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From Eligibility to Release: Reforming Section 479 BNSS Through a Continuous, Time-Bound Undertrial Review Mechanism

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From Eligibility to Release: Reforming Section 479 BNSS Through a Continuous, Time-Bound Undertrial Review Mechanism

EXECUTIVE SUMMARY

Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 strengthens the statutory protection against excessive pre-trial detention. It retains the earlier half-sentence rule, introduces release on bond for qualifying first-time offenders after one-third of the maximum sentence and places a positive duty on the Jail Superintendent to move the Court once the applicable threshold is reached.[1] Yet the provision does not itself create a complete operational path from eligibility to judicial decision and actual release.

That gap is visible in current institutional evidence. NALSA's October–December 2025 UTRC report recorded 4,03,302 undertrials out of 5,31,949 prisoners or 75.81 per cent of the prison population. NALSA's October–December 2025 data also reveal attrition between prisoners identified for review, those recommended, applications actually filed and prisoners ultimately released.[2] This indicates that statutory eligibility does not by itself ensure timely judicial consideration or actual release. Supreme Court has separately noted deficiencies in identifying eligible prisoners and in 2026 directed attention to the "huge gap" between identification, recommendation and filing of applications.[3]

This brief proposes a Section 479 Continuous Release Review Mechanism. The model does not automate bail. It automates identification, verification, transmission, tracking and escalation while preserving judicial decision-making. e-Prisons should generate advance eligibility alerts. The Jail Superintendent should verify the data. A standard application should be transmitted through ICJS to the court and DLSA. The court should acknowledge, list and decide the matter within defined timelines. Overdue cases should escalate and a manual fallback should operate whenever technology fails. Its expected impact is to reduce missed eligibility and procedural delay, improve accountability across institutions and ensure that statutory release review translates

[1] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 479.
[2] National Legal Services Authority, Functioning of the Under Trial Review Committees: October to December 2025 10, 15-21, available at <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2026/02/20260211666479586.pdf> (Visited on September 23, 2026).
[3] *Shankar Mahto v. State of Bihar, 2026 INSC 369, para 48.9.*

more consistently into timely judicial consideration and actual release.

The reform uses institutions India already has. Its governing principle is simple. Standardise first, digitise second, integrate third.

BACKGROUND

The undertrial problem in India is not new but Section 479 changes the legal context in which it must now be addressed. The earlier Section 436A of the Code of Criminal Procedure, 1973 created a ceiling-based protection for undertrial detention. Section 479 of the BNSS retains that basic structure but goes further in two important respects. First, a first-time offender who has never been previously convicted may be released on bond after detention extending to one-third of the maximum period of imprisonment for the offence. Secondly, subsection (3) expressly requires the Jail Superintendent, once the relevant one-third or one-half threshold is reached to make a written application to the Court for the prisoner's release.[4]

Section 479(3) shifts responsibility from the prisoner to the custodial administration by requiring the Jail Superintendent to initiate review once the statutory threshold is reached. This reflects the Article 21 concern with speedy trial and protection against excessive pre-trial detention.[5]

Recent developments have moved the debate beyond the statutory text. Supreme Court directions, MHA's insistence on continuous implementation and NALSA's monitoring reveal gaps between identification, recommendation, filing and release.[6] The present debate is therefore whether Section 479 mainly requires statutory reconsideration, particularly of subsection (2) or a stronger continuous implementation mechanism.

The scale of the problem remains substantial. NALSA's latest detailed national UTRC report publicly available for October–December 2025 recorded 5,31,949 prisoners, of whom 4,03,302 were undertrials. That is 75.81 per cent of the total prison population.[7] Prison Statistics India 2023

[4] The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 436A; The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 479(1), (3).
[5] The Constitution of India, art. 21; *Hussainara Khatoon (I) v. Home Secretary, State of Bihar, (1980) 1 SCC 81.*
[6] In Re: Inhuman Conditions in 1382 Prisons, W.P. (C) No. 406 of 2013, order dated Oct. 22, 2024, paras 7, 9, 12; Government of India, Ministry of Home Affairs, "Implementation of the provisions of Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) by the State Prison authorities for providing relief to undertrial prisoners", Letter No. V-17013/20/2024-PR, Jan. 1, 2025, paras 4-5; National Legal Services Authority, *Supra* note 2 at 2-4.
[7] NALSA, *Supra* note 2 at 10-11.

also showed national prison occupancy at about 121 per cent. Maharashtra's occupancy stood at about 155 per cent while NALSA's October 2025 data recorded 36,325 undertrials out of 41,755 prisoners in the State, roughly 87 per cent.[8]

These figures do not prove that Section 479 alone can solve overcrowding. They do establish why a statutory safeguard against excessive undertrial detention cannot depend on fragmented or delayed implementation.

STATEMENT OF THE PROBLEM

Section 479 contains a substantive entitlement and an administrative trigger but it leaves crucial operational questions unanswered. The provision does not prescribe an advance alert before eligibility, a uniform calculation protocol, a standard application format, a fixed period for transmission by the Superintendent, a court acknowledgement requirement, a listing deadline, a disposal timeline, an automatic legal-aid notification, a prisoner-notification process, an escalation mechanism for overdue cases or a correction procedure for inaccurate digital records.[9]

The difficulty is therefore not one single "bail problem." Three different defects must be separated.

The first is an eligibility defect. Section 479(2) excludes a person from release under the provision where investigation, inquiry or trial in more than one offence or in multiple cases is pending subject to the ultimate maximum-period safeguard. This can operate broadly because a single FIR or charge-sheet often contains several alleged offences. The concern was expressly raised during parliamentary consideration of the BNSS. The Parliamentary Standing Committee also considered a more liberty-protective formulation concerning prisoners who had completed the maximum sentence for the most serious offence but the enacted provision did not fully adopt that approach.[10]

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[8] PRS Legislative Research, "Demand for Grants 2026-27 Analysis: Home Affairs" 13 (2026), available at <https://prsindia.org/files/budget/budget_parliament/2026/DfG_Analysis_2026-27-Home_Affairs.pdf> (last visited on September 23, 2026); National Legal Services Authority, *Supra* note 2 at 11.

[9] *Supra* note 1.

[10] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 479(2); Rajya Sabha Debates, Dec. 21, 2023, p. 122 (statement of Shri S. Niranjan Reddy); Department-related Parliamentary Standing Committee on Home Affairs, *Two Hundred Forty Seventh Report on The Bharatiya Nagarik Suraksha Sanhita, 2023*, Report

The second is an identification and transmission defect. The Supreme Court while monitoring prison conditions in 2024, observed that the identification of prisoners entitled to Section 479 benefits appeared deficient. The Union Ministry of Home Affairs later told States and Union Territories that implementation was not a one-time exercise and had to operate continuously. Repeated advisories and monthly reporting requirements show that the statutory duty has required continuing administrative reinforcement.

The third is a post-filing defect. Even where prison authorities correctly identify eligibility and send an application to court, delay can continue. The Delhi High Court's handling of the Suleman Samad matter illustrates this stage. The jail had already transmitted a Section 479 application stating that the one-third threshold had been completed yet the matter remained pending through repeated adjournments.[11] This shows why a reform that stops at "automatic identification" would be incomplete.

NALSA's October–December 2025 UTRC data show this attrition clearly. Across all categories, 14,387 prisoners were identified, 9,011 applications were filed and only 5,864 were ultimately released.[12]

EXISTING LEGAL FRAMEWORK

Section 479 applies where an undertrial has spent the prescribed part of the maximum imprisonment period in detention. For ordinary eligible undertrials, the relevant threshold is one-half. For qualifying first-time offenders, it is one-third with release on bond. The benefit does not apply where death or life imprisonment is one of the punishments for the offence. Delay attributable to the accused is excluded from the custody calculation. Subsection (2) restricts release where more than one offence or multiple cases are pending. Subsection (3) requires the Jail Superintendent to apply to the Court once the applicable period is completed.[13]

The constitutional basis is Article 21. The right to speedy trial, access to legal aid and protection against unjustified pre-trial detention form part of the fairness requirement attached to personal liberty.[14] At the same time, current Supreme Court jurisprudence does not treat prolonged detention as an automatic command to grant bail irrespective of statutory exclusions or the gravity of the case. That distinction is important for

No. 247, para 3.30.2, p. 34 (Rajya Sabha Secretariat, New Delhi, Nov. 2023).

[11] *Suleman Samad v. State of N.C.T. of Delhi, 2025:DHC:503, paras 11–14.*

[12] NALSA, *Supra* note 2 at 30–32.

[13] *Supra* note 1.

[14] *Supra* note 5.

reform design. A digital system may identify a statutory threshold and trigger review but it cannot replace the judicial function.

Existing institutions already perform separate parts of the Section 479 process. UTRCs conduct periodic review, DLSAs provide legal assistance, e-Prisons stores prisoner information and ICJS links prisons with courts, police, prosecution and forensic systems. MHA has nevertheless required States and Union Territories to treat Section 479 implementation as a continuous exercise rather than a one-time campaign. In 2026, the Supreme Court also directed NALSA to strengthen digitised UTRC reporting and examine gaps between identification, recommendation and filing.[15] The resulting institutional mismatch is important. Section 479(3) requires the Jail Superintendent to act "forthwith" when eligibility arises while the supporting machinery still operates through separate administrative stages rather than a single continuous workflow.

These facts should not be read as proof that every non-release was unlawful. They do show that entitlement, recommendation, judicial relief and actual release are institutionally distinct events.

COMPARATIVE PERSPECTIVE

Comparative law is useful here only for institutional design not for importing foreign detention periods.

Canada offers the closest structural comparison. Section 525 of the Canadian Criminal Code places responsibility on the person having custody of an accused to apply for judicial review after the statutory detention period expires. The important lesson is not the Canadian timetable. It is the idea that a detention-review right can be activated by the custodian rather than depending on the detainee's initiative. Section 479(3) has already moved Indian law in the same direction.[16]

England and Wales offer a different lesson through Custody Time Limits. The system uses formal deadline calculation tools because custody periods can be legally and factually complex. Judicial involvement remains necessary where continued detention is sought.[17] The

[15] Ministry of Home Affairs, Government of India, "Inter-Operable Criminal Justice System (ICJS)", available at <https://www.mha.gov.in/en/commoncontent/icjsncrb-administration> (last visited on September 23, 2026); *Shankar Mahto v. State of Bihar, supra note 3, para 48.9, 48.14.*

[16] Criminal Code, R.S.C. 1985, c. C-46, s. 525(1) (Canada).

[17] Prosecution of Offences Act 1985, c. 23, s. 22 (U.K.); Prosecution of Offences (Custody Time Limits) Regulations 1987, S.I. 1987/299; Crown Prosecution Service, "Custody Time Limit Calculator and Ready Reckoner", available at

transferable principle is therefore, statutory limit, reliable calculation, institutional responsibility and judicial control over exceptions.

Neither model should be copied mechanically. India's prison scale, federal structure, court workload and multiplicity of criminal statutes differ substantially. Their value lies in confirming that procedural time limits work best when responsibility for calculation and review is institutionally assigned rather than left to individual prisoners.

STAKEHOLDER ANALYSIS

The Government particularly State prison departments and the Union Ministry of Home Affairs is directly affected because Section 479 depends on accurate prison records, timely identification of eligible undertrials and coordination across jurisdictions. Uneven implementation increases administrative pressure and may also contribute to avoidable prison overcrowding.

The Judiciary is affected because every Section 479 application ultimately requires judicial consideration. Delayed or incomplete information can increase case-management burdens while courts must balance personal liberty with statutory exclusions, public safety and case-specific circumstances.

Relevant regulatory and institutional bodies including NALSA, SLSAs, DLSAs, NCRB, NIC and the e-Committee are affected through legal-aid coordination, prisoner-data management, digital reporting and inter-institutional information exchange. Their principal practical concerns are data accuracy, interoperability, privacy and consistency of implementation.

Civil society organisations working on prison reform and legal aid are affected where delayed review increases the need for monitoring, prisoner assistance and rights-based intervention. For citizens, the impact is most direct on undertrial prisoners and their families. Unnecessary continuation of detention can affect personal liberty, employment, family income and social stability. At the same time, the wider public has a legitimate interest in public safety and in ensuring that release remains subject to lawful judicial scrutiny.

PROPOSED LAW REFORM

Before selecting the mechanism, three alternatives should be distinguished. The first is to retain the present law and rely on periodic

<https://www.cps.gov.uk/prosecution-guidance/custody-time-limit-calculator-and-ready-reckoner> (last visited on September 23, 2026).

advisories, UTRC meetings and case-by-case monitoring. That approach preserves institutional flexibility but the existing record shows recurring gaps between identification, recommendation, filing and release. The second is to amend Section 479 so that crossing the statutory threshold itself produces automatic release. That would be simpler in appearance but it would disregard statutory exclusions, disputed custody calculations, multiple-case complications and the judicial role in considering legally relevant objections. The third is a hybrid model, retain judicial adjudication but convert the Superintendent's existing duty into a continuous, traceable and time-bound process supported by existing digital infrastructure. This is the preferred option because it targets the implementation defect without turning software into a bail court.

The legal basis for implementation should also reflect India's institutional structure. Criminal procedure is centrally legislated while prisons are administered primarily by States and Union Territories and court administration remains institutionally independent.[18] Parliament can clarify the statutory duty and require a time-bound review architecture but detailed operational standards should be framed through coordinated rules, judicial directions on registry workflow and NALSA/SLSA protocols. This avoids treating a nationally important problem as though one authority controls every stage. It also gives States room to adapt infrastructure while preserving a common minimum process for liberty-related review. This division of responsibility is essential to both legality and workable implementation.

The recommended reform is a Section 479 Continuous Release Review Mechanism created through a hybrid of statutory clarification, subordinate rules and administrative integration.

The first step is standardisation. A national Section 479 data protocol should define the fields necessary to calculate eligibility which are custody commencement, custody attributable to the particular case, excluded delay attributable to the accused, maximum punishment, first-time-offender status, death or life-imprisonment exclusion, other alleged offences, other pending cases, case number, FIR number, CNR and prison identifier. Without common definitions, digitisation would merely automate inconsistent records.

The second step is a verified digital trigger. e-Prisons should generate an advance alert thirty days before the expected eligibility date. This alert

[18] The Constitution of India, art. 235, Seventh Schedule, List II, Entry 4 and List III, Entry 2.

should have no legal effect by itself. The Jail Superintendent must verify the computation against the warrant, case record and available conviction or pending-case information. The prisoner or legal-aid lawyer should be able to point out a data error before transmission.

On the eligibility date, the system should generate a unique Section 479 Review ID and a standard application. After Superintendent authentication, the application should be transmitted electronically through ICJS to the jurisdictional court and simultaneously notified to the DLSA. Technology should assist filing not replace the statutory responsibility of the Superintendent.

The court should electronically acknowledge receipt and map the review to the existing case and CNR. A short, nationally prescribed period should govern listing. A further defined period should govern disposal subject to recorded judicial reasons where additional time is genuinely necessary. The exact number of days should be prescribed after consultation with the judiciary rather than invented in legislation without workload assessment.

The court's order should return electronically to e-Prisons and DLSA. Where release is granted, the workflow should continue until physical release is recorded. This matters because Prison Statistics India 2023 recorded 24,879 accused persons who had already obtained bail but remained in prison because bail bonds had not been furnished.[19] The statutory objective is not achieved merely because an order exists on paper.

An overdue case should automatically appear on a supervisory dashboard accessible to the appropriate prison authority, DLSA and designated judicial administrative authority. UTRCs should receive a due-and-overdue Section 479 list. Their role would shift from discovering eligibility to auditing whether the continuous mechanism is working.

A prisoner should receive a simple notice, preferably in a language understood by the prisoner, stating that Section 479 review has arisen, the application number, whether legal aid has been assigned and the eventual outcome.

A mandatory manual fallback is essential. System failure, poor connectivity or inaccurate integration cannot suspend a liberty-related

[19] Centre for Research & Planning, Supreme Court of India, *Prisons in India: Mapping Prison Manuals and Measures for Reformation and Decongestion* 134 (Supreme Court of India, New Delhi, 2024), available at <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110677.pdf> (last visited on September 23, 2026).

statutory duty. Every prison should maintain a prescribed paper register and standard form capable of operating independently during outages.

A secondary statutory review should address Section 479(2). The present "more than one offence" language should be reconsidered so that routine joinder of several offences in one prosecution does not automatically defeat the benefit. Any amendment must still account for genuinely separate pending cases, serious repeat offending and consecutive-sentence situations.

IMPLEMENTATION ROADMAP

During the first six months, the Union, States, judiciary and legal-services authorities should finalise the data dictionary, calculation protocol, standard application, manual fallback, access controls and institutional responsibility matrix. Pilot prisons should test alerts without affecting substantive rights until error rates are assessed.

Between six and eighteen months, selected States should implement integrated transmission between e-Prisons, ICJS, eCourts and DLSA systems. Training should focus on prison staff, legal-aid lawyers and court registry personnel. Data-correction requests, acknowledgement time, listing time and order-to-release time should be audited.

Between eighteen and thirty-six months, the system can be expanded nationally after independent technical and legal review. Public reporting should remain aggregated. Individual criminal and prison data should be available only on a role-based basis.

The proposal is administratively plausible because India is not starting from zero. ICJS already integrates major criminal-justice databases, e-Prisons already stores prisoner information and CCTNS already uses timeline-based alerts for statutory criminal-procedure compliance.[20] The 2026–27 ICJS allocation of ₹550 crore also shows an existing public investment in interoperability although a separate cost assessment would still be required for this specific reform.[21]

EXPECTED IMPACT

[20] Ministry of Home Affairs, Government of India, "Inter-Operable Criminal Justice System (ICJS)", available at <https://www.mha.gov.in/en/commoncontent/icjsncrb-administration> (last visited on September 23, 2026); Press Information Bureau, Government of India, "Technology-Based Justice System", July 29, 2026, available at <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2291038> (last visited on Sept. 23, 2026).

[21] PRS Legislative Research, *supra* note 19 at 9.

The immediate impact should be measured in process terms rather than by claiming that technology will solve prison overcrowding. Relevant indicators are the percentage of eligible prisoners identified, time from threshold to application, application-to-acknowledgement time, time to hearing, order-to-release time, data-correction rates, overdue reviews, legal-aid coverage and the gap between bail orders and physical release.

The proposal should also improve accountability. A traceable workflow would make it possible to identify whether delay occurred in prison verification, filing, court listing, legal representation or post-order compliance. At present, aggregate outcomes often reveal that a prisoner was not released without showing where the process failed.

Risks remain. Incorrect data may generate false eligibility or false exclusion. Privacy concerns arise because criminal and prison records are sensitive. Digital dependence may disadvantage prisons with weak connectivity. These risks justify human certification, correction rights, role-based access, audit logs, minimal public disclosure and manual continuity. They are arguments for careful design not for retaining an opaque process.

CONCLUSION

Section 479 BNSS represents a meaningful legislative shift from passive entitlement toward institutional responsibility. Its weakness lies less in the absence of a legal trigger than in the absence of a complete mechanism connecting that trigger to timely adjudication and actual release.

The evidence now available is unusually consistent. The Supreme Court has identified deficiencies in eligibility review and gaps between identification, recommendation and filing. NALSA's data demonstrates a measurable funnel between prisoners identified, applications filed, bail granted and release achieved. MHA has itself insisted that implementation must be continuous not campaign-based. Existing digital infrastructure already links the principal criminal-justice institutions.

The reform proposed here does not seek to displace judicial discretion or create automatic release through technology. Its purpose is narrower. Once Section 479 makes an undertrial eligible for review, the legal system should be able to identify that point promptly, place the matter before the Court without avoidable delay and track the process until a decision is implemented. A statutory protection against excessive detention is meaningful only when the procedure for enforcing it works in practice.