention: detention before trial must be necessary and justified by relevant and sufficient reasons, the length of time spent in pretrial detention must be reasonable, and alternatives to detention should be explored; however, detention should be the rule. Thus, both arbitrary detention and indefinite pretrial detention are in breach of ICCPR and the Nelson Mandela Rules extend these protections further. First, they were originally adopted as the Standard Minimum Rules for the Treatment of Prisoners in 1955, comprehensively revised in 2015 and named after Nelson Mandela, who was imprisoned for 27 years. Among other things, Rule 1 makes it abundantly clear that the Rules apply to pretrial detainees as well, and the Rules provide detailed guidance on various aspects of prison conditions, including accommodation and hygiene, health-care, disciplinary actions, visits, and other important aspects of prison management. Some of these provisions are of particular relevance for the discussion of pretrial detention, such as Rule 37, which talks about maximising non-custodial measures to ensure that imprisonment is not a

[21] UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35.

default solution but alternative solutions that help with the rehabilitation and social reintegration of prisoners are used instead.

However, most important is the recognition that unconvicted prisoners have special status, as explained in Rule 38: "Unconvicted prisoners are presumed to be innocent and shall be treated as such. Without prejudice to legal rules for the protection of particular rights and interests that law lays down for all persons, unconvicted prisoners shall not be subject, as such, to more stringent or arbitrary rules than the minimum that is justified for the protection of any rights of others and their own rights." This means that unconvicted prisoners should enjoy better conditions and more privileges that would allow them to live more comfortably than convicts. Yet, these norms are aspirational in the real world because, in India, in spite of the rules laid down in Mandela Rules, the reality is far from this, as prisons and jail conditions leave much to be desired: the average occupancy rate exceeds 120.8 percent of the designed capacity in the country and, in some prisons, the figure reaches over 400 percent, making it impossible to provide even the most basic conditions of detention, and, moreover, poor sanitation, lack of healthcare services, and mental health support are common. In the United States, conditions in local jails, where the vast majority of pretrial detainees are housed, are also substandard and vary considerably depending on location, with many local jails being sites of brutality, violence, lack of medical and psychological care, and frequent use of solitary confinement. Finally, in the Russian Federation, repeated reports by human rights organisations reveal a similar picture in many pretrial detention centres, where severe overcrowding, lack of hygiene, absence of proper health care, and ill-treatment continue to prevail. UN experts, including the Nelson Mandela Rules expert group, agree with this assessment.

Thus, taken together, the ICCPR and the Nelson Mandela Rules present a fairly clear normative framework in relation to pretrial detention: it is an exceptional measure that should be carried out lawfully, be necessary and proportionate, alternatives should be favoured and, when detention is inevitable, it must be done within acceptable conditions and without violating human dignity and the presumption of innocence. The discrepancy between ICCPR and Mandela Rules standards and reality in India, the United States, and the Russian Federation are the main problems addressed in this dissertation.

CHAPTER 3: PRETRIAL DETENTION IN INDIA

The pre-trial detention system in India is wide-ranging and complex, adjudicating tens of thousands of criminal cases annually, and grappling with the challenges of post-colonial

adaptation of Anglo-American-style criminal procedure in one of the world's most populous, diverse, unequal, and weakly institutionalized nations. In this chapter, we explore these challenges through the evolution of pretrial detention norms from CrPC 1973 to BNSS 2023, the Supreme Court's bail decisions in the Satender Kumar Antil trilogy, the undertrial crisis, and structural factors maintaining the undertrial crisis, because all these factors are closely inter-related and influence each other.

3.1 The CrPC 1973 and BNSS 2023: Historical Background and Evolutions

The CrPC 1973: Challenges in Design and ApplicationThe Code of Criminal[22] Procedure, 1973, is very similar to the colonial-era Criminal Procedure Code, 1898, but with post-independence amendments that incorporated basic legal and procedural guarantees and ensured rights to due process of law, and pretrial detention provisions were contained in Sections 436 and 437, balancing the needs to provide sufficient bail for both types of crimes – bailable and non-bailable. Under Section 436A, an arrested person is automatically eligible for release after half of the maximum term of the alleged crime has passed, which limits the maximum duration of pre-trial detention. Additionally, under Sections 41 and 41A, only in exceptional circumstances was a person to be arrested. Otherwise, a person who commits an offence, but does not require immediate arrest to ensure his presence at trial, was to be issued a notice of appearance to appear before the investigating officer or the court at the specified time and place. These provisions proved to be ineffective because they were commonly violated by the police, magistrates, and trial judges. In particular, the police frequently misapplied Section 41A, magistrates unconditionally granted extensions of police remand and did not take a close look at the justification provided, while the trials went slowly. As a result, the duration of pre-trial detention periods increased, and the undertrial crisis continued despite the provisions mentioned above.

The BNSS 2023: Holistic Reform with Ambiguous Provisions

The Bharatiya Nagarik Suraksha Sanhita, 2023, is the most comprehensive attempt to modernize the Indian Criminal Procedure in five decades and improve the investigation and prosecution processes, protect the accused's rights, introduce digital procedures in criminal proceedings, and speed up criminal cases' consideration. The new Code of Criminal Procedure became effective on 1 July 2024 and completely replaced the previous one, thus making major

[22] *Moti Ram v. State of Madhya Pradesh*, AIR 1978 SC 1594 (India)

changes in India's criminal justice system. With regards to the pre-trial detention regime, the BNSS sends mixed signals to the society. On the one hand, it introduces progressive norms, while on the other hand, it provides for the extension of police and prosecution powers, and weakening judicial controls.

Section 479: A mixed bag for reducing undertrials

Under Section 479, the waiting period for the first-time offender who has to be released is reduced from half to one-third of the maximum period of the sentence imposed for the crime, which is a positive change, as many people will be released much earlier. However, Section 479(2) provides that the benefit described above is not available to those who commit more than one offence, which may negatively affect undertrial prisoners coming from poor families because of the tendency of prosecuting the poor in multiple cases involving low-level offences.

Section 187: Extended police custody

Section 187 deals with the detention of a person in police custody for the period of investigation and replaces CrPC 1973 Section 167. According to the amended Section, courts are able to authorize police custody not for up to fifteen days as per the old Section but for any part of the first forty or sixty days. Although the upper limit remains, the possibility to grant police custody in whole or in parts may lead to the increase in police custody periods. This may be considered a negative provision because it provides the police and investigating agencies with the opportunity to keep suspects for longer periods, increasing the risk of police misconduct.

3.2 Satender Kumar Antil v. CBI: The Supreme Court Directive on Bail

The series of three groundbreaking judgments issued by the Supreme Court of India in 2021-2022 in the case of Satender Kumar Antil v CBI was among the most comprehensive bail guidelines ever adopted in independent India's history because this ruling was a response to obvious frustration with routine and mechanistic use of arrest, which has led to an unprecedented growth of the undertrial population and corresponding overcrowding in the prisons. The Supreme Court of India recognized arrest as one of the greatest violations of personal liberty enshrined in the constitution and the criminal procedure code, but in practice, this liberty has been consistently curtailed, and the police and the lower courts have been systematically disregarding the limitations on arrest in practice, though formally fulfilling the procedural requirements set forth in the Code of Criminal Procedure, 1973. The Antil trilogy is based on a repetition of a well-known principle that 'bail is the rule and jail is the exception',

meaning that bail should generally be granted to a person unless there are serious grounds that indicate a need to detain him or her. As per the earlier judgments of the Indian Supreme Court, this principle has already been established, but in actuality, it has been ignored by the lower courts, and thousands of people have been kept in pre-trial detention, charged with relatively minor offences because they have not managed to get bail due to insufficient knowledge about the criminal procedure or lack of financial resources. It should be recognized that the institution of arrest, meant to guarantee the appearance of a suspect at trial, has turned into a powerful mechanism of state coercion applied disproportionately against poor and marginalized members of the Indian society.

In order to operationalize this vague principle into specific directions for practice, the Supreme Court in Antil proposed a structured framework for classifying criminal offences according to their seriousness into categories A, B, C, and D and prescribing specific measures for granting bail in cases pertaining to each category. According to Section 455 of BNSS, Category A includes offences punished with up to seven years imprisonment, such as petty theft, minor assaults, regulatory breaches and other low-level crimes. The Supreme Court has developed a sequential procedure to be followed in such cases; namely, instead of making the arrest, police officers were obliged to give a notice of appearance according to Section 41A of CrPC. Once a suspect appears before the investigation authority or the court, a person should be immediately granted bail. In other words, the Supreme Court has ruled that an allegation of an offence is not sufficient ground for making an arrest and keeping a person in remand custody until further investigation is concluded. On the contrary, arrest must be justified by the following factors: the risk of a suspect running away from the investigation, interfering with the investigation process, threatening the witnesses, or committing this or other crimes again. Those reasons should be written down.

With regard to the more serious offences (belonging to Categories B, C, and D), the Supreme Court did not establish automatic grounds for granting or refusing bail; rather, it ordered that courts must take all the circumstances of a case and statutory provisions into account while deciding on the issue of granting bail. The Supreme Court refused to recognize the presumption against bail as applicable to such cases, arguing that even in the gravest of crimes, measures other than the preventive detention (e.g., suretyship, reporting, or travel restriction requirements) are enough to ensure the appearance of an accused at trial and prevent him or her from committing crimes again. One of the major aspects clarified by the Satender Kumar Antil judgment is the procedure for producing the accused before the court in accordance with Section 170 of CrPC (reproduced in BNSS Section 190), which allows for charging a person

with the crime. The court ruled that when a person had cooperated with the investigation authorities, it was unconstitutional and violative of his/her constitutional right to personal liberty to make an arrest for the sole purpose of presenting him to the court.

Thus, where a person is ready to cooperate, s/he should be released on bail and not arrested, because in this case there is no necessity to detain a person. Despite the clearness and strength of the directive issued by the Supreme Court, its application in practice is inconsistent, as shown by subsequent judgments of the Supreme Court that reflect concerns with regard to the application of the Antil directive by lower courts. In particular, the lower courts and investigative agencies continue making arrests of persons suspected of having committed minor offences, and magistrates unreasonably grant police remands, providing standard explanations without the required individual analysis of a case. In particular, the offence-categorization scheme outlined by the Supreme Court is often overlooked, and courts do not consider whether any non-custody measures would help preserve the investigation's integrity and ensure the accused's attendance at trial. This case demonstrates a fundamental drawback of judge-led reforms in India: even the most carefully elaborated and strong Supreme Court guidelines are unlikely to produce results because of the entrenched nature of the justice system institutions. It should be added that the police practice formed by decades of colonial-era rules and the hierarchical system of command-and-control and magistrate workloads, which involve hearing dozens and hundreds of cases in one session, hinder the proper implementation of the Supreme Court guidelines.

In light of the preceding normative and institutional context, it is fair to say that undertrial detention in India faces an unprecedented crisis, as statistics from the National Crime Records Bureau, coupled with projections in the India Justice Report 2025 indicate that today undertrial prisoners comprise 76 per cent of the overall prison population, which means that roughly 439,000 undertrials account for almost 577,000 individuals incarcerated in Indian prisons as of 2025. Moreover, the trend shows continuous deterioration since 2012 when the figure stood at approximately 66 per cent. Furthermore, the national statistic masks significant disparity on the regional level, as today, the largest number of people awaiting trial anywhere in the world resides in the state of Uttar Pradesh in India, as it hosts around 110,000 undertrials, followed by Bihar and Maharashtra with undertrial figures exceeding 50,000 each. These states have high crime rates, poor policing practice and burdened judiciary, which, therefore, makes them giant detention centers for India's poor and marginalized, as undertrial detention in such environment becomes routine and normal instead of being an exceptional reaction to risks of danger or flight. Finally, the demographic composition of India's undertrials provides yet

another insight into the nature of pre-trial detention in the country as a tool of discrimination. Approximately half of all undertrial prisoners are young adults aged 18-30, whose education, future careers and family relationships might get irrevocably damaged as a result of a lengthy period in detention prior to trial. Even more revealing is the fact that two-thirds of all undertrials belong to scheduled castes and religious minorities are significantly overrepresented in comparison to the general population's demographics. Furthermore, it is safe to assume that almost 90 per cent of undertrials belong to economically poor and working classes with annual incomes at the poverty line and below.

These data clearly illustrate that the notion of pre-trial detention in India cannot be equated with risk assessment. Rather, it represents an institution that entangles the least well-off segments of the society due to their lack of resources, legal expertise and social contacts, as in many instances, the inability to post bail, hire a lawyer, and navigate judicial procedures determine whether an undertrial stays behind bars or walks free. Undertrial detention in India is neither a proportionate nor graduated measure but an institution aimed at social control of the most vulnerable. The problem of undertrial detention in India is tightly intertwined with the problem of prison overcrowding. Indeed, the jail occupancy ratio was estimated to be around 120.8 per cent in 2023, which means that on average, prisons in India held significantly more prisoners than they were supposed to accommodate. However, the above figure is misleading in terms of showing the actual magnitude of the problem since some of the prisons in Maharashtra, Delhi and Uttar Pradesh operated on occupancy rates from 250 to 400 per cent. Such conditions inevitably lead to a complete breakdown of the prison's ability to provide basic necessities for incarcerated, such as decent accommodation, sanitation, ventilation, proper healthcare and personal safety. As a result, prisoners are exposed to a range of health risks, ranging from the rapid spread of infectious diseases to increased levels of violence inside the prison. Additionally, prison overcrowding leads to suicides and other forms of self-mutilation, deaths in custody and further deterioration in the quality of prison management for lack of space.

Finally, prison overcrowding in such proportions violates basic human rights as per the Nelson Mandela Rules, which explicitly defines such conditions as incompatible with the basic standards of humanity and, in some instances, constitutes a form of cruel, inhuman and degrading treatment and punishment. In the future, the situation seems to get worse rather than improve. Namely, according to current trends, by 2030, the total prison population of India may reach 688,000 while the official capacity will remain at roughly 515,000 prisoners. In the absence of significant reforms that address systematic causes of over-incarceration – bail

reform, decriminalisation or diversion of petty offences, better handling of cases and increased use of non-custodial measures – prison overcrowding is likely to exacerbate and cause further violations of human rights. The problem of undertrial detention is closely related to and is one of the reasons for judicial overload in India. Indeed, as of 2023, over 50 million cases were pendent throughout Indian courts. Additionally, the average time that passes between an arrest and final resolution for criminal cases varies between three and four years, sometimes even reaching up to seven or eight years. Thus, an undertrial spending three to five years in pre-trial detention gets punished for what the court has not decided yet, which, therefore, violates the fundamental principle of legality as stated by Art. 20 of the Constitution.

Although the law includes provisions, such as the amended Section 436A of the CrPC (now Section 479 of the BNSS) aimed at resolving this issue, its effects remain limited in scope as many detainees are not aware of their rights while legal aids are overstretched, which means that NGOs are left to find candidates and bring claims individually before a court. Furthermore, under Art. 479(2), individuals charged with two or more offenses or with more than one case are excluded from eligibility criteria for release as per BNSS. This exclusion leaves thousands of prisoners to languish in pre-trial detention long after reaching statutory deadlines.

3.4 Systemic Challenges: Police Practices, Judicial Capacity, and Caste Disparities

Structural Factors Contributing to Prison Overcrowding: Overcrowding in Indian prisons is not incidental but the result of deliberate policy decisions. Firstly, the exponential growth of the number of offences included in the Indian penal code (from sedition to numerous minor regulatory crimes) creates an opportunity for criminalizing all kinds of activities that make a poor person's life possible. In addition, police have broad discretion to stop, question, and detain any individual on suspicion without warrant as per Section 41 of the CrPC. In this situation, any attempt at making a living, such as selling items on streets, collecting waste materials, or even trying to beg food from motorists in traffic lights can easily lead to incarceration. This problem is exacerbated by the existence of various criminal codes, which together with the Indian Penal Code (IPC), the Narcotics, Drugs, and Psychotropic Substances Act (NDPS), and Prevention of Money Laundering Act weave an intricate network of potentially criminal activities for the poor.

Arrests made by police are the main entry point into this criminal justice system, and the lack of prosecutorial screening and judicial control results in many arrests becoming routine responses to situations that could be handled with warnings, mediation, counselling or even administrative punishments. In this way, people who cannot afford to pay fines for violation of

minor regulations end up in pre-trial detention. However, the infrastructure of these prisons is ill-equipped to receive so many people in the first place, as the majority of Indian prisons are decades old and originally constructed to house fewer individuals and only sentenced prisoners. Therefore, chronic overcrowding, dilapidated barracks, bad sanitation and other problems are the norm rather than the exception in such institutions.

It should also be noted that the issue of caste is critical to understanding police and judicial practice in regard to arrest and pre-trial detention, as the overrepresentation of Scheduled Castes and Tribes among India's undertrial prisoners manifests structural and institutional biases in policing and criminal proceedings. Secondly, Indian police forces are overwhelmingly comprised of members of dominant castes, whose practices reflect long-standing discriminatory attitudes towards lower castes. Thirdly, notions of respectability, trustworthiness, and likelihood of absconding, used during court proceedings, are often implicit references to caste and class. Finally, once arrested, Dalits and Adivasis face numerous disadvantages: they are less likely to rely on trustworthy lawyers and, instead, must resort to chronically understaffed legal aids; they are less likely to enjoy property-owning kin or socially prominent individuals who could serve as surety to post bail.

Even so, the new Bill on Non-Custodial Sanctions (BNSS) does little to change the existing discriminatory practice, as it introduces new technological innovations without addressing underlying caste bias in police actions and bail decisions or proposing a mechanism to track and correct any potential discrimination. Training of judges on the issue of equality and non-discrimination is limited and random while there is no procedure for regular review of bail orders to make sure that caste or community played a role in decision-making. Thus, the criminal justice process reinforces caste subordination and reproduces inequalities: laws that appear neutral combine with practice to increase the probability of arrest and pre-trial detention and negatively influence the outcome of proceedings.

CHAPTER 4: PRETRIAL DETENTION IN THE UNITED STATES

One of the biggest and most widely used pretrial detention systems globally is the US system, in which over 470,000 inmates are incarcerated in local jails at all times, and none of them has yet faced trial, according to the U.S. Bureau of Justice Statistics, 2023. This is almost 70 percent of the total jail population, and the number is significant in absolute terms as well, meaning that America has the world's largest pretrial incarceration rate, at least in terms of absolute numbers. The American pretrial detention regime stands out among other systems in wealthy

countries in at least two important aspects, namely the widespread use of cash bail as a condition of pretrial release, and the open acceptance of pretrial preventive detention as a punishment based on a judge's assessment of the defendant's potential to harm the community ("U.S. jail population statistics – facts & figures | Prison Policy Initiative," n.d.). This chapter will examine the history of American bail laws, provide a brief overview of the legislative framework for pretrial detention, highlight the issue of racism and poverty as factors contributing to the current bail problem in the US, and illustrate how bail reforms can lead to successful changes.

4.1 The Bail Reform Act of 1984 and the Rise of Preventive Detention

It can be said that the current bail system in the United States was established by the passage of the Bail Reform Act of 1984, a statute that was passed in response to increasing violent crime rates and the desire of politicians to respond aggressively to crime, as violent crimes skyrocketed during this time period and generated great public concern, leading the politicians to look for ways of addressing the situation. Both major parties were competing for the title of the "most tough on crime," and bail reform was one of the measures that could be implemented to keep more offenders in jail pending trial, and so the Bail Reform Act of 1984, codified in Title 18, sections 3141-3150 of the U.S. Code, created an elaborate statutory framework for pretrial detention and release from pretrial detention. The greatest constitutional novelty introduced by this act is its explicit permission to detain an accused person not just because of the risk of his fleeing, but also to protect the society from the crime he might commit, which was a departure from previous American bail practice, which mostly addressed the issue of ensuring that an offender would appear in court on time ("18 USC § 3146 - Release Pending Proceedings | LII / Legal Information Institute," n.d.). Two different evidentiary burdens of proof apply in this case: to detain a defendant based on the risk of him fleeing, the prosecution must prove it by "a preponderance of the evidence," whereas to justify pretrial detention based on the defendant's risk of harming the community, the government must satisfy the higher "clear and convincing evidence" standard.

4.2 The Contemporary Movement for Bail Reform

The current American bail system was established by the passage of the Bail Reform Act of 1984, a statute which was enacted by the US Congress as a response to the rapid growth in violent crimes in the 1970s and early 1980s and public pressure to become "tough on crime," as crime rates continued growing throughout the 1970s and 1980s, creating fear and anxiety

among citizens. It was clear that there had to be a response, and the 1984 Act was an attempt to address the issue, since the public demanded politicians to get tougher on criminals, and the politicians were vying to appear tougher on crime than their rivals. Bail reform was one way to do it: politicians could prove themselves to be "tough on crime" by enacting bail reform that required keeping more alleged offenders in jail prior to the verdict. In this case, the Bail Reform Act of 1984, codified in Title 18, sections 3141-3150 of the U.S. Code, was adopted as a way to regulate when courts were entitled to detain defendants and under what conditions. The most significant constitutional change was the permission to detain a defendant not to ensure he would appear in court, but to protect society from future crimes, which was an important step away from previous American bail practice. There are two different evidentiary burdens of proof in the statute: to justify pretrial detention due to a risk of flight, the government must prove its case by "preponderance of the evidence," while to establish preventive detention as justified due to danger to society, it must satisfy a higher "clear and convincing evidence" standard. On its face, the statute seems fairly balanced in favor of bail: formal release is the default, while detention and preventive detention can only be achieved subject to high evidentiary burdens of proof.

4.3 Racial Disparities and the Poverty-Penalizing Nature of American Jails

Racial Disparities: The modern American pretrial detention system works as an institution of racial oppression, firmly rooted in a history of institutionalized racism. The disparity rates are quite obvious, as black defendants are detained at a much higher rate compared to white defendants for comparable crimes. Studies show that controlling for all relevant variables (past convictions, severity of charges), the black defendants are more likely to be detained than white defendants and assigned higher bail amounts. Black people make up 35-50 percent of pretrial detainees in major US jails, despite making up only 13 percent of the US population. Hispanic/Latino individuals are also heavily overrepresented in pretrial detention (Prison Policy Initiative, 2023).

Commercial Bail System: The peculiarity of American bail is the existence of a privately-run commercial bail bond system in the US, whereby individuals can be released from pretrial detention upon payment of a nonrefundable 10-15 percent bail amount (commercial bail system is a uniquely American phenomenon, absent elsewhere in the developed world). The commercial bail system introduces negative incentives: bail bond companies have a vested interest in the continued use of pretrial detention and a very strong opposition to bail reform. The bail bond lobby has repeatedly lobbied against bail reforms and proposed alternatives such

as risk assessment programs.

American bail has an inherently classist nature: while it might not be a problem for the middle class, the working poor are at a distinct disadvantage. A monthly rent might be within reach of a middle-class worker, while a weekly one will likely be too much for someone on a minimum wage job. For a poor person, paying a bail amount means choosing between food and freedom. Wealth makes the difference between release and incarceration: an affluent defendant arrested for a severe crime will easily be able to cover either the entire bail amount or the bail bond fee. Conversely, the poor defendant arrested for a minor infraction will end up spending months or years in pretrial detention.

Economic Impact of Pretrial Detention: Pretrial detention does not only mean losing freedom. It also leads to substantial economic harm, especially to the accused's family members. Job loss is immediate: the person detained will lose his employment, and the employer will not be able to accommodate this absenteeism. The system of commercial bail functions as a regressive tax on poverty. The family is ruined financially if the breadwinner is detained and is unable to pay for the increased living costs (e.g., rent). The housing is also endangered, as the person who is unable to pay rent after having been jailed will eventually be evicted. Moreover, a person detained prior to trial is likely to agree to pleading guilty in order to obtain pretrial release, showing that pretrial detention plays a causative role in trial results. The data clearly indicates that pretrial detainees are substantially more likely to plead guilty and get a harsher sentence than released ones.

4.4 Statistical Realities of American Pretrial Detention (2023-2025)

During the period from 2023 to 2025, pretrial detention will remain extremely prevalent in the US, despite certain attempts at reforming the practice in some jurisdictions, so the number of persons incarcerated in jail will remain very high. As a rule, roughly 70 percent of inmates in local jails at any given time will not be convicted yet, and they will be detained in jail awaiting trial. The total jail population in 2024 will fall below the record-breaking peak of 2009, which reached 750,000, but it will remain a high indicator in comparison with jail rates in other industrial nations. Jurisdictions where bail reform took place reported dramatic changes: after introducing bail reform, they managed to sharply reduce the number of pretrial detainees without experiencing any increases in crime rates associated with the release of those charged with committing those crimes or any failure of the accused to appear in court, which proves that large-scale reforms are possible and beneficial. Race disparities in pretrial detention will continue to exist, as Blacks are 13 percent of the US population but 40 percent of pretrial

detainees. Hispanics/Latinos also account for 1.5 times more pretrial detainees than their demographic weight in the US population allows.

CHAPTER 5: PRETRIAL DETENTION IN RUSSIA

One of the most controversial aspects of the criminal justice system in Russia is that of pre-trial detention, which acts not just as an ordinary mechanism for ensuring the defendant's appearance in court, but also as a form of state oppression. The current Russian legal system displays the general features of post-soviet legal systems, such as insufficient implementation of procedural safeguards for the protection of defendants, domination of prosecution over courts' decisions, lack of judicial independence, and politically motivated detention of persons. In this chapter, I will discuss the legislation concerning pre-trial detention, patterns of judicial detention, politically motivated detentions, and detention conditions.

5.1 Legislation and Procedural Requirements

Chapter 13 of the Criminal Procedure Code: Theoretical Protections: In accordance with Chapter 13 of the Criminal Procedure Code of the Russian Federation ("Measures of Restriction") (Мерыпресечения), pre-trial detention can be applied only based on judicial decisions for one of three grounds (Article 108, CCP): flight risk, obstructing or interfering with a case, or repeated commission of offenses. The statute establishes temporal restrictions for detention duration: initially, detention cannot last more than two months, then – up to six months, after that, detention can be extended up to twelve months and, in certain cases related to serious offenses – up to eighteen months (CCP of Russia, 2001).

Approval Rates and the Problem of Rubber-Stamp Courts: Since 2002, when the Russian judicial power was granted its right to consider the issue of pre-trial detention, courts regularly approve detention petitions at a rate higher than 90%. Such extraordinarily high statistics of approval of pre-trial detention applications in comparison with other countries (with the approval rate ranging from 60% to 80%) suggest that the system of judicial oversight over the issue of detention does not function properly, operating as a rubber stamp. It was stated in the 2024 report on human rights in Russia by the US State Department that despite procedural safeguards, judges rarely deny prosecutor's detention requests and accept their judgments as to the necessity of the measure (Human Rights Watch, 2024).

Structural Causes for the High Rate of Pre-trial Detentions: There are several structural causes that lead to the extraordinarily high rate of judicial approval of pre-trial detention. First,

the judicial power of Russia is not independent of the executive; judges depend on state authorities for further promotion and better conditions. Second, the hierarchy of the investigative process subordinates judges to the procuracy. The procurator has the right to override certain judicial decisions. Thus, it is reasonable to believe that judges may experience pressure from superior bodies when deciding on whether to allow pre-trial detention. Third, when considering the question, judges have asymmetry of information; whereas prosecutors have access to selected evidence, defendants and their attorneys have significantly fewer chances to do so. Finally, according to Article 98 CCP, the authority to decide on detention is vested in the procuracy; judges act only as rubber stamps.

5.2 Politically Motivated Detentions and State Repression (2022-2025)

Weaponized Legality Since 2022: After Russia initiated a full-scale invasion of Ukraine in February 2022, the state began implementing policies of political repression and weaponized criminal law and pre-trial detention as mechanisms. The key pieces of relevant legislation are criminal articles relating to fake news about the military service (Article 207.3 and Article 280.1 of the Russian Criminal Code amended in 2022) and laws on extremism and terrorism, along with the foreign agent law and undesired organizations. As of August 2024, a new amendment broadened the definition of undesired organizations and included any organization considered dangerous for national security, cultural values or social stability, allowing the state wide discretionary powers to designate such organizations (Human Rights Watch, 2024).

Prevalence and Characteristics of Political Detentions: Quantitatively, politically motivated pre-trial detentions reached unprecedented heights in Russian history. According to monitors, as of December 2024, over 1,400 people were imprisoned in politically motivated cases, among whom 28% were kept in SIZO. The target category includes ant-war activists, human rights defenders, LGBTQ community, and independent journalists. Individuals targeted face especially harsh treatment, like isolation, restrictions in contacting with relatives, forced psychiatric evaluation, etc. Among notable cases are detention of Wall Street Journal correspondent Evan Gershkovich, who received a sixteen-year sentence after a conviction of espionage in June 2024, as well as hundreds of Russian citizens for opposition to the war and critical political beliefs.

5.3 Detention Conditions in Pre-trial Facilities (SIZOs)

Prevalence of Human Rights Violations: Russian pre-trial detention centers, called SIZO (следственныеизоляторы), are notorious for systematic international criticism of violation of

human rights. In the landmark judgment *Ananyev and Others v. Russia* (2012), the European Court of Human Rights set quantitative thresholds for the establishment of a systemic breach of the European Convention on Human Rights prohibition on torture or inhuman and degrading treatment: insufficient floor space less than three square meters, lack of daylight and ventilation, absence of adequate medical treatment combined with violent environment, and prevalent diseases in the facility. Despite the pilot judgment, the current situation remains abhorrent: SIZOs are located in obsolete buildings constructed in soviet times, medical treatment is highly insufficient, and violence, sexual abuse, and disease are common (European Court of Human Rights, 2012).

Torture and Negligence in Medical Care: Torture is common alongside detention in SIZOs; especially of those who are designated as political prisoners. UN Special Rapporteur discovered numerous instances of torture and maltreatment of prisoners, including forcible psychiatric evaluation, psychological torture (isolating detainees from society), and physical violence. Moreover, the medical treatment provided is very poor – there is little access to medical professionals, medications required for illnesses are not provided, patients suffer from negligence in treatment, and there is a high prevalence of infectious diseases in the facility (United Nations, 2021).

CHAPTER 6: COMPARATIVE ANALYSIS

6.1 Legal Grounds for Detention and Theoretical Frameworks

Comparison of Risk-Based Detention (USA and India) with Prosecutorial Necessity (Russia): Although both the US and India employ a risk-based framework for pretrial detention determinations, in each case, the requirement is that a judge must predict whether or not a person will pose a risk of flight or pose a danger to the community if released. This seemingly objective determination hides deep-seated subjectivity. Indeed, the use of risk assessment instruments in the US was shown to be biased towards people who historically have been discriminated against and excluded. The opaqueness of risk assessment and the difficulty in contesting its output results in unfair treatment of vulnerable groups. In contrast, Russian pretrial detention is based on the need to detain a suspect for reasons of investigatory convenience or interference prevention rather than any individual prediction of dangerousness. As such, this prosecutorial standard allows for a much broader set of justifications for detention than risk-based criteria and places fewer limits on the practice of detention.

6.2 Temporal Elements of Pretrial Detention

Russian Law 18-Month Limit vs. Indian Practice of Indefinite Pretrial Detention: Russian law clearly establishes the temporal limit of detention: it cannot last longer than 18 months even in exceptional cases of extremely grave crimes. While there is no clear temporal boundary on detention length in most other countries, the presence of one in Russia prevents arbitrary, indefinite detention practices. Yet eighteen months is an exceptionally long period of unconvicted detention and may constitute violation of the reasonability criteria on its own. India features another pathologic element: although legal limitations on length of pretrial detention are established in statutes, this limitation is ignored in practice. The Supreme Court of India has emphasized that pretrial detention should be sparing and of limited duration, but lower courts routinely prolong remand. In essence, it constitutes indefinite pretrial detention as the result: as of 2020, India housed more than 323,000 people incarcerated despite being eligible for release. The US pretrial detention duration varies according to complexity of the case, yet federal and state laws specify how quickly the trial should commence, as well as provide means for extension of this timeline.

6.3 Demographic Discriminatory Effects of Pretrial Detention

Indian Caste-Based, US Racially, Russian Politically Biased Practice: In India, the pretrial detention process takes place in the context of social stratification along the lines of caste affiliation. There are numerous mechanisms through which caste plays a role in this process: first, police are overrepresented by individuals from dominant castes; second, bail is determined with biases regarding trustworthiness and respectability of certain castes. In the US, racial disparities in pretrial detention have proven to be large and persistent: black americans are far more likely to be incarcerated pending trial compared to whites. The reasons for this disparity are numerous: they include race-based police stops and arrests; prosecutorial charging; and judicial decision-making regarding bail. In Russia, pretrial detention is highly politically motivated. People deemed politically dangerous by the government for their anti-war, human rights activism or membership in unfavorable organizations are detained at much greater rates, facing especially harsh conditions of detention.

CHAPTER 7: SOCIOECONOMIC AND HUMAN RIGHTS CONSEQUENCES

7.1 The Poverty Trap and Economic Devastation

Pretrial detention is known among scholars and human rights defenders as a "poverty trap." This refers to the mechanism whereby the criminal justice system keeps poor people trapped in poverty through pretrial detention. There are serious consequences on the immediate economic front. In the USA, average bail for felony charges is $10,000 nationally but varies regionally. This is equivalent to several months' or even years' income for poorer persons (Open Society Justice Initiative, 2024). The bail system works like a regressive tax against poor people, taking money from the poorest.

Work becomes immediately at risk as one will be fired from work within a couple of days for absences and lack of accountability during detention. The financial pressure will fall on the shoulders of the family members left behind who are financially weak. The family itself experiences a breakdown. One loses access to housing, as he or she is evicted for inability to pay rent while in jail. Food security is compromised as families are unable to make ends meet without the person working. Access to health care is curtailed and the psychological effect of family separation is severe. Thus, an endless loop develops: pretrial detention leads to poverty; poverty makes it difficult to afford bail and legal counsel; detention continues and weak legal representation results in higher probability of being convicted and harsher punishment; being convicted makes employment impossible and hence poverty persists.

7.2 Psychological and Family Effects of Pretrial Detention

Cognitive and Emotional Problems: The main aspect about pretrial detention is uncertainty. Unlike the convicted who get to know how long they will spend in detention, pretrial detainees cannot predict when they will leave the jail. It brings immense stress, depression, and even cognitive dysfunction such that the person cannot properly prepare for his or her defense in the trial. Pretrial detention almost always leads to clinical depression and emotional withdrawal. The suicide rate among pretrial detainees is three times higher compared to that of convicted inmates, illustrating the negative impact of uncertainty and helplessness on mental well-being.

Familial Disruption and Consequences for Children: Pretrial detention alienates the person from their closest source of support when it is more needed. If one has a child, the consequences are grave – trauma upon losing the parent; interruptions in education; poor development of social-emotional skills; and heightened poverty levels. The consequences reach future

generations, as the offspring of incarcerated people tend to suffer higher rates of educational disruptions, psychiatric problems, behavioral issues, and criminal activity. Familial relationships are disrupted in a way that may be permanent.

7.3 Violation of Fundamental Human Rights

Inversion of Presumption of Innocence: Presumption of innocence as the human right principle stating that every individual remains innocent until proven guilty is universally recognized and respected except where there is pretrial detention. The very essence of pretrial detention is the reversal of presumption of innocence, since the individual is detained in similar conditions to a convict. He or she cannot freely move around, contact others, and even receive necessary information. Those who cannot afford bail are held in prison for a crime which he or she might be found innocent of. International human rights laws state that all detainees have the right to good detention and proper healthcare. The reality, however, is very different.

CHAPTER 8: REFORM INITIATIVES AND PATHWAYS FORWARD

8.1 International Standards and Global Framework

The United Nations Standard Minimum Rules for the Treatment of Prisoners, renamed the Nelson Mandela Rules in 2015, address pretrial detention specifically and set out that all people deprived of their liberty have basic human rights (United Nations, 2015). Among these rules is that the treatment shall respect human dignity, shall never involve torture and cruel treatment, shall provide healthcare and safety standards, shall prohibit unjustified segregation, and shall provide access to legal counsel.

The Bangkok Rules (2010) acknowledge that women prisoners and offenders have particular requirements. The Rules emphasize non-custodial measures and alternatives to detention to account for the vulnerability of women in pretrial settings. Similar to the Nelson Mandela Rules, the Bangkok Rules serve as soft laws with considerable impact on reforming national laws.

8.2 National Bail Reform Initiatives

United States - Illinois and New Jersey Models: The Pretrial Fairness Act of Illinois (2023) marks the most thorough bail reform ever implemented in the United States. The legislation abolishes cash bail for the vast majority of offenses and imposes a presumption of release. Initial results demonstrate dramatic decreases in pretrial prisoner numbers without an increase

in pretrial crimes or failure to appear. New Jersey's systemic approach to bail reform (2014-2017) provided an example of successful reform, demonstrating that it is possible to abolish cash bail while maintaining high levels of public safety. Both jurisdictions have proven that extensive pretrial detention has not been required for ensuring public safety.

India - Under Trial Review Committees and BNSS Implementation: In India, the primary institution to address pretrial detention is the Under Trial Review Committee (UTRC), tasked with identifying undertrial prisoners eligible for release under several provisions of BNSS. UTRCs should identify prisoners having served half (or one-third according to the new legislation) of their maximum sentence, prisoners eligible for bail under bailable offenses, prisoners who received bail but could not provide sureties, etc. The current year UTRC campaign helped release approximately 2,000 undertrial prisoners who were eligible for release. However, there still persist several obstacles to reducing pretrial detention rates, including difficulty providing sureties, lack of legal representation, and inefficient process of identifying prisoners eligible for release. Automation of UTRC identification procedures and implementation of BNSS provisions may lead to improvements in the matter (Government of India, 2023).

8.3 Recommended Comprehensive Reforms

For All Three Jurisdictions: Foundational reforms must ensure a presumption of release, allowing detention only for serious offenses and requiring proof thereof. Alternative mechanisms to release must be considered, such as unsecured bonds, recognizance release, community supervision, and other options. Risk assessments must be conducted using a transparent framework, subject to audit and challenge. Guarantees of speedy trial must be enforced in practice, using a strict timeline of 120-180 days after an individual's arrest. Right to bail hearing must be guaranteed within 24-72 hours after the arrest with access to counsel.

India-Specific: Complete implementation of BNSS provisions must be ensured. Digital UTRC must help identify eligible prisoners promptly. Standards of bail conditions must be established. Reform of the surety system must allow releasing prisoners on their own recognizance in cases of non-violent offenses. Caste discrimination must be forbidden with special emphasis in judicial education.

United States-Specific: Nationwide elimination of bail system must be strived for. The model proposed by Illinois must be adopted. Poverty-based detention must be banned, and more resources invested in public defenders. Collection of statistics on pretrial detention, disparity in outcomes, and other relevant data must be required. Bail funds must be increased. Sentencing

reform must be implemented.

CHAPTER 9: CONCLUSIONS AND RECOMMENDATIONS

9.1 Summary of Key Findings

As discussed throughout this analysis, pretrial detention systems have been reviewed in the context of the United States, India, and Russia, revealing a worldwide crisis that affects millions of people today. The scope is unprecedented: there are approximately nine million people worldwide who are held in pretrial detention at any one time, with millions more passing through such detention processes per year. In all three jurisdictions reviewed herein, pretrial detainees make up between 70% and 76% of prison populations, revealing that pretrial detention, rather than post-conviction imprisonment, drives prison population growth (United Nations Office on Drugs and Crime, 2023).

Pretrial Detention as an Ineffective Measure: Pretrial detention does not succeed in meeting its intended goals. Evidence from jurisdictions implementing pretrial reform reveals that abolishing cash bail and releasing individuals do not cause higher rates of pretrial crime or failure to appear at trial proceedings. The expanded detention measures are thus unnecessary for the goal of public safety or court appearances. Rather, the high rates of detention in all jurisdictions can be explained by factors other than the achievement of the listed purposes, including social control, financial gain, and political repression.

Inequitable Detention: Pretrial detention is not applied equally across groups. For example, black Americans are incarcerated during the pretrial period three times as much as their proportion of the population; Dalits and religious minorities face higher rates of detention in India; and political dissidents are subject to pretrial detention in Russia. This reveals pretrial detention to be an instrument of social control.

Violation of Human Rights: Pretrial detention constitutes systematic human rights violations since it violates key human rights, such as the presumption of innocence, right to a fair trial, and freedom from cruel, inhuman treatment or punishment. Even with the international commitment to human rights, pretrial detention has remained in violation of human rights laws.

9.2 The Path Forward

Critical to pretrial justice reform is acceptance of the fact that pretrial liberty, rather than detention, is the normal state and that detention should be carefully constrained. This important international human rights principle, which applies across UN norms as articulated by the

Nelson Mandela rules, the Bangkok rules, the International Covenant on Civil and Political Rights, and the sustainable development goals, emphasizes that incarceration should be an exceptional measure and especially before conviction.

The empirical evidence provided in this analysis reveals that this principle is not only normatively correct but also realistically possible to implement, with the end of cash bail systems and the implementation of alternative measures meeting public safety and court attendance goals while dramatically reducing the tremendous human tolls associated with current practices. Illinois' Pretrial Fairness Act, New Jersey's Pretrial Release and Supervision Reform, and the Indian Satender Kumar Antil cases offer models for reform.

At the end of the day, pretrial justice reform raises essential questions about what society wants from its criminal justice system and what values it holds. The evidence gathered and analyzed in this dissertation points to the need for reform, the feasibility of such a change process, and considerable human benefit that may be realized thereby.

APPENDIX: DETAILED CASE STUDIES AND REGIONAL ANALYSIS

ADDITIONAL ANALYSIS: SPECIFIC IMPACT STUDIES AND CASE EXAMPLES

Economic Impact Analysis: The True Cost of Pretrial Detention

However, the negative economic effects of pretrial detention are much wider, influencing not only defendants themselves, but also families, communities, and society as a whole. The examination of socioeconomic effects of pretrial detention shows an oppressive system of punishment that further increases the levels of poverty while placing extremely burdensome costs to the society as a whole.

Individual Economic Effect: Studies of the employment consequences of pretrial detention reveal the severe economic effect of being placed in pretrial detention. According to research conducted by the Vera Institute of Justice (2024), individuals kept in pretrial detention lost between $3,000 to $5,000 during this time, which poor people would never recover. Post-detention earnings were 20-30 percent lower for individuals with pretrial detention history compared to similar individuals who were allowed to leave pending trial; this economic penalty lasted for many years following the detention.

Economic Devastation for Families: The poverty traps are applied not only to individual defendants, but to their whole families as well. When a household's breadwinner is detained, family income plummets to nothing, while expenses increase. These expenses include paying for the bail and hiring attorneys, as well as extra childcare costs, and even expenses for traveling

to jails to see defendants on occasion. Families are forced to withdraw all money in savings, incur debts, stop visiting doctors and buying education supplies and other items. Moreover, the problem of housing instability arises because individuals and families are unable to pay for rent and, therefore, face evictions that cause homelessness when they are released from detention. The Open Society Justice Initiative (2024) describes cases where families had to move several times and take kids out of schools due to pretrial detention-related instability.

Aggregated Economic and Social Effects: Aggregation of pretrial detention effects in communities is substantial. In the US, the bail bond industry drains $2 billion of revenues from low-income communities every year. Poor people are robbed of this money by the private industry, rather than benefiting from such investment. The loss of valuable employees affects employers as well, especially small business owners in low-income communities, who do not have spare resources to recruit other employees to cover those who were detained. Moreover, the healthcare system should be ready to address the health needs of mentally ill individuals returned to the community after detention. Finally, the problem of educating children who were affected psychologically by their parents' detention arises.

Plea Bargaining Distortion and Due Process Abuses

One of the most harmful consequences of pretrial detention is the way it affects the process of plea bargaining. The existence of pretrial detention seriously undermines the principle of adversarial process and violates the basic principles of due process.

Distortion of the Adversarial Process: Individuals detained pretrial face a very hard choice of remaining detained until their trial begins or accepting a plea deal to be set free immediately. The decision is particularly difficult for people who cannot pay their bail due to poverty, for individuals who are in families, and for people whose employment statuses are unstable. Despite the weakness of evidence against them or high likelihood of acquittal at trial, many of detained individuals choose to plead guilty and be set free. The pressures to enter guilty pleas and the consequences of refusal to do it are enormous.

Empirical Proof: Research proves that the case outcomes are determined by the status of the defendant before trial: detained defendants are convicted more often than those released on their own recognizances (25 percent more likely to be found guilty, according to research of federal cases). Detained defendants receiving sentences get them longer: 3 years on average longer. This is the indicator that pretrial detention affects trials, negotiating powers of both sides, and final verdicts. The difference in outcomes becomes even more obvious in case of poor people who are unable to defend themselves properly in jail.

False Acquittals: Most troubling part of the story is that individuals are coerced to plead guilty

despite their innocence. It may not be possible to quantify how many innocents end up pleading guilty, but the combination of unbearable pressures of pretrial detention and weak legal defense leads to guilty pleas made by innocent people. As a result, innocent people are wrongfully convicted and suffer from it along with their families, and perpetrators are left at large.

Mental Health Issues and Suicide

Unlike post-conviction imprisonment, pretrial detention is associated with significant psychological distress. Unlike imprisonment, the uncertainty about future in the case of pretrial detention is its unique feature.

Mental Health Disorders: The main peculiarity of pretrial detention is uncertainty: what will happen further? When will the release occur? What sentence will be imposed? This uncertainty creates high levels of anxiety and depression. The sense of helplessness and loss of freedom lead to learned helplessness and depression. Cognitive functions suffer greatly due to the constant stress, lack of proper sleep, and uncertainty of future. Inability to focus negatively affects the interaction with attorneys and understanding of legal processes.

Suicides: The suicide rate in the group of pretrial detainees is thrice higher than in convicted prisoners (Vera Institute of Justice, 2024). The reason for the high level of suicides is that unlike convicted prisoners who know their sentences, pretrial detainees are uncertain about everything, which adds to the feeling of hopelessness. Jails, where pretrial detention occurs, are characterized by the shortage of mental health services; as a result, individuals suffering from disorders are deprived of help and die of suicide.

Effects of Parental Pretrial Detention on Children

The consequences of pretrial detention on children of defendants are substantial and include long-term and intergenerational effects.

Effects of Parents' Detention on Kids' Welfare: In case of detention of the parent, children lose their main caregiver. They are either placed with relatives, when possible, or placed in orphanages, and sometimes become homeless. For children, especially young children, this unexpected separation is quite traumatic. Sometimes, kids do not even understand what happens, they do not know why their parent disappeared, and whether they will ever be seen again.

Educational Difficulties and Behavioral Problems: Detained parent means disruption of education of their kids, because there will be more absences from school, poorer school performance, and behavioral disorders. Teachers notice behavioral changes in the kids of detained parents and state that they are increasingly aggressive and less focused. Children falling behind academically and having behavioral difficulties are more prone to suspension or

expulsion, which affects their future educational opportunities.

Intergenerational Criminal Justice Involvement: Children from parents arrested have much higher risks of being in criminal justice than others do. There are several factors that may lead to this result, including absence of parent's supervision and protection, financial difficulties and poverty, psychological disorders and trauma, and normalization of detention.

Pretrial Detention Demographics

It is necessary to find out, who suffers the most from pretrial detention. The following groups demonstrate the greatest overrepresentation.

Racial and Ethnic Groups: Pretrial detention occurs much frequently among black people and Hispanics/Latinos. Black Americans constitute 40 percent of pretrial detainees despite their population accounting for only 13 percent of the US population. Such high levels of overrepresentation result from different decisions at each stage of the process, including arrests by police, charging and sentencing by prosecutors and imposition of high bail by judges. As a result, racial disparity in pretrial detentions reaches extreme levels. Hispanics/Latinos also represent overrepresented group in case of states with active immigration policy.

Caste and Religious Disparity in India: In India, Scheduled Castes and Tribes are significantly overrepresented in pretrial detainee population. Approximately two-thirds of pretrial detainees come from such marginalized communities. Religious minorities are also more likely to be detained, especially Muslims and Sikhs. The explanation of the high levels of disparity in this case is rooted in the discriminatory behavior of police, prosecutors, and judges, leading to pretrial detention. As a result, pretrial detention becomes another tool of maintaining cast and religious inequality.

Gender Differences: Women constitute 15 percent of the pretrial detainee population compared to 85 percent men. However, female detainees suffer from specific difficulties and vulnerabilities. Female detainees experience sexual abuse and harassment twice as often as male detainees do. Women carrying babies are detained in conditions that violate international standards of healthcare for pregnant women. Women with kids face severe psychological problems because of worries related to kid's welfare. Transgender detainees suffer from inadequate conditions of detention.

Evaluation of Reform Initiatives: What Works?

As can be seen from the foregoing, the analyzed bail reform initiatives give a practical assessment of what kind of reform works and what barriers persist.

Reform Success Evidence: Illinois Pretrial Fairness Act proves that it is entirely possible and even beneficial to completely abolish bail system as a measure to eliminate unnecessary pretrial

detention, without adverse effects on public safety and defendant's court attendance. Failure-to-appear rates remained unchanged or even went down in the first year of abolition. This gives us a clear indication that there was no need for such massive pretrial detention in the past, since it did not serve the purpose of public safety and ensured appearance before the court (Vera Institute of Justice, 2024).

Limits and Inequitable Implementation: Nonetheless, bail reform has proven its limits. First of all, prosecutors are now able to use "net widening," which means that they increase charges or submit detention motions, thereby reducing total number of cases with detention, but increasing its share. Second, bail reform did not remove racial disparity problem, since black Americans are still being held pretrial and are facing bigger amounts of bail compared to any other group. Lastly, some jurisdictions implement bail reform less rigorously, which indicates that complete implementation of bail reform may be problematic.

Constitution of India. 1950. Articles 19, 21, 22. Fundamental Rights protecting liberty and freedom from arbitrary detention. The Constitution establishes fundamental rights protecting an individual from any form of arbitrary detention or deprivation of freedom, which forms basis for bail laws.

European Court of Human Rights. (2012). Ananyev and Others v. Russia, Applications Nos. 42525/07 and 60800/08. Pilot judgment establishing standards for pretrial detention conditions and state responsibility for systemic violations. Judgment establishes that if the pretrial detention conditions fail to reach minimum threshold (under 3 sq. meters of area available for each detainee), it constitutes torture or cruel and inhumane treatment.

Government of India. (2023). National Crime Records Bureau Statistics. Ministry of Home Affairs. Official statistics regarding Indian prison populations, number of undertrials in prison, demographic composition in terms of caste, religion, and gender. Shows that about 76% of prison population consist of untried defendants. State-level figures for undertrial population are also presented.

Human Rights Watch. (2024). Persecution and Detention in the Russian Federation. Annual Report documenting political arrests, tortures in the SIZOs and investigative detention facilities, violation of human rights in Russia. Documents multiple instances of persecution, arrests, and tortures in SIZOs of various regions, including anti-war activists, human rights defenders, and journalists, who were arrested and put to jail for expressing their political views.

International Covenant on Civil and Political Rights. (1966). Adopted by the United Nations General Assembly. Article 9 establishes individual right to liberty and security of a person, while article 14 states presumption of innocence principle and right to fair proceedings. India,

Russia, and the USA are parties to this treaty.

Open Society Justice Initiative. (2024). The Socioeconomic Impact of Pretrial Detention. OSJI report analyzing economic impact of pretrial detention, including poverty of detained, employment disruption, financial and housing instability in detainee's family, criminalization, etc. Case studies included showing that many detainees' families experience devastating economic effects of pretrial detention.

Parliament of India. (2023). BharatiyaNagarik Suraksha Sanhita, 2023. New law replacing 50-year old Criminal Procedure Code. Law introduces new bail procedure, establishes detention and investigation periods, etc. Both progressive and expanding powers of law enforcement provisions are introduced. Law takes effect on July 1, 2024.

Prison Policy Initiative. (2023). Pretrial detention. Retrieved from https://www.prisonpolicy.org/research/ Data on pretrial detention population of jails (467,600 in 2023), demographics (ethnic, socio-economic, age) of detainees, average bail amount (mediana $10,000 in felony cases), and economic effects of pretrial detention for detainee and his/her family members. Document shows that 70% of jail population are unconvicted.

Russian Code of Criminal Procedure. (2001, as amended). Chapter 13 dealing with pretrial detention (Меры пресечения). Grounds for placing under pretrial detention (Article 108), procedures (Article 109), and maximum periods of detention (articles 108, 109).

Supreme Court of India. (2021). Satender Kumar Antil v. Central Bureau of Investigation, (2021) 1 SCC 1. Decisions establishing new categorical bail framework, limiting arbitrary power of police and establishing procedure of assessment for each case. Decision establishes the principle according to which there must be grounds for arrest and not just police decision.

United Nations. (2014). General Comment No. 35 on Article 9 of the International Covenant on Civil and Political Rights. UN Human Rights Committee statement on pretrial detention stating that it should only occur in cases of justification and if it is of reasonable length, and alternatives should be considered before resorting to pretrial detention.

United Nations. (2015). Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). UNODC publication. International standards for conditions in prisons and detention facilities (Rule 13 on accommodation; Rule 24 on sanitation). Additionally, rules concerning alternatives to detention (Rule 37) and unconvicted prisoners (Rule 38).

United Nations Office on Drugs and Crime. (2023). Global Study on Imprisonment. Comprehensive UNODC study about global imprisonment situation. Documents show that there are about 28.8 million people globally imprisoned, out of whom one-third (9.5 million) are untried.

United Nations, Special Rapporteur on Torture. (2021). Report on the Russian Federation. Report of UN mechanism dealing with torture allegations, inadequate conditions in Russian prisons and systemic human rights violation. Report documents allegations of forced psychiatric examination, torture, and solitary confinement of political prisoners.

U.S. Bureau of Justice Statistics. (2023). Local Jail Population Survey. Department of Justice. Local jail population data (total of 664,200 individuals, unconvicted 467,600 individuals, 70% in jail population); demographic statistics (by race and ethnicity); offense categories. As of 2023 average length of stay is 32 days.

U.S. Congress. (1984). Bail Reform Act of 1984. 18 U.S.C. §§ 3141-3150. Federal law regulating bail and pretrial detention. Statutes establish procedures and evidence rules for making decisions on pretrial detention. Allows preventive detention for community protection purposes.

Vera Institute of Justice. (2024). Pretrial Detention: The Fourth Wave. Vera report about contemporary pretrial bail reform movements, analysis of Illinois and New Jersey cases of reform, empirical data on reform effectiveness and impact, evaluation of risk assessment tools, and racial and economic inequities of reform.

Institutional and Systemic Barriers to Reform

Although bail reform movements have illustrated the potential for transformation, institutional and systemic barriers continue to limit the extent of pretrial justice system reform. It is critical to examine these barriers to develop strategies that would overcome them and bring about transformational change to pretrial justice systems.

Prosecution Adaptation and Resistance

As a stakeholder group with considerable influence in criminal justice systems, prosecutors have been among those resisting bail reforms in the past. In response to the restrictions or absence of cash bail, prosecutors adapt their strategies to include filing increased number of charges, raising detention motions for additional charges, and using evidence to persuade the judge of the necessity of detaining the defendant to maintain safety in the community. In jurisdictions adopting bail reform, there appears to be a trend towards increased rate of detention motions filed, suggesting that although the number of cases entering pretrial may go down due to the ban on money bail, the proportion of cases involving the detention motion increases. Such an adaptation strategy implies that without the reform of the prosecutorial decision-making structure and incentives, bail reform alone brings limited benefits.

Additionally, bail bondsmen companies have opposed the bail reform, contributing financially to the campaigns and political activities of those opposing bail reform. Opposition to the reform

of pretrial procedures by the bail bond industry resulted in the halt of bail reform in certain states and jurisdictions, creating a political economy problem in that regard. With their vested interest in maximizing pretrial detention, bail bond industry has generated around $2 billion per year by collecting non-refundable fees for posting bail bonds. Thus, the bail industry is actively resisting bail reform.

Capacity Constraints of the Judiciary and Magistracy

One of the most pressing challenges facing the judiciary and magistrates in India and other jurisdictions with a similar case management system is enormous pretrial workload in lower courts. Magistrates hearing hundreds of bail applications a day under the constraint of inadequate court capacity, insufficient staff, and obsolete case management system lack the ability to consider individual circumstances of the defendant in the bail determination process. The structure of casework in such circumstances provides for two types of decisions: granting the defendant bail without imposing any conditions (the easiest type of bail granted) and automatic remand to police custody (the default decision when the case falls within one of the listed offense categories).

The Satender Kumar Antil[23] directive of the Indian Supreme Court outlined the criteria and framework for individualized bail decision making, which could hardly be implemented in light of the limited capacity of lower courts. Similarly, lower courts in the US suffer from limited resources, which impedes bail reform. Legislative reforms are necessary, but in order for them to be successful, courts need additional resources invested into their operation, training of judges and magistrates, and implementation of efficient case management system. Otherwise, bail reform is bound to be aspirational rather than operational.

Risk Assessment Tools and Algorithms: Issues of Discrimination

As a way of reducing subjective nature of bail and detention decision making, jurisdictions have adopted risk assessment tools to assist judges in determining whether the defendant poses a danger to public safety and is likely to reoffend or flee the jurisdiction if released. However, scientific research has proven that despite the attempt to make the procedure more objective, such tools still carry built-in discrimination based on race and socio-economic background. Risk assessment algorithms tend to produce different results for persons of different ethnicities regardless of the fact that other parameters considered in the prediction of future behavior are

[23] *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 (India).

controlled.

Risk assessment algorithms use historical criminal justice data that has been reflecting centuries of discrimination by police and prosecutors. As a result, the model learns discrimination and replicates it in subsequent determinations. What is worse, due to its opacity, it becomes impossible to challenge decisions made based on an algorithm, let alone understand them. An effective risk assessment tool must be transparent and open to scrutiny, audited regularly for discrimination, and capable of recognizing that predictions are not deterministic.

International Human Rights Mechanisms: Pros and Cons

International human rights mechanisms play a crucial role in pressuring countries to undertake reform of pretrial detention procedures and policies. Findings and recommendations of international human rights organizations (including UNHRC and special rapporteurs, regional courts, etc.) have been issued regarding the issue of pretrial detention practices in numerous countries[24].

However, the enforcement mechanisms available for international human rights organizations remain relatively weak compared to the ones available in domestic judicial processes. For instance, a country subjected to the decision of a regional court in favor of detainees has a possibility of opting out of the jurisdiction of such court. In 2022, Russia withdrew itself from the jurisdiction of the European Court of Human Rights.

In addition to that, even those countries that do not withdraw themselves from the jurisdiction of international bodies remain free to ignore the decisions issued by those organizations and do not experience any consequences for it. Moreover, international organizations usually address pretrial detention issues in several years after the events that triggered the complaints have occurred. Therefore, international mechanisms cannot provide immediate relief for the complainants.

That being said, international human rights mechanisms are still valuable and serve their purpose. They provide authoritative assessments of pretrial detention problems, pressure countries politically on the issues, and assist domestic actors in bringing about domestic reform and protection of human rights. Bail procedures in India, for instance, have been significantly influenced by the human rights principles proclaimed by UN in ICCPR. International standards are a part of the global discourse that encourages domestic reforms[25].

[24] United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*: resolution adopted by the General Assembly, 8 January 2016, A/RES/70/175.
[25] Census of India 2011, *Population Projections for India and States, 2011-2036* (Report of the Technical Group, 2020).

The Road to Transformation: Multi-Level Strategy

On the basis of the analysis performed and barriers to bail reform identified in this dissertation, it should be concluded that comprehensive bail reform and pretrial justice system transformation require an integrated approach based on several strategies operating on different levels of the criminal justice system[26].

Bail Reform: A Legal Basis

First of all, the legal foundation of pretrial procedures must be altered. Legislative reforms should establish the presumption of release and narrow down the criteria for detention in pretrial to include only the most serious offenses and justify it only based on the proof standards.

Secondly, bail should be prohibited on the grounds of inability to pay. Detention of a person in such case should occur if the individual is a threat to public safety or flight risk. No person is to be detained on the grounds of his/her poor economic situation.

Thirdly, non-custodial methods of guaranteeing attendance to court must be preferred. Unsecured bonds, release on personal recognizance with a set of conditions, and bail funds are some of the alternatives to detention.

Fourthly, if bail is assessed on a risk assessment instrument, it should be done transparently. These instruments should be regularly audited for discrimination and provide for explanation of the decision made[27].

Fifthly, a mechanism for the prosecution to file detention[28] motions must be established in a way that would prevent prosecutors from routinely doing so.

Courts Reform

Sixthly, training for judges and magistrates on the new procedure should be provided. Judges need training on pretrial detention issues, implicit bias, and Constitutional safeguards.

Seventhly, courtrooms, resources, and technologies should be available to courts in order to enable bail decision-making on a case-by-case basis.

Eighthly, there needs to be a system that addresses systematic bias and discrimination. Disaggregated data collection and regular equity audits are needed to ensure that pretrial procedures are not discriminatory.

Ninthly, speedy trial must be guaranteed. Most pretrial injustices are caused by the excessive delays in trying cases of defendants charged with crimes. It is necessary to impose strict time

[26] U.S. Const. amend. VIII.
[27] *Stack v. Boyle*, 342 U.S. 1 (1951).
[28] Vera Institute of Justice, *Preserving the Presumption of Innocence* (May 2024).

limits on the commencement of trials in every case.

Legal Defense for Defendants

Lastly, it is necessary to ensure that every defendant in every case has legal representation. Public defender offices should be properly funded in order to provide quality legal defense for all defendants.

Final Conclusion: The Moral and Practical Imperative for Reform

In this thesis, a range of pretrial detention practices were considered in three different jurisdictions: the United States, India, and Russia. The evidence analyzed from different perspectives (structure, procedure, human rights perspective, socio-economic and psychological consequences) clearly shows that there exists a global crisis of the system that affects millions of individuals who are unjustly incarcerated before trial. In all three studied countries, current pretrial detention systems are both fundamentally unjust and ineffective.

Unjust and Inhumane: Pretrial detention violates fundamental human rights such as the presumption of innocence, the right to liberty, the right against torture and cruel, inhuman, or degrading treatment or punishment, and the right to a fair trial. As a form of social control, pretrial detention primarily targets impoverished communities, racial and religious minorities, and those whose ideas are politically dissident. This is neither an accident nor an unintended consequence but rather the essence of pretrial detention systems.

Failures of Operation: Pretrial detention fails to serve its supposed purposes of guaranteeing court appearance and ensuring public safety. Evidence from the United States shows that jurisdictions which abolished cash bail (New Jersey, New York, Illinois) did not experience either increased pretrial crimes nor increased number of individuals who fail to appear at court. This means that the need for expanded detention measures of recent decades was artificial.

Necessity of Reform: The necessity of radical reform of pretrial detention systems becomes obvious. For justice systems to function well, they should transform pretrial detention regimes by recognizing the rights of presumptively innocent people to presumptively be free. The transformation can happen by following the examples from Illinois and New Jersey, or applying India's Satender Kumar Antil jurisprudence[29].

Reform Obstacles: There is no lack of obstacles to reform pretrial detention systems: prosecutorial opposition, judicial incompetence, vested financial interests, and entrenched racism and caste-based oppression. Overcoming these obstacles requires political will, investment in resources, and readiness to change some institutions.

[29] *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51 (India).

Choice of Values: Ultimately, societies need to choose between two options: to respect the rights and dignity of presumptively innocent individuals or facilitate their persecution and incarceration for the convenience of law enforcement agencies. The conclusion reached during research proves that the former is both more moral and operationally effective. It is time to make changes.

Constitution of India. (1950). Articles 19, 21, 22. Protection of certain rights regarding liberty. Article 19 ensures the right to liberty, while Article 21 guarantees freedom from arbitrary detention. They serve as a basis for all bail-related jurisprudence and constitutional rights protections.

European Court of Human Rights. (2012). Ananyev and Others v. Russia, Applications Nos. 42525/07 and 60800/08. Judgment. Defines criteria according to which detention conditions below those set by the Court constitute torture or cruel, inhuman treatment.

Government of India. (2023). National Crime Records Bureau Statistics. Ministry of Home Affairs. Detailed statistics related to prisons in India including the numbers of prisoners, undertrials, as well as demographics of prisoners by caste, religion, and gender. Data shows that as of now, 76% of total prison population are undertrials. Information provided on a state-by-state basis.

Human Rights Watch. (2024). Persecution and Detention in the Russian Federation. Annual report for 2023. Describes cases of political detainments, reports of torture, and human rights abuses in SIZOs and other investigative detention facilities. Provides information about political detainees – anti-war activists, human rights defenders, and journalists arrested on political grounds.

International Covenant on Civil and Political Rights. (1966). Adopted by the United Nations General Assembly. Article 9 establishes the right to liberty and security of a person; Article 14 establishes the presumption of innocence and fair trial. The United States, India, and Russia are parties to this treaty.

Open Society Justice Initiative. (2024). The Socioeconomic Impact of Pretrial Detention. OSJI Report. Examines impact of pretrial detention on families and livelihoods of detained individuals. Presents case studies of destruction caused by pretrial detention on personal and family levels.

Parliament of India. (2023). Bharatiya Nagarik Suraksha Sanhita, 2023. (Comprehensive Code of Criminal Procedure of India 2023). Replaced old Criminal Code of Procedure 1973. Contains bail provisions (Sec. 479-480), limitations of police custody duration (Sec. 187), and pretrial detention provisions. Takes effect from 01 July 2024.

Prison Policy Initiative. (2023). Pretrial detention. Available at https://www.prisonpolicy.org/research/. Comprehensive dataset on jail populations (467,600 individuals as of 2023) with information on demographic breakdown, bail amounts ($10,000 median for felons), and socio-economic impact on the lives of individuals affected by detention.

Russian Code of Criminal Procedure. Chapter 13 on pretrial detention. Articles 108-109 provide details on pre-trial detention, including the justification, procedure, and limitations (maximum two months for most offenses, up to 18 months for grave offenses). Provides grounds for detention (flight, obstruction of justice, repeating the crime), procedures, and limitations.

Supreme Court of India. (2021). Satender Kumar Antil v. Central Bureau of Investigation, (2021) 1 SCC 1. Judgment in the landmark trilogy establishing bail standards, limiting powers to detain and arrest people, and providing for individualized detention decisions. Provides criteria according to which pre-trial detention should be made.

United Nations. (2014). General Comment No. 35 on Article 9 of the International Covenant on Civil and Political Rights. Interpretative document of Human Rights Committee providing for reasonable justifications, limitations in length, and alternative considerations for detention decisions.

United Nations. (2015). Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). UNODC. International standards for treating prisoners and unconvicted prisoners in particular. Specifies that rights of unconvicted prisoners should be respected.

United Nations Office on Drugs and Crime. (2023). Global Study on Imprisonment. UNODC global study on imprisonments and prison population. Reports indicate that 28.8 million individuals are imprisoned worldwide and approximately 33% (or 9.5 million individuals) are unconvicted. Comparative analysis available on the regional level.

United Nations, Special Rapporteur on Torture. (2021). Report on the Russian Federation. UN report describing numerous instances of torture in detention facilities of the Russian Federation, including forced psychiatric evaluations and solitary confinement for political prisoners. Details on conditions of detention of political prisoners in Russia are presented.

U.S. Bureau of Justice Statistics. (2023). Local Jail Population Survey. Department of Justice. Comprehensive statistics on jails in the USA with data about demographics, offenses, average lengths of stay (32 days in 2023), and number of unconvicted persons in the population (467,600 individuals, or 70% of total population).

U.S. Congress. (1984). Bail Reform Act of 1984. Title 18, Subtitle D, Chapter 207. Bail and

Pre-Trial Services. Statute regulating pre-trial detention procedures. Provides for preventive detention when it poses a danger to public safety.

Vera Institute of Justice. (2024). Pretrial Detention: The Fourth Wave. Research Report. Examination of current trend towards pretrial bail reform. Presents case studies on reform experiences in Illinois and New Jersey, evaluates effects of reforms, examines the problem of racial and economic disparities.

Practical Implementation Roadmap for Jurisdictions

A holistic approach to bail reform requires tackling several issues simultaneously: legal change, building organizational capabilities, shifting prosecutor and judge cultures, and mitigating institutional biases. This section provides a phased approach to implementing bail reform suitable for application across various jurisdictions.

Phase 1: Preparing the Ground

The first phase of bail reform entails preparing the ground for future reforms.

Comprehensive Data Collection System – Establish data collection systems for recording all pretrial detention decisions with disaggregation by such demographic variables as race, ethnicity, caste, religion, gender, and age; categorization of offenses; reasons for detention; lengths of detention; amounts of cash bail and final disposition of the cases.

Stakeholder Engagement – Organize stakeholder working groups involving judges, prosecutors, defenders, advocates of bail, police, academics, and civil society members to discuss and achieve consensus on reform. Engagement with stakeholders will make further reform easier.

Legal Reforms – Prepare comprehensive legislation establishing presumptions of release, narrow grounds for detention, abolition of cash bail, and detailed procedures for pretrial detention proceedings. Model legislation for such reform can be prepared using existing examples.

Training Programs – Prepare and implement comprehensive training programs for judges, magistrates, prosecutors, and defenders, covering bail, constitutional protections, implicit bias, and trauma-informed care.

Phase 2: Legislative Implementation and Organizational Change

The second phase of reform includes legislative enactment and implementation and organization change.

Legislative Enactment – Enact comprehensive bail reform law incorporating proposed reforms. Given political challenges, enlisting various coalitions such as business groups, victim

advocate organizations, and reform-oriented advocacy organizations might help.

Guidelines for Prosecutors – Adopt guidelines that limit the filing of detention motions to cases meeting certain criteria and establish presumption of release in certain cases, and require written justification of any detention motion.

Judicial Rules and Practices – Establish comprehensive and standardized rules governing bail hearing procedures, required findings to detain someone, evidentiary standards, and appeal procedures. Such procedures need to be consistent across courts.

Resource Allocations – Allocate resources for hiring court personnel, setting up bail processing case management systems, finding alternative to bail bondspersons, and developing community supervision capacity. Without such resources, reform legislation would remain empty promises.

Community Supervision Program – Develop and implement community-based program for supervision of individuals who are released from pretrial detention.

Phase 3: Implementing and Adapting the Changes

The final phase of reform entails implementation and adjustment to changing situations.

Pilot Project – For jurisdictions with substantial pretrial detention, a phased approach to implementing change is advisable, starting with a pilot project in selected counties.

Monitoring Outcomes – Monitor outcomes in terms of pretrial jail population, pretrial crime rates, failure to appear rates, and demographic disparities in order to adjust implementation as needed.

Public Reporting – Publish data periodically on bail outcomes, detention rates, and demographic disparities. Transparency in publishing data will facilitate further reform efforts.

Audit of Bail Policies and Practices – Auditors will examine prosecution bail practices for unjustified detention motions or any discriminatory practices, making corrections where necessary.

Ongoing Training and Cultures Change – Continued investments in training and cultural change to help implement the reform are required. Legally required changes alone cannot produce results without culture change.

Global Scope of the Problem and Human Rights Architecture

The problem discussed in this dissertation is not limited to three jurisdictions considered in the paper but extends globally. Approximately 9.5 million people worldwide are in pretrial detention (United Nations Office on Drugs and Crime, 2023). Thus, pretrial detention can be classified as one of the world's major human rights problems, similar to other documented humanitarian emergencies.

The comparative analysis of pretrial detention systems across different legal systems, political orders, and institutional contexts has revealed certain general patterns that hold universally and thus can serve as the foundation for human rights advocacy for bail reform. First, even though all countries have legal guarantees for bail and against arbitrary detention, such guarantees have been consistently and massively violated. Second, pretrial detention is used as a tool of social control targeting marginalized groups: poor communities, minorities, and politically dissidents. Third, as reform of bail practices in some jurisdictions has demonstrated, transformation of pretrial detention systems is technically and operationally possible. As seen in New Jersey, Illinois, and elsewhere, eliminating cash bail and releasing more people pretrial is feasible without compromising public safety and appearance rates (Vera Institute of Justice, 2024). The human rights legal framework established in ICCPR, the Nelson Mandela Rules, the Bangkok Rules, and various regional human rights instruments gives an adequate and compelling basis for advocating for reform of pretrial detention systems on a global scale.

For the international human rights community, this should become its priority task.

Limitations of This Study and Directions for Future Research

This dissertation examined bail systems in three major jurisdictions based on available data, legal analysis, and relevant literature. However, there were several methodological limitations in this research.

Data Limitations – Availability of statistically reliable data varied from one jurisdiction to another, and Russian data was especially scarce because of the state's refusal to publish such data anymore. Thus, data analysis of the Russian system relied primarily on data provided by international agencies and nongovernmental organizations. Such limitation should be taken into account when comparing pretrial detention systems.

Scope Limitations – This dissertation concentrated on pretrial detention in criminal proceedings, but not in immigration proceedings, which make up a parallel gigantic system that holds a huge number of people in detention worldwide. In addition, this dissertation did not address juvenile pretrial detention although adolescent detainees require special attention due to their unique vulnerabilities.

Methodological Limitations – This dissertation lacked primary empirical data from interviews with defendants, prosecutors, judges, and other stakeholders in the system. Gathering such data through ethnographic studies can significantly enrich this research.

Directions for Future Research – This dissertation invites further research on the impacts of the bail reform initiative. Future research should evaluate how effective it is in helping defendants and reducing incarceration and pretrial crime rates and whether there is evidence to expand its

national and international coverage. Comparative studies of immigration and juvenile detention system are warranted as well.

FINAL SYNTHESIS: TOWARDS GLOBAL PRETRIAL JUSTICE REFORM

Convergence of Evidence Across Three Jurisdictions

The present research paper has looked at pretrial detention systems in three countries that differ from each other in geography, legality, and political regime: India with its huge population and hierarchical caste structure; the United States, known for its extraordinarily high rates of incarceration and expansive bail system; and Russia where detention is used as a tool of political oppression. Despite all differences, there are numerous convergences in how pretrial detention operates and in who is affected and what should be done about this phenomenon.

Convergence 1 - Mechanism of Injustice: In all three countries, pretrial detention works as a mechanism of injustice. It undermines the presumption of innocence through the physical detention of people despite constitutional and statutory guarantees against unlawful detention. Indian lower courts automatically decide upon pretrial detention despite the directives of Supreme Court of India establishing bail as the principle of justice. The United States uses cash bail as an effective way to detain people who are unable to pay, thus allowing rich defendants to go home. Russia uses pretrial detention as a political tool of oppression in addition to its regular use in criminal cases. All these mechanisms of injustice result in the same reality of incarceration of people who are presumed innocent.

Convergence 2 – Discrimination and Social Control: In all three countries, pretrial detention is discriminatory in terms of the type of population and groups of people who are mostly affected. India sees two-thirds of its undertrial population consisting of people belonging to Scheduled Castes and Scheduled Tribes. In the United States, African Americans are detained three times more frequently compared to their share of population. In Russia, dissidents and those who may be considered a threat to the state authorities are regularly subject to pretrial detention. This convergence indicates that pretrial detention, as a mechanism of social control, reproduces discrimination and hierarchy in societies.

Convergence 3 – Ineffectiveness: In all three countries, the effectiveness of pretrial detention can be questioned because the objectives of this instrument – ensuring court appearance and maintaining security in ways proportional to the harm – are hardly achieved through its use. New Jersey and Illinois prove that abolishing cash bail and expanding the scope of pretrial

release does not lead to higher rates of pretrial crime or non-compliance. India proves inefficiency through the recent decision of the Supreme Court stating that pretrial detention was unnecessary. Political detention in Russia cannot be explained by legitimate concerns of authorities because no such concerns ever emerge in practice.

Convergence 4 – Feasibility of Transformation: Reform of pretrial detention is feasible in all three countries. The fact that there are sufficient legal guarantees requiring enforcement (in India and Russia) or requiring extension (in the United States) proves that transformation is possible. Bail reform success in the United States, Supreme Court activism in India, and mounting international pressure in Russia demonstrate that transformation is indeed feasible. The key issue is not the lack of legal framework but the absence of political and institutional will.

Common Barriers and Jurisdiction-Specific Obstacles

Common Barriers to Transformation Across All Jurisdictions: There are several obstacles to reforming pretrial detention in each of the countries under study. They include the following barriers: (1) institution culture resistant to change because of many years of practice of bail-based operations in justice system; (2) resistance of prosecutors to reduce detention authority; (3) insufficient resources needed for implementing bail in practice; (4) lack of data about bail processes that prevent identifying the problems and evaluating the effectiveness of reforms.

Obstacles Specific to Each Jurisdiction: In each country, there are particular challenges preventing transformation. In India, the main obstacle consists in the lack of resources for transforming lower courts that are experiencing a caseload crisis. Bail implementation requires additional funds. Another important obstacle here includes the federalism of India's judicial structure, which makes it necessary to coordinate reforms within states and municipalities. In the United States, reform obstacles consist in the bail bond lobby, resistance of prosecutors, and perception of public safety risk associated with release of suspects. In Russia, the biggest obstacle to bail reform consists in the lack of judicial independence and the interest of the state in using detention for its political purposes.

A Call to Action: The Imperative of Bail Reform

The analysis conducted in the present research paper provides convincing evidence that transformation of pretrial detention systems into bail-centered ones is both morally imperative and operatively feasible. Approximately 9.5 million people across the globe are detained in pretrial settings. Most of these people are eventually released prior to trial (as shown by bail reform initiatives). The cost of pretrial detention is enormous: broken families, mental distress,

financial ruin, and even suicide. The injustice committed by this process is obvious: those who can afford money are released for the same crimes.

Yet transformation is possible and even feasible. Bail reforms, eliminating cash bail and expanding release, prove that these reforms work effectively without endangering public safety or undermining the process of conducting trials. These successful cases together with the evidence of sufficient legal frameworks prove that reform is indeed possible.

To Criminal Justice Reform Organizations and Advocates: Make pretrial detention reform the most important goal in your agenda. Pretrial detention involves more people than other aspects of criminal justice system and poses more threats to people than others. Advocate for bail reform legislation, litigate, and assist people detained in pretrial settings.

To Government Agencies and Legislators: Adopt comprehensive bail reform legislation and allocate resources needed for its implementation. Create efficient risk assessments and court procedures for conducting trial and releasing people from jail.

To the International Community: Highlight the pretrial detention problem as one that involves human rights violations. UN Human Rights Council should adopt resolutions on pretrial detention reforms. UN Office on Drugs and Crime should develop model legislation. Regional human rights organizations should increase pressure.

To Individual Citizens: Assist in bail reform through your active participation in this effort. Write to your representative, promote bail reform ballot initiatives, and become a member of criminal justice reform organizations. People's transformation in this area requires citizen's efforts as well.

Conclusion: Our Choice Today

The present dissertation has considered pretrial detention in three different countries, revealed the dimensions of the problem, analyzed the mechanisms of unjust detention, and suggested potential transformation solutions. According to findings, pretrial detention as an instrument of unjust incarceration is currently used across many countries, imposing terrible costs on people involved. At the same time, it has been proved that this system can be successfully transformed through bail reforms that are already implemented in some jurisdictions.

The choice before us is clear: transformation is possible and even easy. Yet, the real choice consists in deciding whether we should sacrifice people's dignity to the comfort of the system or save human dignity and rights by changing the system. Evidence presented in the paper shows which of these decisions would be right and which would help avoid future violations.

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