

DETENTION, BAIL, AND ACCESS TO JUSTICE FOR FOREIGN UNDERTRIAL PRISONERS IN INDIA: A SOCIO-LEGAL STUDY OF ASSAM

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Abstract

Foreign undertrial prisoners, due to various legal, procedural, and administrative challenges, constitute the most vulnerable group within the criminal justice system in India during the period of their custody and trial. This study tries to evaluate issues of custody, bail, and justice concerning foreign undertrial prisoners in India with specific reference to Assam. This research design is a combination of doctrinal and socio-legal approaches. Analysis of constitutional provisions, legislative acts, judicial pronouncements, and international human rights conventions has been carried out as a doctrinal part, while empirical data of 130 respondents, including practicing lawyers, legal aid activists, academics, police officers, human rights activists, administrators, etc., has been collected on selected issues in the empirical part. This study found various problems faced by foreign detainees, for example, nationality verification and administrative delay, language barrier, unawareness of legal rights, poor legal aid, and difficulty getting bail on account of procedural requirements. The study found a strong correlation between access to legal aid and "Access to Justice," while bail and procedural-related barriers hurt the justice delivery mechanism, and the strong existence of legal and institutional safeguard are essential for safeguarding the rights of foreign undertrial prisoners. It is concluded that enhancing legal aid and institutions like law enforcement bodies, the administrative system, and the judicial mechanism with better procedural safeguards is needed to protect the human rights of foreign undertrial prisoners and ensure effective delivery of justice.

Keywords: Foreign Undertrial Prisoners; "Access to Justice"; Bail; Legal Aid; Assam.

1. Introduction

Protecting individual liberty is a cornerstone of the principle of democracy and the rule of law. A cornerstone of criminal justice systems is the presumption of innocence, which binds an accused to be treated as an innocent person until proven guilty after a fair trial. As such, the practice of pre-trial detention should remain a matter of exception where its necessity is needed to secure justice, evidence not to be tampered with, and the accused person to be deterred from absconding. Human rights instruments like UDHR (United Nations, 1948) and ICCPR (United Nations, 1966) forbid arbitrary deprivation of liberty and prescribe a right to fair trial by an independent and impartial tribunal, and continue to influence global criminal justice reforms and "Access to Justice" (Walmsley, 2014).

However, pre-trial detention has become an excessive practice. Prolonged detention pending conviction leads to overcrowded prisons, human rights violations, economic burden, and psychological distress, acts as a pre-trial punishment which dilutes the concept of presumption of innocence (Walmsley, 2014; Csete, 2010), and affects the poor and indigent who can't arrange bail and legal aid (Berry, 2011). In India, constitutional rights to equality before law (Art 14), life and personal liberty (Art 21), and safeguards against detention (Art 22), coupled with various judicial pronouncements including *Hussainara Khatoon v. State of Bihar* (1979), *Moti Ram v. State of Madhya Pradesh* (1978), *Satender Kumar Antil v. CBI* (2022), etc. Have been pivotal in the protection of speedy trial and liberalization of bail, which must not be punitive (Bhagwati, 2022). Nevertheless, more than seventy-five percent of India's prison population comprises undertrial prisoners, and judicial delay, overcrowding, poor procedural

management, inadequate legal aid, and socio-economic disparities are major impediments (AS, 2024; Surendranath & Ali, 2022).

Among undertrials, foreign nationals are the most vulnerable group, and the obstacles faced by them range from their nationality, immigration status, language, lack of financial resources, and unfamiliarity with legal proceedings in India. They often lack local support networks, guarantors, and a permanent address, which makes obtaining bail and legal representation challenging (Gupta et al., 2025). Moreover, issues concerning verification of nationality, liaison with consulates, and immigration issues delay court proceedings. In Assam, which has a long porous international border with Bangladesh, nationality and citizenship have been contentious issues resulting in increased use of the Foreigners Act, 1946, establishment of Foreigners Tribunals, NRC, detention centres, and associated concerns regarding “Access to Justice” and human rights of individuals suspected of irregular migration (Saikia, 2025).

In this context, bail is extremely relevant due to its direct impact on the constitutional protection of personal liberty. Courts have always held that deprivations of liberty must pass tests of necessity, fairness, and proportionality (Sekhri, 2025). In addition to challenges faced by all undertrials, foreign nationals face extra concerns over immigration status, travel documents, nationality, and flight risk, which in turn results in long pre-trial detention periods. Similarly, “Access to Justice” cannot just mean the availability of courts but the accessibility of the same and the ease of understanding their rights, accessing proper legal representatives, adequate communication, and obtaining prompt remedies. LSA, 1987, provides a framework for free legal aid services, but studies show a lack of implementation in prisons (Surendranath & Ali, 2022), and foreign nationals lack a legal voice due to linguistic barriers and a lack of understanding about their rights, effective legal and communication with consular authorities.

Although there is abundant literature on undertrial detention, prison congestion, migration governance, and disputes about citizenship, very few have addressed the plight of foreign undertrial prisoners in Assam and their experiences concerning detention, bail, and “Access to Justice” procedures. Available literature largely examines detention centers, citizenship adjudication processes, and general human rights issues, and overlooks how safeguards of bail and “Access to Justice” function for foreign detainees.

Based on these contexts, the present study looks to undertake a socio-legal analysis of detention, bail, and “Access to Justice” for foreign undertrial prisoners in India, with particular focus on Assam. The study will probe into the efficacy of the existing legal framework and examine the practical impediments faced by foreign detainees. It will analyze the mechanisms of bail and access to legal aid provided to foreign detainees and provide recommendations for strengthening existing protections for the protection of human rights.

2. Need for the Study

Among all vulnerable groups in the criminal justice system, foreign undertrial prisoners are at a higher risk in the justice mechanism due to many legal, social, and administrative barriers that they come across while detained during the trial process. Unlike other national prisoner they faced many legal issues such as language barriers, lack of social network, ignorance of the legal system, and issues about getting legal aid and consular support. All these barriers can lead to delayed detention and a lack of legal support.

The study arises from concerns about the issues of detentions and bails to foreign nationals in India, especially in the State of Assam. Since migration and border management issues are major concerns at the State level, many foreigners are taken under scrutiny by various laws. However, in principle, there is sufficient protection given to individual liberty under the Constitution of India and the legal system, but there may be many practical difficulties to obtain those safeguards effectively, such as the case of bail to foreign undertrial prisoners, for a lawyer, fair trial rights, and so forth.

Again, there are not many studies relating to the detentions, bail, and justice of foreign undertrial prisoners in Assam. The study at the State level is in search of those socio-legal challenges with the available legal framework and efficiency of the justice delivery system, so that reforms can be brought

about for protecting human rights, procedural fairness, and “Access to Justice” for foreign nationals under detention.

3. Literature Review

Recent years have seen a rise in scholarly attention devoted to issues of detention, bail, and “Access to Justice”, on account of the profound implications these issues hold for human rights, criminal justice, and constitutionalism. “Evidence in the literature suggests that pre-trial detention beyond a certain limit is not only at odds with the principle of the presumption of innocence but also produces acute and debilitating consequences of a social, economic, and psychological nature.”

3.1 Pre-Trial Detention, Human Rights, and Bail Jurisprudence

“Pre-trial detention is a major concern within contemporary criminal justice systems, impacting the balance between individual liberty and the administration of justice.” The principle of presumption of innocence guides the use of pre-trial detention, an exceptional measure designed solely to secure the presence of the accused at trial and to protect the integrity of court proceedings. However, its overuse and detrimental effects have prompted scholars and human rights organizations to express grave concern.

Research shows that prolonged pre-trial detention has significant human rights implications. Csete (2010) found a range of ill effects, including stress, anxiety, deteriorating physical and mental health, and social isolation of those detained, while Lukas et al. (2016) proved socio-economic impact through loss of employment, breakdown of family relationships, and economic hardship on families and communities.

Moreover, evidence in the literature links over-reliance on pre-trial detention to prison overcrowding and inefficiency. Fair and Walmsley (2014) argue that many prisoners in remand account for a substantial part of prison populations, which creates immense pressure on correctional administration, health services, and rehabilitation programs. Similarly, Kazemian et al. (2025) saw that many undertrial prisoners continue to create pressures on criminal justice systems and hinder the guarantee of treatment within humane prison conditions.

Scholars also focused on the relationship between pre-trial detention and the liberty of an individual. Bhuwania (2017) argued that complexities of procedure and institutional barriers often turn detention into indirect punishment before adjudication and conviction, while Bhatia (2019) expressed concern that constitutional guarantees can only be effective when complemented with effective safeguards against the arbitrary exercise of power by the state.

Bail stays a crucial safeguard against the unnecessary loss of individual liberty as it ensures the attendance of the accused at trial while releasing them into community supervision. Henning (2022) noted persisting variability in bail decisions despite the introduction of relatively modern approaches to individual liberty in bail law. Personal bias and legal uncertainty continue to shape release outcomes, hence the need for standardized decision-making.

The unequal consequences of detention and bail are other central issues discussed in the literature, affecting the poor, marginalized, and legally vulnerable members of society disproportionately. This inequality before the law and substantive justice requires the development of legal systems that promote equal, transparent, and proportional use of detention.

3.2 Access to Justice, Legal Aid, and Vulnerable Prison Populations

The Right to 'Access to Justice' is fundamental to the rule of law and to the realization of all human rights. It is not only a right to attend a court, but also a right to understand legal rights and to have legal representation, as well as a right to take part effectively in legal proceedings and to have prompt remedies. For the prisoner and other detainees, more specifically, vulnerable groups, the right to access justice is critical in realizing procedural fairness and legal protection.

From the readings, there is no doubt that socio-economic disparities create unequal access to legal remedies. According to Khosla (2020), a constitution means little if the institutions cannot realize it. Issues such as level of education, social and economic class, and the like may create hurdles in helping the vulnerable population to understand legal matters, get adequate legal aid, and realize legal rights.

“Legal aid has been identified as a tool for inequality reduction.” According to Khanna (2025), legal aid services are vital in ensuring that those who cannot afford a lawyer are defended. Nevertheless, many detainees are still unaware of the legal services available and their right to make a claim. According to O’Connell (2020), legal literacy and the inadequate reach of institutions are barriers for vulnerable people to gain access to legal aid services.

The standard of legal representation also affects procedural fairness. Yin et al. (2021) discovered that the legal aid provided to the vulnerable prisoners was not satisfactory because of the resource deficiency, overload of work, and weak institutional backing. Thus, the state funded legal aid to them, and the prisoners’ capacity to access sufficient representation had been limited due to inadequate resources.

Based on the studies, it is obvious that legal aid should be strengthened. Widodo et al. (2025) state that limited access to legal representation is also one of the reasons for overcrowding and prolonged detentions. Similarly, Jain (2023) emphasized the importance to improve legal aid for prisoners and other detainees, who rely on state-funded legal aid, through better delivery mechanisms.

It is important to notice that the theme of vulnerable prison populations is pervasive. Awasthi and Goyal (2021) argued that disadvantaged prisoners suffer disadvantages from social, economic, and legal dimensions. Disadvantaged prisoners may experience a lack of information about their rights, restricted communication with lawyers, delays in procedures, and weak institutional support, all of which hinder “Access to Justice”.

3.3 Foreign Undertrial Prisoners, Immigration Detention, and the Assam Context

Detention of foreign nationals has appeared as an important topic in the spheres of law and human rights because criminal justice, migration management, and national security have overlapped. Foreign prisoners differ from domestic inmates because their detention conditions are affected by their nationality, immigration status, language barriers, and knowledge about the local legal system. These challenges, therefore, led the scholars to perceive foreign prisoners as an exceptional group of detainees. A substantial part of the academic literature is dedicated to exploring immigration detention as an instrument of migration management.

The argument by Bosworth (2014) is that immigration detention itself involves processes of social exclusion and legal vulnerability by separating detainees from their families, networks, and legal support. According to Flynn (2014), immigration detention has transformed into an instrument of global migration governance and is widely employed in the context of prolonged confinement without criminal judgment, leading to concerns over proportionality, fairness of procedure, and dignity of human beings.

From the point of view of human rights, the vulnerability of foreign detainees has been discussed from various angles. Human Rights Watch (2020) found that migrants and foreign nationals are often subjected to discrimination, procedural safeguards are deficient, access to legal remedies has been found difficult, language barriers are hindering the migrants from getting knowledge of their legal rights, and their inability to have frequent contact is depriving the opportunity to use their rights. Sampson et al. (2011) suggested that alternatives to detention should be explored because prolonged detention can have adverse psychological and social consequences. In the Indian context, issues relating to foreign nationals and detention have been relevant due to India’s long international border and complex issues related to migration. Several studies have shown that the process of detention of foreign nationals often involves procedural challenges in identity verification, traveling documents, contact with diplomatic mission and immigration regulations.

All these factors are prolonging the legal process and thus affecting personal liberty and equality before the law. In this discourse, the status of Assam is significant due to the migration history, disputes related to citizenship, and border governance. It has been found that detention in Assam is often associated with the procedures for deciding citizenship, and many of the affected persons are held in indefinite limbo (Encinas 2017). The issues related to citizenship and accessing legal rights through fair procedure are found to be additional impediments for foreigners to claim justice (Jha et al. 2023). These challenges related to dual processes of law and administration have further extended the duration of detention (Buragohain 2025).

3.4 Research Gap

Pre-trial detention, bail and legal aid, immigration detention, and the politics of citizenship are heavily researched. Literature covers prison overcrowding, human rights, delays in trials, legal aid and procedural fairness, migration politics, and citizenship determinations. “However, there is a dearth of literature on how pre-trial detention, bail, and 'Access to Justice' affect foreign undertrial prisoners in India in combination.” Studies mainly discuss them separately, while literature in Assam mainly discusses citizenship conflicts, migration politics, Foreigners' Tribunals, and detention centers in the absence of a focused discussion on the detention of foreign undertrial prisoners. Besides, socio-legal studies discuss the challenges of foreign detainees to access legal aid, bail, and ways to overcome language and procedural and administrative problems faced by them while exercising procedural rights during their detention. Evidence about the functioning of the existing legal safeguards is minimal. To bridge this gap, the present study presents a socio-legal analysis of pre-trial detention, bail, and “Access to Justice” to foreign undertrial prisoners in Assam.

4. Aims of the Study

- “To examine the legal framework governing the detention, bail, and constitutional rights of foreign undertrial prisoners in India.”
- “To analyze the relationship between access to legal aid, bail opportunities, and 'Access to Justice' for foreign undertrial prisoners in Assam.”
- “To assess the effectiveness of legal and institutional safeguards in protecting the rights of foreign undertrial prisoners.”

5. Hypotheses of the Study

H1: “There is a significant relationship between access to legal aid and 'Access to Justice' for foreign undertrial prisoners.”

H2: “Bail-related and procedural barriers significantly affect 'Access to Justice' for foreign undertrial prisoners.”

H3: “There is a significant relationship between the effectiveness of legal and institutional safeguards and the protection of the rights of foreign undertrial prisoners.”

6. Methodology

“This present study tries to analyze the nature and scope of detention, bail, and 'Access to Justice' for foreign undertrial prisoners in Assam by applying a mixed-method socio-legal research design.” The present study is both descriptive and analytical and tries to analyze the existence, adequacy, and implementation of legal and institutional safeguards in practice. This study aims to collect both primary and secondary data. “The primary data will be collected by questionnaire method using structured question for about 130 purposively sampled respondents, comprising of lawyers, legal aid practitioners, academicians, Police Officers, human rights activist, and administration personnel and the secondary data from the constitution, various statutes, various case laws, government reports, various NCRB and

NHRC documents, books, journals, international human rights conventions etc.” SPSS shall be used for data analysis. The responses shall be analyzed using descriptive statistics such as percentage, frequency, mean, standard deviation, etc. Questionnaires shall be tested for reliability using Cronbach's Alpha and Correlation analysis between variables, namely legal aid accessibility, bail accessibility, and institutional safeguard. “Access to Justice” shall be analyzed using Pearson Correlation Analysis.

7. Conceptual and Theoretical Framework

The research is based on principles of individual freedom, “Access to Justice”, provision of legal aid, procedural justice, and protection of human rights. Foreign undertrial prisoners are especially vulnerable in the criminal justice system since their “Access to Justice” is conditional on their nationality, language barrier, administrative procedures, and lack of adequate institutional support. This study tries to address the interrelationship between detention practices, bail accessibility, and legal provisions in safeguarding the “Access to Justice” for foreign undertrials. The study mainly relies on the theory of “Access to Justice,” which says that justice must be both legally guaranteed and readily accessible to everyone, irrespective of their social, economic, or legal position (Cappelletti et al 1978).

A real and actual “Access to Justice” would thus require that each person have effective representation, fair procedures, reasonably prompt proceedings, and equal opportunities to assert their rights. For foreign undertrial prisoners, “Access to Justice” is a very critical issue, as the legal and administrative hurdles can sometimes prevent them from having their voice heard in the court. Human Rights-Based Approach is another influential perspective that views all individuals as holders of fundamental rights and entitlements irrespective of their citizenship or nationality status, and state institutions as the entities responsible for ensuring adherence to human rights standards at all levels of the criminal justice system, including detention practices, bail decisions, and legal aid provisions.

In this framework, detention, bail, and legal aid become crucial interdependent elements in the exercise of human rights and protection from injustice. The study goes ahead on the hypothesis that the greater the accessibility to legal aid, institutional safeguards, and favorable bail practices, the greater would be the “Access to Justice” for the foreign undertrial prisoners and vice versa: the lack of these would imply the obstacles in accessing justice. The study, therefore, tests the link between the variables on the above framework to examine how the legal and institutional practices fare in Assam in providing “Access to Justice” to foreign undertrial prisoners.



Fig.1: Conceptual Framework

The framework depicts legal aid availability, bail availability, and procedural safeguards as independent variables affecting “Access to Justice” and rights of foreign undertrial prisoners. In the study, these relations are tested empirically to assess the efficacy of current legal provisions and find the need for improvement.

8. Legal Framework Governing Foreign Undertrial Prisoners in India

The legal system governing foreign undertrial prisoners in India is founded on constitutional provisions, statutory laws, judicial precedents, and principles of international human rights standards. Though foreign nationals do not enjoy all rights like citizens, they are given basic protections from arbitrary arrest and are entitled to procedural fairness. The legal framework tries to keep the state's security and immigration control and simultaneously protect individual liberty and human dignity.

Constitutionally, Articles 14 and 21 serve as the basis for protecting the rights of foreign detainees. Article 14 upholds equality before the law and equal protection of laws for all, irrespective of nationality. Article 21 protects the right to life and personal liberty of every person, not being deprived except by a procedure set up by law. The judiciary, through its interpretations, has ensured that fair treatment, right to legal representation, and due process are included in Article 21 (Singh, 2006).

These two constitutional articles provide the fundamental guarantees for the protection of foreigners from arbitrary arrest and detention. There is no explicit law defining all rights of foreign prisoners, but fundamental freedoms are safeguarded in case they are deprived of the same without a legal right to do so.

Regulations governing foreigners are laid down under the Foreigners Act, 1946. It provides the government power over foreigners to regulate their entry, stay, exit, and departure in India. This Act lays down the rules for the detention, expulsion, etc of foreigners when needed. The Indian borders have also been regulated through various legislative provisions under the Passport (Entry into India) Act, 1920, and the Passports Act, 1967. These laws also provide penalties for illegal entry, travel without a passport, etc., by imposing fines, prosecution, or even detention

For procedural fairness for the foreign undertrial prisoners, the Bharatiya Nagarik Suraksha Sanhita, 2023, has provisions for the entire process of arrest, detention, investigation, bail, and trial of a person. The legislation ensures trial and judicial supervision and aims to curb the necessity of detention without preventing an adequate, fair trial.

The judiciary has always shown interest in protecting the basic rights and liberties of foreign detainees. In *Louis De Raedt v. Union of India*, the Supreme Court ruled that foreigners, even though not having the right of residence and settlement in India, shall be given due consideration and they are protected under Article 21 of the Constitution. This observation was also reiterated by the Supreme Court in *National Human Rights Commission v. State of Arunachal Pradesh*, that human rights are not for citizens only.

The availability of legal remedies for foreign prisoners is supplemented by the Legal Services Authorities Act, 1987, providing free legal services and aid to certain categories of persons. This framework is vital for the foreign undertrial prisoners since they may not be financially sound, and they can have language and knowledge related problem.

Protection for foreign prisoners is also available under various International human rights covenants and agreements, such as the Universal Declaration of Human Rights, 1948, and the International Covenant on Civil and Political Rights, 1966, which advocate for basic human rights and freedoms to be extended to all, regardless of their nationality (Kaur, 2017).

9. Detention and Pre-Trial Incarceration of Foreign Nationals

Pre-trial detention means taking custody of the accused before the final trial and determination of guilt. While custody of the accused before trial and determination of guilt ensures the presence of the accused before the law and to uphold the rule of law and due process, prolonged custody may infringe upon the notion of personal freedom and presumption of innocence of the individual. In the case of foreigners, these concerns are more amplified due to complex legal and administrative issues faced by them (Bosworth, 2014).

For foreign undertrial prisoners, issues of nationality, visa status, language barriers, and contact with their embassy/consulate cause delays in the legal proceedings, leading to extended pre-trial detention. Flight risk and lack of established residence in India can often be the primary reasons for detention or rejection of bail applications of such prisoners.

Furthermore, crimes of migration, violations of visa and related document irregularities, further prolong the custody of the foreign detainees. This intermingling of administrative and penal processes and the complexities of such legal problems result in a significant delay of legal processes, prolonging the period of custody of the detainee in the absence of any conviction.

Apart from this, psychological and social impacts of prolonged custody can include depression, stress, isolation from family and friends, and difficulty in getting proper access to legal aid. These problems are more visible in border states like Assam, where issues relating to migration and citizenship overlap significantly with criminal justice processes. Hence, prompt disposal of the cases, providing sufficient legal aid, and humane treatment are very crucial.

10. Bail Jurisprudence and Challenges Faced by Foreign Undertrial Prisoners

The granting of bail is a crucial aspect of the criminal justice system as it safeguards the basic right to personal liberty while also ensuring that the accused is available to stand trial. The underlying premise of the entire body of case law on bail is that every person is presumed innocent until proven guilty, and detention before conviction should be an exception rather than a rule. The Indian courts have reiterated on several occasions that bail is a procedural safeguard against undue detention and keeps the equilibrium between individual freedom and the interests of justice.

However, despite the judicial protections and pronouncements, there appears to be a growing discrepancy and a disparity in the way foreigners, under trial, can obtain bail vis-à-vis native undertrials. The predominant rationale is the concern that the foreigner might abscond or abscond and will not be

available to face trial. Absence of a permanent residence, of local guarantors, and lack of family in the Indian territory all act as significant factors in the decision of the judiciary to deny bail (Singh, 2025). Thus, many foreign undertrials have languished in jail for prolonged periods of time, in the absence of any gravity of the offense committed by the foreigner.

Linguistic barriers, lack of knowledge of the Indian legal system, and financial constraints also handicap foreigners from obtaining bail effectively. The fact that issues of verification of nationality, passport details, and, more particularly, coordination with respective diplomatic bodies pose a significant barrier also causes much delay in the obtaining of the grant of bail. These bureaucratic hindrances ultimately contribute to the lengthy periods of detention and an overall sense of uncertainty for the prisoners.

Judicial pronouncements have reaffirmed the significance of the protection of personal liberty and for fair and impartial administration of bail, and it can be concluded from the argument that there is an increased necessity to strike a balance and to administer justice from a rights-based perspective. For this, an enhancement in legal aid services, expedited trials, and removal of bureaucratic hurdles will greatly help the foreigners.

11. Access to Justice and Legal Aid Mechanisms

“Access to Justice” is a fundamental principle of the rule of law and a critical part of a fair criminal justice system. This forms access to courts, legal representation, rights, and proper redressal, and fair participation in legal proceedings. It becomes increasingly crucial for foreign undertrial prisoners as legal, linguistic, and administrative barriers often impede the ability to defend themselves and avail themselves their legal rights appropriately (Sverba, 2020).

Legal aid is an instrument in guaranteeing legal aid for vulnerable groups, regardless of their economic standing. India is bound by provisions like the Legal Services Authorities Act, 1987, setting up various institutions like the National Legal Services Authority (NALSA) and State Legal Services Authorities to promote the principles of equality before law and guarantee legal remedies and representation to all prisoners and detainees.

Despite these safeguards, foreign undertrial prisoners are generally unable to obtain legal aid easily due to many hindrances in communication (language barrier, awareness about legal rights, Indian criminal justice procedures, and communication with their legal representatives) and financial constraints as they lack familial and social support (George, 2006).

Legal aid has been vital in the bail proceedings, detention reviews, and other rights like the right to a fair trial for foreign undertrial prisoners, as the legal representatives are better informed and can inform prisoners about the law. The delay and lack of awareness about legal aid are problematic as it undermines its effective utility. Enhancement of legal aid institutions and their legal awareness mechanisms, providing interpretational and translational services, and ensuring prompt legal representation of all foreign undertrial prisoners can make “Access to Justice” a reality for this class of prisoners.

12. Socio-Legal Analysis of Assam

12.1 Based on Demographics

Table 1: Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Gender	130	1	2	1.58	.496
Age	130	1	4	2.46	1.135
Profession	130	1	6	3.44	1.661
Years of Experience	130	1	4	2.48	1.150

Valid N (listwise)	130				
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Table 1 displays the descriptive statistics of the respondents' personal attributes. There were 130 complete responses. A total of 130 data sets were used. The mean score for Gender was 1.58 (SD = 0.496), which shows that it consists of both male and female respondents. Mean score for Age was 2.46 (SD = 1.135), meaning the age of the respondents ranged across all different categories. Mean score for Profession was 3.44 (SD = 1.661), meaning it consists of all sorts of professions, while the mean score for Year of Experience was 2.48 (SD = 1.150), meaning that most people respondents from the range of work experience have answered the survey.

Table 2: Demographics					
		Frequency	Percent	Valid Percent	Cumulative Percent
Gender	Male	55	42.3	42.3	42.3
	Female	75	57.7	57.7	100.0
	Total	130	100.0	100.0	
Age (Years)	Below 30	35	26.9	26.9	26.9
	31-40	32	24.6	24.6	51.5
	41-50	31	23.8	23.8	75.4
	Above 50	32	24.6	24.6	100.0
	Total	130	100.0	100.0	
Profession	Lawyer	18	13.8	13.8	13.8
	Legal Aid Practitioner	29	22.3	22.3	36.2
	Academician	22	16.9	16.9	53.1
	Police Officers	18	13.8	13.8	66.9
	Human Right Activist	25	19.2	19.2	86.2
	Administrative Personnel	18	13.8	13.8	100.0
	Total	130	100.0	100.0	
Years of Experience	Below 5	34	26.2	26.2	26.2
	5-10	34	26.2	26.2	52.3
	11-15	27	20.8	20.8	73.1
	Above 15	35	26.9	26.9	100.0
	Total	130	100.0	100.0	

"The demographic profile of the 130 respondents is provided in Table 2." "Among them, the proportion of females (57.7%) was more than that of males (42.3%)." The age of the respondents varied: 26.9% below 30; 24.6% between 31-40; 23.8% between 41-50, and 24.6% were more than 50 years old. So, it was equally represented among all age groups. About occupation, the proportion of Legal Aid Practitioners was higher (22.3%) than others. Other proportions were: Human Rights Activists (19.2%); Academicians (16.9%); Lawyers, Police officers, and Administrative Staff (13.8% each). For work experience, the highest proportions were seen among those who were practicing for 15 years (26.9%) and those who had been practicing for less than 5 years (26.2%); others were between 5-10 years (26.2%) and 11-15 years (20.8%).

12.2 Based on Hypothesis

H1: There is a significant relationship between access to legal aid and "Access to Justice" for foreign undertrial prisoners.

Table 3: Correlations		
	Access to Legal Aid for	"Access to Justice" for

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		Foreign Undertrial Prisoners	Foreign Undertrial Prisoners
Access to Legal Aid for Foreign Undertrial Prisoners	Pearson Correlation	1	.246**
	Sig. (2-tailed)		.005
	N	130	130
“Access to Justice” for Foreign Undertrial Prisoners	Pearson Correlation	.246**	1
	Sig. (2-tailed)	.005	
	N	130	130
**. Correlation is significant at the 0.01 level (2-tailed).			

“In Table 3, there is a positive and statistically significant relationship between Access to Legal Aid for Foreign Undertrial Prisoners and Access to Justice for Foreign Undertrial Prisoners. ($r = 0.246$, $p=0.005$). Although it appears that the relationship is weak, since the coefficient is positive, we can say that more access to legal aid is accompanied by better “Access to Justice” for foreign undertrial prisoners. Given that the relationship is significant at the 0.01 level, it can be concluded that there is a genuine relationship between these two variables.”

H2: Bail-related and procedural barriers significantly affect “Access to Justice” for foreign undertrial prisoners.

Table 4: Model Summary									
Model	R	R Square	Adjusted R-Square	Std. Error of the Estimate	Change Statistics				
					R Square Change	F Change	df1	df2	Sig. F Change
1	.175 ^a	.031	.023	.77511	.031	4.036	1	128	.047
a. Predictors: (Constant), Bail-Related and Procedural Barriers									

“Table 4 is a regression summary looking at the effect of Bail-Related and Procedural Barriers on the dependent variable. It shows an R of 0.175, suggesting a weak relationship between the variables. An R-squared value of 0.031 shows that 3.1% of the variance in the dependent variable is accounted for by bail-related and procedural barriers. This model is significant ($F=4.036$, $p=0.047$), which shows that the predictor is a significant, although weak, factor for the dependent variable.”

Table 5: ANOVA ^a						
Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	2.425	1	2.425	4.036	.047 ^b
	Residual	76.902	128	.601		
	Total	79.327	129			
a. Dependent Variable: “Access to Justice” for Foreign Undertrial Prisoners						
b. Predictors: (Constant), Bail-Related and Procedural Barriers						

“Table 5 has the ANOVA results for the regression model for examining the effects of Bail-Related and Procedural Barriers on 'Access to Justice' for foreign undertrial prisoners. The model was significant at $F=4.036$ and $P=0.047$, confirming that Bail-Related and Procedural Barriers significantly affect “Access to Justice”. The Regression sum of squares was 2.425, and the residual sum of squares was 76.902. This shows that the predictor helps explain some variance in the dependent variable.”

Table 6: Coefficients ^a							
Model		Unstandardized Coefficients		t	Sig.	95.0% Confidence Interval for B	
		B	Std.			Lower	Upper
		Beta					

			Error				Bound	Bound
1	(Constant)	2.465	.387		6.362	.000	1.698	3.231
	Bail-Related and Procedural Barriers	.255	.127	.175	2.009	.047	.004	.506
a. Dependent Variable: "Access to Justice" for Foreign Undertrial Prisoners								

The results of regression coefficients on how Bail-Related & Procedural Barriers affected the "Access to Justice" for the Foreign undertrial prisoners are given in Table 6. It is found that bail-related & procedural barriers have a positive and statistically significant effect on the "Access to Justice" ($\beta = 0.175$, $B = 0.255$, $t = 2.009$, $p = 0.047$). A unit change in the predictor variable results in a change in the dependent variable by 0.175 units. 95% confidence interval does not have zero (0.004 to 0.506), therefore the relationship is significant. Hence, bail-related & procedural barriers are associated positively and significantly.

H3: There is a significant relationship between the effectiveness of legal and institutional safeguards and the protection of the rights of foreign undertrial prisoners

Table 7: Correlations			
		Effectiveness of Legal and Institutional Safeguards	Protection of the Rights of Foreign Undertrial Prisoners
Effectiveness of Legal and Institutional Safeguards	Pearson Correlation	1	.991**
	Sig. (2-tailed)		.000
	N	130	130
Protection of the Rights of Foreign Undertrial Prisoners	Pearson Correlation	.991**	1
	Sig. (2-tailed)	.000	
	N	130	130
**. Correlation is significant at the 0.01 level (2-tailed).			

Table 7 proves a highly positive and statistically significant relationship between the Effectiveness of legal and institutional safeguards and the protection of rights of the foreign undertrial prisoners ($r = 0.991$, $p < 0.001$). This reveals that higher legal and institutional safeguards are significantly associated with the greater protection of the rights of foreign undertrial prisoners. The relationship is very significant; therefore, the hypothesis put forth is accepted.

13. Policy Gaps and Reform Imperatives

Although constitutional rights, legal provisions, and court guidelines exist, there stay certain policy and implementation gaps as far as foreign undertrials are concerned. Prolonged incarceration for foreigners because of delayed nationality verification, lack of proper documentation, and coordination between the investigative authorities and the respective Embassies/Consulates stands as one of the major issues at present, leading to prolonged confinement even before trial.

Another major concern is related to the provision of legal aid and legal awareness. Legal aid mechanisms are provided, yet most of the foreigners are not aware of their rights and the legal recourse available to them. Language barriers, differences in culture, and a lack of communication facilities reduce their capacity to engage effectively in the legal process. Thus, "Access to Justice" stays in practice only a distant reality for most foreign undertrial prisoners.

The current regime of bail also poses significant concerns. Flight risk, lack of local residence, and lack of guarantors often result in disproportionately stringent bail conditions being imposed upon foreigners. While these factors may be genuine concerns in specific cases, their overuse can

disproportionately affect the personal liberty of foreign prisoners. A balanced and non-discriminatory approach to the grant of bail is thus needed.

There is an urgent need for the following reforms: first, procedures of verification of nationality and communication with foreign missions should be sped up to avoid undue delay. Second, legal aid mechanisms need to be augmented with provision for multilingual help and interpretation facilities, and for conducting systematic awareness programs targeted at foreign prisoners. Third, the formulation of special guidelines may be needed, ensuring that bail applications in cases of foreign nationals are dealt with uniformly and justly. Lastly, greater coordination between the executive, judicial, and diplomatic authorities is needed.

Implementation of these measures can further lead to the protection of human rights and the creation of a more just and effective criminal justice system in consonance with constitutional principles and human rights standards.

14. Discussion

The findings suggest that foreign undertrial prisoners suffer major issues when seeking justice. The study reveals legal, procedural, and administrative obstacles, such as; Nationality verification, language issues, lack of local aid, and immigration issues, which make the foreign prisoners suffer more and are long behind in receiving any judicial remedy despite the constitutional and statutory protections available to them (Bosworth, 2014; Flynn, 2014).

The results about H1 found a statistically significant positive relationship between access to legal aid and "Access to Justice" ($r=0.246$, $p=0.005$). It is confirmed that access to adequate legal aid will help foreign prisoners in understanding the legal procedures better and to effectively exercise their rights. The study is consistent with the earlier literature emphasizing the necessity of legal aid in providing procedural fairness and ensuring "Access to Justice" to all equally (Khanna, 2025; Surendranath & Andrew, 2022).

The regression for H2 revealed that bail-related and procedural barriers significantly affect "Access to Justice" ($p=0.047$). Documentation requirements, nationality verification, and flight risk continue to play a significant role in deciding bail and affect the lengthy detention of foreign undertrial prisoners (Sekhri, 2025; Singh, 2025).

The H3 showed a very strong positive association between legal and institutional safeguards and "Access to Justice" ($r=0.991$, $p<0.001$). Legal safeguards such as proper legal provisions, the role of the judiciary, and the support of the institutional framework were identified as crucial for securing the rights of the foreign undertrial prisoners (Cappelletti & Garth, 1978; Khosla, 2020).

15. Conclusion

The present study has investigated the problem of detention, bail, and "Access to Justice" for foreign undertrial prisoners in India with reference to the state of Assam. The Indian legal framework guarantees a wide range of fundamental and statutory protections to all, including foreign nationals, but in practice, the implementation and realization of these rights continue to be a critical issue. In the case of foreign undertrial prisoners, these difficulties are worsened by practical problems such as nationality verification, communication barriers owing to language problems, absence of personal support structures, lack of legal knowledge, and administrative inefficiencies, which have a profound impact on the accessibility of justice for these prisoners. The empirical evidence suggests that access to legal aid has a positive impact on the "Access to Justice". However, bail-related barriers and procedural barriers do seem to have a noticeable impact on how foreign undertrial prisoners experience this ordeal.

Furthermore, the study found that there is a significant positive relation between efficient legal and institutional safeguards and the rights of foreign undertrial prisoners. It is thus clear that efficient legal and institutional mechanisms for ensuring rights are crucial. This problem also needs an initiative-taking approach on the part of the state to guarantee effective legal and institutional mechanisms that are

necessary to protect individual liberty and ensure procedural due process. The Assam context, in particular, highlighted how citizenship-related and immigration related issues, coupled with administrative intricacies, further complicate the position of foreign detainees, requiring close coordination between judicial, administrative, and diplomatic organs.

References

1. AS, N. (2024). Undertrial Prisoners in India: Detention of the Presumed" Innocent". *Issue 2 Int'l JL Mgmt. & Human.*, 7, 1217.
2. Awasthi, A., & Goyal, P. (2021). Need for prison reforms. *Indian JL & Legal Rsch.*, 2, 1.
3. Berry, D., English, P., & Schönteich, M. (2011). *The socioeconomic impact of pretrial detention*. Open Society Foundations.
4. Bhatia, G. L. (2019). *The transformative constitution: A radical biography in nine acts*.
5. Bhuwania, A. (2017). *Courting the people: Public interest litigation in post-emergency India* (Vol. 2). Cambridge University Press.
6. Bosworth, M. (2014). *Inside immigration detention*. OUP Oxford.
7. Buragohain, M. (2025). Contested Belonging: Citizenship, Migration, and Identity Politics in Assam. *South India Journal of Social Sciences*, 23(3), 123-126.
8. Cappelletti, M., & Garth, B. G. (1978). *Access to Justice: the worldwide movement to make rights effective: a general report*. AW Sijthoff.
9. Csete, J. (2010). Consequences of injustice: pre-trial detention and health. *International Journal of Prisoner Health*, 6(1), 3-14.
10. Encinas, M. (2017). Migrant Rights and Extraordinary Law in India: The Cases of Assam and Jammu & Kashmir. *South Asia: Journal of South Asian Studies*, 40(3), 463-480.
11. Flynn, M. (2014). There and back again: On the diffusion of immigration detention. *Journal on Migration and Human Security*, 2(3), 165-197.
12. George, J. P. (2006). "Access to Justice", costs, and legal aid. *Am. J. Comp. L.*, 54, 293.
13. Gupta, A., Bajpai, A., & Shah, M. G. (2025). The Citizenship (Amendment) Act, National Register of Citizens and Detention Centres in India: A Legal and Human Rights Perspective. *Manchester Journal of Transnational Islamic Law and Practice*, 21.
14. Henning, K. (2022). Inconsistencies in Bail Determinations: An Analysis of Judicial Decision-Making. *Ind. JL & Soc. Equal*, 10, 437.
15. Hussain, P. M. (2022). Constitutional Rights in India: An Assessment of Judgments of Justice PN Bhagwati. *Journal of Constitutional Law and Jurisprudence*, 4(2), 9-24.
16. *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369.
17. Jha, M. K., & Chakrabarty, A. (2023). Nationalism and populist politics: the migrant-citizen conundrum in Assam. *Citizenship Studies*, 27(4), 514-529.
18. Kaur, A. (2017). Protection of human rights in India: a review. *Jamia Law Journal*, 2.
19. Kazemian, L., & Galleguillos, S. (2025). A global comparison of long prison sentences. *Journal of Criminal Justice*, 96, 102341.
20. Khanna, B. (2025). *Legal Aid And "Access to Justice": A Socio-Legal Perspective*. Available at SSRN 5315928.
21. Khosla, M. (2020). *India's founding moment: The constitution of a most surprising democracy*. Harvard University Press.
22. *Louis De Raedt v. Union of India*, (1991) 3 SCC 554.
23. Lukas, M., & Jean, R. (2016). *The socio-economic impact of pre-trial detention in Kenya, Mozambique, and Zambia*.
24. *Moti Ram v. State of Madhya Pradesh*, (1978) 4 SCC 47.
25. *National Human Rights Commission v. State of Arunachal Pradesh*, (1996) 1 SCC 742.

26. O'Connell, M. (2020). Improving "Access to Justice": Procedural justice through legal counsel for victims of crime. In *An international perspective on contemporary developments in victimology: A festschrift in honor of Marc Groenhuijsen* (pp. 207-223). Cham: Springer International Publishing.
27. Payeng, H., & Rao, P. (2025). Borders Within: The Politics of Belonging and Displacement in Assam. *Lex Localis*, 23(S4), 4046-4060.
28. Sampson, R., Mitchell, G., & Bowring, L. (2011). *There are alternatives: A handbook for preventing unnecessary immigration detention*. Swinburne.
29. *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.
30. Sekhri, A. (2025). Retaining the "Premium on Poverty": India's Perplexing Persistence with a Monetary Bailout Regime. *Mod. Crim. L. Rev.*, 2, 80.
31. Singh, A. (2025). Rights of Undertrial Prisoners: A Study Under Article 21 of the Constitution. *VIDHIGYA: The Journal of Legal Awareness*, 20(1and2), 65-80.
32. Singh, R., & Lakshminath, A. (2006). *Constitutional law*. LexisNexis Butterworths.
33. Surendranath, A., & Andrew, G. (2022). State legal aid and undertrials: are there no takers? *Indian Law Review*, 6(3), 303-330.
34. Sverba, Y. (2020). The Role of Free Legal Aid in the Mechanism of "Access to Justice". *Law Rev. Kyiv UL*, 83.
35. sWalmsley, R. (2014). *World pre-trial/remand imprisonment list*. London: International Centre for Prison Studies.
36. Watch, H. R. (2020). *Shoot the Traitors. Discrimination Against Muslims under India's New Citizenship Policy*, <https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>.
37. Widodo, L. A., & Kasih, E. (2025). *Reducing prison overcrowding through non-custodial measures: Lessons from international practices and policy recommendations*. Available at SSRN 5086689.
38. Yin, E. T., Korankye-Sakyi, F., & Atupare, P. A. (2021). Prisoners' "Access to Justice": Family support, prison legal education, and court proceedings. *J. Pol. & L.*, 14, 113.