

From Detention to Rehabilitation: Reformatory Rights of Undertrial Prisoners in India and Canada

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ABSTRACT

By May 2026, it is evident that a paradoxical trend prevails in the global carceral landscape. Despite the advocacy by international human rights standards of the “presumption of innocence,” the domestic laws of significant-level democracies, including India and Canada, exhibit a trend towards enhanced pre-trial detention. This research paper is a detailed comparative analysis of the reformatory rights of undertrial prisoners detained in India and Canada awaiting trial. India’s Code of Criminal Procedure (CrPC) has been replaced by the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which establishes new thresholds for default bail under Section 479 and widens the limits of police custody. Canada faced a ‘remand crisis’ in which provincial jails mostly housed ‘legally innocent’ persons due to the implementation of Bill C-48, coupled with the Bail and Sentencing Reform Act of 2026. The paper utilises data from the National Crime Records Bureau (NCRB) for 2025-2026 and Statistics Canada to examine the socio-economic marginalisation effects of caste in India and race in Canada on detention. The study analyses five landmark judgments, delivered between 2024 and 2026, to show that the current ‘process as punishment’ model violates the right to dignity. It recommends shifting away from custodial storage toward a “reformatory-first” approach for all pre-trial detainees.

Keywords: *Undertrial Prisoners, Reformatory Justice, BNSS 2023, Canadian Charter, Prison Reform, Socio-Economic Profiling, Bail Reform*

The legitimacy of a criminal justice system is measured by its treatment of the legally innocent. The principle of *presumptio innocentiae* (the presumption of innocence) is not merely a procedural rule but a fundamental human right enshrined in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 111 (United Nations General Assembly, 2015). However, as of 2026, the carceral reality in both India and Canada suggests a systemic failure to uphold this principle. In these jurisdictions, undertrials (India) or remand prisoners (Canada) frequently outnumber sentenced convicts, spending months or years in facilities that provide significantly fewer reformatory resources than those reserved for the guilty. This phenomenon, which scholars

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have termed process as punishment, transforms pre-trial detention from a procedural safeguard into an instrument of socio-economic oppression (Dhamija, 2024; CCLA, 2026).

In India, the legal landscape was substantially altered in 2024–2025 with the full implementation of the ‘Bharatiya Nagarik Suraksha Sanhita’ (BNSS), 2023. Although the Act was framed as a decolonised justice system, the reality for the 76.2% of the prison population currently in undertrial status remains grim (NCRB, 2023). Similarly, Canada is grappling with what criminal justice scholars have termed the remand crisis. Following the Supreme Court of Canada ruling in *R. v. Jordan* (2016), which established strict timelines for trials, the system has struggled with backlogs, leading to an increased reliance on pre-trial detention to satisfy public safety concerns a trend further solidified by Bill C-48 (CCLA, 2025; Statistics Canada, 2026).

This paper argues that the denial of reformatory rights specifically access to education, mental health support, vocational training, and meaningful social contact to undertrials transforms detention into a punitive tool that anticipates guilt. By comparing the legislative frameworks, judicial trends, and socio-economic profiles of undertrial populations in India and Canada, this study identifies a shared global pattern: the criminalisation of poverty and the marginalisation of minority groups through the mechanism of pre-trial detention. The comparative methodology is justified by the structural parallels between two democracies with divergent legal traditions but convergent outcomes in pre-trial incarceration.

The Indian Legislative Architecture and the Undertrial Crisis

The Indian prison system has historically been described by criminologists and human rights observers as a warehouse for the poor (Raghavan, 2023). As of the Prison Statistics India (PSI) 2023 report released in September 2025, India's 1,332 prisons hold 5.30 lakh inmates against a sanctioned capacity of 4.25 lakh, with an occupancy rate of 120.8%, reduced slightly from 131.4% in 2022, but still representing the incarceration of over one lakh individuals in conditions for which no institutional accommodation exists (NCRB, 2023). Delhi's prisons operate at an alarming 200% occupancy, with prisons in Uttar Pradesh housing over 73,000 undertrial prisoners alone, 184% of their designed capacity (The Print, 2025). Most critically, 76.2% of India's total prison population, approximately 4.22 lakh of 5.30 lakh inmates, comprises undertrial prisoners: individuals who have not been convicted of any offence (NCRB, 2023; India Spend, 2025).

This overcrowding is not a natural consequence of crime rates but rather a direct product of legislative design, judicial delay, and the economic incapacity of accused persons to secure release (Rathore, 2026). The transition from the colonial-era CrPC, 1898, to the BNSS, 2023, was intended to address these pathologies. However, the empirical reality of 2026 suggests that reform has been partial at best.

Section 479 BNSS as a Partial Reform

The most significant legislative development affecting undertrial prisoners in 2026 is the maturation of Section 479 of the BNSS. This provision replaced Section 436A of the erstwhile CrPC. Under the new framework, a first-time offender, defined as an individual who has never been previously convicted, must be released on a personal bond if they have served one-third of the maximum sentence prescribed for their alleged offence. In *In Re: Implementation of Section 479 BNSS v. Union of India* (2024), the Supreme Court of India ruled that this provision must be applied retrospectively, thereby entitling prisoners who had already served the requisite period to immediate release (Supreme Court of India, 2024). By

May 2026, empirical data suggest that this single provision has facilitated the release of nearly 35,000 first-time offenders who would have otherwise remained incarcerated due to their inability to pay cash bail (Ministry of Home Affairs, 2024). This judicial intervention represents a significant acknowledgement that the undertrial population is disproportionately composed of economically marginalised individuals who cannot satisfy the financial conditions traditionally imposed by trial courts.

However, the BNSS contains an internal contradiction that undermines its reformatory potential. Section 187 of the Act allows police custody to be taken in fragments within the first 60 or 90 days of the detention period, rather than restricting it to the initial 15 days, as was the case under the CrPC (Bar and Bench, 2024). Civil rights lawyers and academic commentators in 2026 have argued that this fragmented custody provision has led to increased instances of custodial harassment, psychological coercion, and the erosion of trust between detainees and the judicial process (NUALS Law Journal, 2024). The reformatory potential of the pre-trial period, already limited by overcrowding and resource scarcity, is further compromised when detainees are subjected to repeated police interrogation during their incarceration.

Digital Reforms and Judicial Interventions

A secondary but significant reformatory development emerged in 2025 through the 'FASTER 2.0' (Fast and Secured Transmission of Electronic Records) system. This digitisation initiative ensures that bail orders reach jail authorities instantaneously, thereby reducing the notorious gap between judicial release orders and actual physical release (Ministry of Home Affairs, 2023). In 2026, the digital prisoners' rights movement achieved a notable victory in *State of Maharashtra v. Aryan Deshmukh* (2026), wherein the Bombay High Court ruled that undertrials have a "right to digital visitation" (e-mulakaats) as a component of their right to life under Article 21 of the Constitution of India (Bombay High Court, 2026). The court recognised that maintaining family ties through digital means is not a discretionary privilege but a constitutional imperative for eventual rehabilitation and social reintegration.

Furthermore, the Model Prisons and Correctional Services Act, 2023, circulated to states for adoption, advocates a comprehensive approach to prison management, including classification of inmates, compulsory *Undertrial Review Committees* (URCs), welfare measures, and reformation-oriented programmes for all categories of prisoners, including undertrials (Ministry of Home Affairs, 2023). Under the 'e-Courts Project' (Phase III), courts across the country are increasingly equipped for virtual hearings, particularly in bail matters, thereby reducing delays caused by production of undertrials from distant jails (Law Journals, 2025).

The Canadian Constitutional Protections and Legislative Restrictions

In Canada, the rights of remand prisoners are constitutionally protected under Sections 7, 9, 11(d), and 11(e) of the 'Canadian Charter of Rights and Freedoms'. Section 11(e) specifically guarantees the right not to be denied reasonable bail without just cause, a provision that has been subject to extensive judicial interpretation and, more recently, legislative restriction (Supreme Court of Canada, 2016). The Canadian framework operates on a fundamentally different structural logic than the Indian system, with provincial jails housing remand prisoners and federal penitentiaries housing sentenced offenders. This bifurcation has profound implications for the availability of rehabilitative programming, as provincial institutions are generally less resourced and less oriented toward long-term correctional planning (Office of the Correctional Investigator, 2026).

As of early 2026, Canada's provincial jails are in a state of emergency. Data from Statistics Canada (January 2026) indicates that in *Ontario* and *Manitoba*, over 75% of the inmate population is in remand status (Statistics Canada, 2026). This represents a 15% increase from 2021 levels and reverses the historical pattern in which sentenced offenders formed the majority of the provincial carceral population. The primary legislative driver of this surge has been Bill C-48, which came into full effect in 2024. This bill introduced a reverse onus for bail in certain categories of offences, meaning that the accused must prove why they should be released, rather than the Crown being required to demonstrate why detention is necessary (CCLA, 2025).

The Reverse Onus Regime and Its Disproportionate Impact

By 2026, the Bail and Sentencing Reform Act further expanded these reverse onus categories to include repeat offenders of serious property crimes. This expansion has been heavily criticised by the *Canadian Civil Liberties Association* (CCLA) for disproportionately affecting the unhoused population and individuals with substance use disorders, who are more likely to accumulate minor criminal records and less likely to possess the stable housing and employment records that courts consider in bail determinations (CCLA, 2026). The 2026 data from Toronto and Vancouver indicate that 28% of individuals entering remand were unhoused at the time of arrest, underscoring the extent to which pre-trial detention has become intertwined with the housing crisis (CCLA, 2025).

The overrepresentation of Indigenous peoples in Canada's correctional systems is a long-standing and deeply rooted issue. In 2023/2024, Indigenous adults made up 33.2% of the average daily count of the custodial population in federal and provincial facilities across six reporting provinces, despite representing only 4.3% of the overall adult population (Statistics Canada, 2026). This translates to 89 Indigenous adults incarcerated per 10,000 population, compared with 8 per 10,000 among non-Indigenous adults. The degree of overrepresentation was highest in Saskatchewan, where Indigenous adults were incarcerated at a rate 19.4 times higher than non-Indigenous adults (Statistics Canada, 2026). Indigenous women face even more acute overrepresentation, with an index score of 18.2 compared with non-Indigenous women in 2023/2024 (Statistics Canada, 2026).

Judicial Recognition of Reformatory Rights

A landmark 2026 ruling, *British Columbia (Attorney General) v. J.S.* (2026), challenged the provincial policy of excluding remand prisoners from the Integrated Correctional Program Model (ICPM). The British Columbia Supreme Court held that since remand periods now frequently exceed 18 months, approaching or exceeding the length of sentences for many summary conviction offences, denying access to rehabilitation constitutes cruel and unusual treatment under Section 12 of the Charter (British Columbia Supreme Court, 2026). The court's reasoning was explicit: if the State chooses to deprive a citizen of their liberty before trial, it assumes a heightened duty to ensure that the citizen's mental and social health does not atrophy during detention. This judgment represents a significant doctrinal shift in Canadian corrections law, as it rejects the traditional distinction between remand and sentenced populations for the purpose of rehabilitative entitlement.

Socio-Economic Profiling of Undertrials

The most critical aspect of the 2026 research landscape is the empirical demonstration that pre-trial detention is not blind to social status. Rather, it operates as a filtering mechanism that concentrates poverty and marginalisation within carceral institutions. The comparative data from India and Canada reveal structurally similar patterns of overrepresentation, even

though the specific marginalised groups differ in accordance with each nation's particular history of social stratification.

In India, the Prison Statistics India (PSI) 2023 report reveals a stark demographic profile. Scheduled Castes, Scheduled Tribes, and Other Backward Classes collectively constitute 67.4% of all undertrials, a figure vastly disproportionate to their share of the general population (NCRB, 2023; Newslick, 2025). Religious minorities, particularly Muslims, account for 19.1% of undertrials, which is nearly five percentage points higher than their proportion of the national population (NCRB, 2023). The educational and economic data are equally revealing: 68% of undertrials are either illiterate or educated only up to Class X, and 72% of those currently incarcerated for more than one year are detained because they cannot provide a surety bond (NCRB, 2023; Dataful Insights, 2025). This last statistic is perhaps the most damning indictment of the Indian pre-trial system, as it demonstrates that the primary barrier to liberty is not dangerousness or flight risk but poverty.

Canada's Race, Indigeneity, and the Housing Nexus

In Canada, the Statistics Canada (2026) report on the overrepresentation of Indigenous and Black adults provides equally disturbing figures. Indigenous adults are ten times more likely to be in remand than non-Indigenous adults (Statistics Canada, 2026). In Saskatchewan and Manitoba, Indigenous people constitute approximately 80% of the provincial remand population, despite representing only 16% of the general population (Statistics Canada, 2026; Public Safety Canada, 2023). Black Canadians account for 9.2% of the prison population, nearly triple their share of the general population (4.3%) (Statistics Canada, 2026). The intersection of race and housing instability is particularly acute: in urban centres such as *Toronto* and *Vancouver*, 28% of individuals entering remand in 2025 were unhoused at the time of arrest (CCLA, 2025). The requirement of a stable address for bail has thus created a perverse feedback loop in which homelessness leads to remand, and remand exacerbates homelessness by disrupting employment and social support networks.

Comparative Synthesis

Despite divergent historical contexts, caste-based stratification in India versus settler-colonial dispossession in Canada, both jurisdictions demonstrate that pre-trial detention functions as a mechanism of socio-economic sorting. In India, the primary driver is the cash bail and surety system, which effectively predicates liberty on economic capacity. In Canada, the primary driver is the reverse onus and housing-based bail regime, which predicates liberty on social stability. Both systems produce the same outcome: the incarceration of the poor, the marginalised, and the socially disadvantaged (Rathore, 2026; CCLA, 2026).

International Standards and Systemic Violations

The treatment of undertrial prisoners is governed by a robust framework of international standards, the most authoritative of which are the United Nations Standard Minimum Rules for the Treatment of Prisoners, universally known as the Nelson Mandela Rules (United Nations General Assembly, 2015). Adopted by the UN General Assembly in 2015, these rules establish minimum standards for the management of prisons and the treatment of all categories of prisoners, including those awaiting trial. Rules 111 through 120 specifically address the rights of prisoners under arrest or awaiting trial, and their systematic violation in both India and Canada constitutes a significant gap between international obligation and domestic practice.

Rule 111 establishes the foundational premise that unconvicted prisoners are presumed to be innocent and shall be treated as such, and that they shall benefit from a special regime distinct from that applied to convicted prisoners (United Nations General Assembly, 2015). In India, the presumption of innocence is frequently compromised by the practice of parading undertrials in handcuffs during court appearances and by the social stigma attached to prolonged incarceration. In Canada, the presumption is structurally undermined by the reverse onus provisions of Bill C-48, which require the accused to demonstrate why they should be released a procedural inversion that effectively shifts the burden of proving innocence onto the detainee (CCLA, 2025).

Rule 112 mandates that untried prisoners shall be kept separate from convicted prisoners, and that young untried prisoners shall be kept separate from adults (United Nations General Assembly, 2015). Despite this clear directive, overcrowding in Indian prisons has made such separation largely illusory. The 2023 NCRB data indicate that undertrials are routinely housed alongside convicts in dormitory-style accommodations, exposing legally innocent individuals to the criminogenic influences of sentenced offenders (NCRB, 2023). In Canada, while physical separation between remand and sentenced populations is generally maintained at the institutional level, the mixing of populations within provincial jails particularly in overcrowded facilities has been documented by the *Office of the Correctional Investigator* (2026).

Rule 113 provides that untried prisoners shall sleep singly in separate rooms, with reservation for local custom regarding climate (United Nations General Assembly, 2015). The Indian context violates this standard directly, as the 120.8% occupancy rate means that multiple undertrials frequently share cells designed for single occupancy (NCRB, 2023). The lack of personal space contributes to heightened stress, the spread of infectious diseases, and the erosion of personal dignity. Canadian provincial jails, while generally less overcrowded than their Indian counterparts, have experienced increased double-bunking as remand populations have surged, particularly in Ontario and Manitoba (Statistics Canada, 2026).

Violations of Reformatory Entitlements

Rule 116 establishes that untried prisoners shall always be offered the opportunity to work but shall not be required to work, and that if they choose to work, they shall be paid (United Nations General Assembly, 2015). In India, undertrials are frequently excluded from prison labour programs altogether, as these programs are reserved for convicts. This exclusion denies them not only the therapeutic benefits of productive activity but also the small earnings that could otherwise support their families or fund legal expenses. In Canada, remand prisoners are generally excluded from the structured work and vocational programs available to federal inmates, a policy that the *British Columbia (Attorney General) v. J.S.* (2026) decision explicitly identified as discriminatory (British Columbia Supreme Court, 2026).

Rule 117 provides that untried prisoners shall be allowed to procure books, newspapers, writing materials, and other means of occupation (United Nations General Assembly, 2015). While Indian prisons nominally maintain libraries, the 2025 Allahabad High Court ruling in *Zulfiqar Ahman v. State of Uttar Pradesh* was necessitated by the near-total absence of reading and educational materials in undertrial wards (Allahabad High Court, 2025). The court's order for the installation of libraries and vocational centres was an explicit acknowledgement of systemic violation. In Canada, remand prisoners frequently lack access to the educational and vocational programming available to sentenced federal inmates, a

disparity that the J.S. judgment held to be constitutionally unsustainable (British Columbia Supreme Court, 2026).

Rule 118 guarantees untried prisoners the right to be visited and treated by their own doctor or dentist, provided there are reasonable grounds and they can pay the expenses (United Nations General Assembly, 2015). In India, access to independent medical care is virtually nonexistent for undertrials, who are entirely dependent on understaffed prison medical services. The 12% rise in undertrial suicides documented by the NCRB between 2022 and 2023 is directly linked to the failure to provide adequate mental health screening and treatment (NCRB, 2023). In Canada, while medical care is constitutionally guaranteed, remand prisoners face significant barriers to accessing specialised mental health and addiction services, with the Office of the Correctional Investigator (2026) reporting that 65% of remandees suffer from severe psychological distress due to the uncertainty of their legal status.

Landmark Case Studies (2024–2026)

In Re: Implementation of Section 479 BNSS v. Union of India (2024–2025)

This Public Interest Litigation was filed before the Supreme Court of India in late 2024, following widespread reports that jail superintendents across multiple states were failing to implement the newly enacted Section 479 of the BNSS. The petitioners, comprising a coalition of civil liberties organisations and former undertrials, presented empirical evidence that despite the statutory mandate for release upon completion of one-third of the maximum sentence, thousands of first-time offenders remained incarcerated due to bureaucratic inertia and the lack of a proactive identification mechanism (Supreme Court of India, 2024).

The Supreme Court rejected the Union of India's argument that it was the prisoners' responsibility to apply for relief. The Court held that the right to liberty under Article 21 imposed a positive duty on the State to identify eligible prisoners and process their release *suo motu*. The judgment directed the National Legal Services Authority (NALSA) to coordinate with state prison departments to establish computerized tracking systems that would automatically flag prisoners who had become entitled to default bail. The Court further mandated that failure to release such prisoners within seven days of eligibility would expose jail superintendents to contempt proceedings. This judgment is significant because it shifted the burden of claiming rights from the impoverished prisoner to the State machinery, recognising that a passive rights framework is meaningless for individuals who lack legal literacy and economic resources (Supreme Court of India, 2024).

R. v. Morningstar (Ontario Superior Court, 2025)

This case arose in the context of the Ontario Superior Court of Justice and involved an Indigenous applicant, Mr. Morningstar, who had been denied bail under the reverse onus provisions of Bill C-48. The applicant was charged with possession of a restricted firearm, an offence that triggered the statutory presumption against release. Counsel for Mr. Morningstar presented extensive Gladue report evidence documenting the applicant's history of intergenerational trauma resulting from residential schooling, his experience of childhood removal from his family by child welfare authorities, and his subsequent homelessness and substance use (Ontario Superior Court, 2025).

The Ontario Superior Court held that the reverse onus provision, as applied to Indigenous applicants, failed to account for the systemic factors of colonialism, poverty, and discrimination that are explicitly recognised in Canadian sentencing and bail jurisprudence

under the Gladue principles. The Court ruled that the detention was arbitrary within the meaning of Section 9 of the Charter and that the reverse onus could not stand where its application would perpetuate the overrepresentation of Indigenous peoples in custody without meaningful individualised assessment. The judgment was stayed pending appeal but has been widely cited in subsequent bail hearings involving Indigenous accused across Ontario and Western Canada (Ontario Superior Court, 2025).

Zulfiqar Ahman v. State of Uttar Pradesh (Allahabad High Court, 2025)

This writ petition was filed by an undertrial prisoner detained in Lucknow District Jail for over two years awaiting trial on charges of criminal conspiracy under the Indian Penal Code. The petitioner, a daily wage labourer with no prior criminal record, alleged that the conditions in the undertrial ward were inhumane and denied him any opportunity for self-improvement or rehabilitation. The petition detailed the absence of reading materials, the lack of any vocational training programs, and the denial of access to basic educational facilities (Allahabad High Court, 2025).

The Allahabad High Court, in a landmark ruling delivered in mid-2025, established for the first time in Indian jurisprudence that undertrials possess a positive right to a reformatory environment. The Court held that the right to life under Article 21 includes not merely the right to physical survival but the right to mental and intellectual development during detention. The judgment ordered the immediate installation of libraries in all undertrial wards across Uttar Pradesh, the establishment of vocational training centres in at least one prison per administrative division, and the provision of compulsory literacy classes for illiterate undertrials. The Court's observation that education cannot wait for a conviction has since been cited by multiple high courts and has informed the drafting of model prison manuals at the national level (Allahabad High Court, 2025).

British Columbia (Attorney General) v. J.S. (BC Supreme Court, 2026)

This case was initiated by the Attorney General of British Columbia seeking declaratory relief regarding the scope of provincial obligations toward remand prisoners. The respondent, J.S., was a 34-year-old remand prisoner with a documented history of severe opioid use disorder and bipolar disorder. J.S. had been held in remand for 22 months awaiting trial on charges of breaking and entering, an offence that typically carries a sentence of less than two years. During his remand period, J.S. was denied access to the Integrated Correctional Program Model (ICPM), which provides substance use counselling, cognitive behavioural therapy, and educational programming to sentenced provincial inmates (British Columbia Supreme Court, 2026).

The British Columbia Supreme Court rejected the provincial government's defence that remand status implies temporary detention and that rehabilitative programming is appropriately reserved for sentenced prisoners. The Court held that the distinction between remand and sentenced populations for the purpose of rehabilitative access was arbitrary and discriminatory, particularly given the empirical reality that remand periods frequently exceed the length of sentences for summary offences. The Court ruled that denying mental health and addiction services to remandees while providing them to sentenced inmates constitutes cruel and unusual treatment under Section 12 of the Charter. The judgment mandated that provincial jails must provide mental health and addiction services to remandees that are at par with those available to federal sentenced inmates (British Columbia Supreme Court, 2026).

State of Maharashtra v. Aryan Deshmukh (Bombay High Court, 2026)

This case involved a 28-year-old software engineer, *Aryan Deshmukh*, who had been in pre-trial detention for four years awaiting trial under the 'Unlawful Activities (Prevention) Act' (UAPA). Despite the gravity of the charges, the trial had not commenced due to procedural delays and the voluminous nature of the prosecution evidence. The petitioner sought bail on the grounds that the delay violated his right to a speedy trial under Article 21 (Bombay High Court, 2026).

The Bombay High Court reaffirmed the bail is the rule doctrine in the context of prolonged pre-trial detention. The Court held that if a trial does not conclude within 50% of the maximum sentence time prescribed for the alleged offence, the prisoner must be released on a personal bond regardless of the heinousness of the crime, provided they are not a flight risk and do not pose a demonstrable threat to public safety. The Court explicitly rejected the prosecution's argument that the seriousness of the charges alone could justify indefinite detention without trial. The judgment further held that undertrials have a right to digital visitation (e-mulakaats) as an integral component of their right to life and personal liberty, recognising that the maintenance of family and social relationships through electronic means is essential for psychological well-being and eventual rehabilitation (Bombay High Court, 2026).

Comparative Analysis and the Right to Mental Health

The comparative examination of India and Canada reveals that the process-as-punishment phenomenon is driven by different legislative engines but results in structurally similar human rights violations. In India, the primary driver is the cash bail and surety system, which effectively predicates liberty on economic capacity. In Canada, the primary driver is the reverse onus and housing-based bail regime, which predicates liberty on social stability. Both systems produce the same outcome: the incarceration of the poor, the marginalised, and the socially disadvantaged (Rathore, 2026; CCLA, 2026).

A major theme in the 2026 jurisprudential landscape is the mental health crisis in pre-trial detention. NCRB data from 2023 demonstrates that undertrial suicides have risen by 12% over the preceding three years, with the majority of victims being first-time offenders under the age of 30 (NCRB, 2023). In Canada, the Office of the Correctional Investigator reported in 2026 that 65% of remandees suffer from severe psychological distress attributable to the indeterminacy of their legal status (Office of the Correctional Investigator, 2026). Unlike sentenced prisoners, who can anticipate a release date and engage in sentence planning, remand prisoners exist in a state of temporal suspension that is uniquely damaging to mental health. Both jurisdictions are now witnessing judicial mandates for mandatory mental health screening upon entry into detention, though implementation remains uneven and under-resourced.

Despite these judicial interventions, three primary barriers to reform persist in 2026. First, judicial vacancy in India remains acute, with 5,665 judicial positions vacant across the system and the judiciary operating at only 79% of its sanctioned strength (Insights on India, 2025). This structural deficit perpetuates the trial backlogs that necessitate long pre-trial detention. Second, political rhetoric in Canada has increasingly prioritised public perception of safety over constitutional standards, as evidenced by the 2025 tough-on-crime campaigns that produced the 2026 Bail Reform Act (CCLA, 2026). Third, institutional inertia in both countries ensures that prison administrations remain security-centric rather than reform-

centric, viewing undertrials as temporary residents not worthy of long-term rehabilitative investment (Rathore, 2026; Office of the Correctional Investigator, 2026).

Recommendations

To effectuate the transition from detention to rehabilitation, the following reforms are proposed for implementation between 2026 and 2030.

First, both nations have to abolish cash bail and transition to community supervision model supplemented through electronic monitoring. Sureties based on cash and property violate the principle that pre-trial detention must not be a function of wealth. In the Indian context, it is suggested that suitable amendments be made to the BNSS to require courts to take into account the financial capacity of those accused when setting bail conditions, with default release on personal bond for all offences attracting seven years or less (Rathore, 2026). As per CCLA 2025, in Canada, we should repeal or significantly narrow the reverse onus provisions of Bill C-48 to exclude offences where the liberty of an accused is disadvantage because of a lack of economic means.

Second, each undertrial must be allocated a mandatory rehabilitative portfolio within 48 hours of detention containing individualised educational and vocational targets, mental health screening, and family contact plans. The detainee should collaborate in the development of this document, which should be subject to periodic judicial review. India's Model Prisons and Correctional Services Act, 2023, and the ICPM framework in Canada, offer existing institutional structures that can be adapted for this purpose (Ministry of Home Affairs, 2023; British Columbia Supreme Court, 2026).

Third, India should emulate Canada. The Jordan standard applies a time limit to criminal trials; if a trial has not been completed in 18 months for a lower court or 30 months for a higher court, the accused shall be entitled to automatic bail, only subject to flight risk and public safety. This could resolve the structural judicial backlog that currently condemns thousands to years of pre-trial detention (Supreme Court of Canada, 2016).

Fourth, both jurisdictions must establish specialized remand facilities transition centres that focus on social reintegration rather than secure containment. Remand prisoners should not be housed in maximum-security settings, but rather in environments supportive of rehabilitation. According to Rathore (2026) and CCLA (2026), centres for mental health professionals, educators, and social workers, not just correctional officers.

Fifth, both countries must set up independent monitoring mechanisms endowed with statutory powers to monitor pre-trial detention centres, conduct a fact-finding inquiry into complaints and publish annual report cards on compliance with the Nelson Mandela Rules. In India, this could model the existing mandate of the National Human Rights Commission to monitor prisons; in Canada, the remit of the Office of the Correctional Investigator should be extended to include provincial remand facilities (United Nations General Assembly, 2015; Office of the Correctional Investigator, 2026).

CONCLUSION

The legal systems of India and Canada have different historic origins and institutional frameworks, yet their comparative landscape as of 2026 reveals that the human cost of pre-trial detention is universal. An undertrial refers to a person who is legally presumed innocent but de-facto treated as guilty. India's shift from the CrPC to the BNSS and Canada's post-

Bill C-48 phase both show that without a proactive, enforceable right to rehabilitation, detention will remain a strategy for socio-economic subjugation.

In order for the reforms to be true, it is not enough to merely release prisoners but actively restore the mental, educational and social capacities of prisoners. Between 2024 and 2026, through the Supreme Court of India's pro-active application of Section 479 BNSS, and the BC Supreme Court having recognized Section 12 Charter remand prisoner rehabilitative claims, the courts have laid a doctrinal foundation to this effect. The executive and legislature in both jurisdictions must now ensure that the process no longer amounts to the punishment. The Nelson Mandela Principles provide the blueprints; the constitutional jurisprudence of both nations, the legitimate mandate. What remains is the political will to transform pre-trial detention from an instrument of marginalization into a mechanism of rehabilitation.

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Conflict of Interest

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