



INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 5 | Issue 2 | 2026

Art. 01

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Recommended Citation

Vanshi Vinay Bagri, *Presumed Innocent, Digitally Excluded: Undertrial Prisoners, Internet Access, and India's Obligations Under the ICCPR and the Nelson Mandela Rules*, 5 IJHRLR 1-21 (2026).

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Presumed Innocent, Digitally Excluded: Undertrial Prisoners, Internet Access, and India's Obligations Under the ICCPR and the Nelson Mandela Rules

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Manuscript Received

05 Mar. 2026

Manuscript Accepted

07 Mar. 2026

Manuscript Published

09 Mar. 2026

ABSTRACT

*Over 5,30,000 inmates are housed in the prison system of India, of whom approximately 73.5 per cent are undertrial prisoners not convicted of any offence. These individuals endure blanket denial of internet access under prison regulations of the colonial era, positioning India rather incongruously with the evolving architecture of human rights law. This paper argues that the absolute prohibition of internet access for undertrial prisoners transgresses the golden triangle of the Indian Constitution, as interpreted through landmark decisions, including *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, and *Anuradha Bhasin v Union of India*. It is moreover contended that this prohibition is at odds with Articles 10 and 19 of the International Covenant on Civil and Political Rights, in addition to Rules 3, 58 and 61 of the United Nations Nelson Mandela Rules. Drawing on comparative practice in Europe, New Zealand, and the United States, the paper demonstrates that the current approach of India is increasingly anomalous in the global landscape of prison rights. The paper urges the introduction of a statutory framework for graduated, supervised digital access for undertrial prisoners, to be embedded within the Model Prisons and Correctional Services Act 2023, as a necessary step toward aligning the prison jurisprudence of India with international human rights norms.*

KEYWORDS

*Undertrial prisoners, supervised internet access,
Nelson Mandela Rules, International Covenant on Civil*

*and Political Rights (ICCPR), Articles 14, 19, 21 of the
Constitution of India*

I. INTRODUCTION

In the digital age, internet access is no longer a luxury; rather, it is the means by which people exercise their right to free speech, obtain legal information, stay connected to their families, and participate in public life. However, internet access is strictly prohibited for the majority of 3,84,000 undertrial inmates currently housed in Indian prisons. This is due to the accumulated inertia of prison rules derived from the colonial Prisons Act of 1894, rather than a sustainable legislative mandate.

The scale of the undertrial crisis in India is alarming. As per the National Crime Records Bureau's Prison Statistics India 2023 Report, 73.5 per cent of the total prison population of India is constituted by undertrials.¹ Nearly one-third of these individuals have been in custody for over a year.² By definition, they have not been convicted; they retain their constitutional rights. Nonetheless, the digital world, indispensable to modern legal research, family communication, and personal dignity, is hermetically inaccessible to them.

The vitality of this question is not merely academic. In a series of judgments spanning four decades, the Supreme Court of India has affirmed that fundamental rights survive incarceration. There is no distinction so drawn between the rights of free citizens and those detained pending trial by the framers of the Constitution of India. While this is interpreted through deduction, the same deprivation of liberty itself being the punishment or precaution warranted is an explicit facet of international human rights law; without independent justification grounded in law and necessity, it may not be supplemented by additional deprivations. The aforementioned blanket denial of internet access to undertrials in Indian prisons fails both tests.

This paper examines the legal basis, or more specifically, the absence thereof, for this prohibition, commencing in six parts and concluding in another. Part III situates the problem within the constitutional framework of India, tracing the judicial expansion of Articles 14, 19, and 21 to encompass the rights of detained persons. Part IV investigates the relevant instruments of international human rights, the ICCPR³ and the Nelson Mandela

¹ National Crime Records Bureau, *Prison Statistics India 2023* (Ministry of Home Affairs, Government of India, September 2025)

² *ibid*

³ International Covenant on Civil and Political Rights (adopted 16 December

Rules⁴, principally. A comparative analysis is undertaken in Part V, illuminating how select jurisdictions have approached digital access for prisoners. Part VI develops undertrial prisoners as a distinct and especially vulnerable category. Lastly, Part VII proposes a graduated framework for supervised internet access for undertrial prisoners in India following a rights-based principle. Part VIII is the conclusion.

A note on scope and methodology is warranted. The paper does not argue that undertrials have an absolute and unrestricted right to internet access. The position preferred is more modest and defensible: a blanket prohibition, unsupported by legislation, unjustified by individualised security assessments, and disproportionate to any legitimate aim, cannot survive the scrutiny of constitutional or international human rights. It is an argument for a floor, not a ceiling; it is for legality, proportionality, and the minimum dignity that the Indian Constitution and international law oblige, with ample space for legitimate and cautiously calibrated security regulation within that floor.

II. RELATED LITERATURE & CONSEQUENT RESEARCH GAP

The predominant focus of the existing scholarship on the rights of prisoners in India has been on physical conditions of detention, undertrial bail reform, and speedy trial jurisprudence. The foundational constitutional litigation of the late 1970s and early 1980s has been extensively analysed by scholars, including Upendra Baxi⁵, whose work underscored the transformative potential of public interest litigation in the prison context. Influential policy reports documenting the structural deficits of the prison administration of India have been produced by the Commonwealth Human Rights Initiative.⁶ The Law Commission of India, in its 78th and 268th Reports, has addressed undertrial congestion and criminal law reform, respectively.⁷ More recently, Project 39A, now at the NALSAR, as the Square Circle Clinic, has generated rigorous empirical research on undertrial prisoners that provides an essential evidential foundation for normative

1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 19.

⁴ UN General Assembly, 'United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)' (Resolution 70/175, 17 December 2015) UN Doc A/RES/70/175.

⁵ Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 *Third World Legal Studies* 107.

⁶ CHRI, *Rights of Prisoners* (CHRI 2011) available at <www.humanrightsinitiative.org>.

⁷ Law Commission of India, *78th Report on Congestion of Under-Trial Prisoners in Jails* (1979); Law Commission of India, *268th Report on Amendments to Criminal Laws* (2017).

literature in this area.⁸

On the comparative and international plane, the work of Dik van Zyl Smit and Sonja Snacken has established the framework for European prison law.⁹ Sharon Shalev¹⁰ has examined solitary confinement through the lens of human rights, and the reports by Frank La Rue as UN Special Rapporteur on Freedom of Expression¹¹ have articulated the centrality of internet access to the modern right of free expression.

However, the specific intersection of digital rights and undertrial detention in India remains largely unaddressed in academic literature. Existing commentary on Anuradha Bhasin has focused on internet shutdowns as instruments of state control rather than on the affirmative implications of the judgment. The broader digital rights literature has not engaged with the prison context in any substantial manner. This paper seeks to fill that gap.

III. THE CONSTITUTIONAL FRAMEWORK: RIGHTS THAT FOLLOW THE PRISONER THROUGH THE GATE

A. Fundamental Rights Survive Incarceration

The foundational principle of Indian prison jurisprudence is that incarceration does not extinguish fundamental rights.¹² This proposition was first crystallized in the landmark decisions of *Hussainara Khatoon v Home Secretary, State of Bihar*, in addition to *Sunil Batra v Delhi Administration*.¹³ These established that a prisoner retains every constitutional right except those which are mandatorily abridged by the fact of lawful confinement. Rights may not be curtailed beyond the measure necessitated by the lawful deprivation of liberty itself.

The significant judgment in this line of authority is that in *Francis Coralie Mullin v Administrator, Union Territory of Delhi*.¹⁴ Writing

⁸ Project 39A, *Prisons, Courts and Legal Aid* (National Law University Delhi 2021).

⁹ Dirk van Zyl Smit and Sonja Snacken, *Principles of European Prison Law and Policy* (OUP 2009).

¹⁰ Sharon Shalev, *Supermax: Controlling Risk through Solitary Confinement* (Willan Publishing 2009).

¹¹ UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (Frank La Rue), *Report on the promotion and protection of the right to freedom of expression on the Internet* (16 May 2011) UN Doc A/HRC/17/27.

¹² Constitution of India 1950, arts 14, 19, 21.

¹³ *Hussainara Khatoon v Home Secretary, State of Bihar* (1979) 1 SCC 98; *Sunil Batra v Delhi Administration* (1979) 3 SCC 488.

¹⁴ *Francis Coralie Mullin v Administrator, Union Territory of Delhi* AIR 1981 SC 746.

for the Supreme Court, Justice Bhagwati articulated an expansive understanding of Article 21. The right to life is not confined to mere existence, but encompasses the right to live with human dignity. This includes facilities for reading, writing, and expressing oneself in diverse forms, in addition to the right to mix and commingle with fellow human beings.¹⁵ This was a deliberate rejection of the narrow conception of liberty, reinforced by the earlier decision in *Maneka Gandhi v Union of India*.¹⁶ The Court was explicit, observing that a prisoner is entitled to have interviews with family members and friends, and only upon satisfaction of the test of reasonableness, fairness, and justice, can any prison regulation curtailing such right survive constitutional scrutiny.

This line of reasoning was further enumerated in subsequent decisions. The Supreme Court reiterated that custodial conditions must conform with the dignity of the human person in *D.K. Basu v State of West Bengal*.¹⁷ In *Prem Shankar Shukla v Delhi Administration*¹⁸ and *T.V. Vatheeswaran v State of Tamil Nadu*¹⁹, the Court held that prison authorities bear an obligation to provide conditions consistent with constitutional rights. The trajectory of the decisions is clear; the constitutional floor, beneath which conditions of detention may not fall, has risen with each decade, sustaining pace with changing social and technological realities.

B. The Internet as a Medium of Constitutional Rights

In *Anuradha Bhasin v Union of India*²⁰, the Supreme Court directly addressed the constitutional status of internet access. The prolonged internet shutdown in Jammu and Kashmir gave rise to the case, with the analysis of the right to internet access by the court indicating implications reaching far beyond its specific factual context. The freedom of speech and expression through the internet was held to be an integral part of the fundamental right under Article 19(1)(a), in addition to the protection by Article 19(1)(g) of the freedom of trade and commerce through the internet.²¹ Holding that any restriction on these rights must be lawful, necessary, and proportionate, the Court applied the doctrine of proportionality. A measure cannot survive constitutional scrutiny if it is not the least restrictive means of

¹⁵ *Ibid.*

¹⁶ *Maneka Gandhi v Union of India* AIR 1978 SC 597.

¹⁷ *D.K. Basu v State of West Bengal* AIR 1997 SC 610, para 35.

¹⁸ *Prem Shankar Shukla v Delhi Administration* AIR 1980 SC 1535.

¹⁹ *T.V. Vatheeswaran v State of Tamil Nadu* AIR 1983 SC 361.

²⁰ *Anuradha Bhasin v Union of India* AIR 2020 SC 1308.

²¹ *Ibid.*

achieving a legitimate aim.

The logical implication for the context of undertrial prisoners is significant. As established, internet access is a constitutionally protected medium for free citizens. The complete denial of it to undertrial prisoners, who retain their fundamental rights and are presumed innocent, thereby requires compelling justification grounded in proportionality. The question is whether a blanket, unqualified, and legislatively ungrounded prohibition can survive constitutional perusal. Plainly, the answer, as derived from the doctrine established in *Anuradha Bhasin and Francis Coralie Mullin*, is in the negative.

The proportionality test as applied by the Supreme Court demands that a restriction be (i) prescribed by law, (ii) pursue a legitimate aim, (iii) be necessary in a democratic society, and (iv) be the least restrictive means of achieving that aim. This framework was articulated in *Modern Dental College v State of Madhya Pradesh*²², drawing on comparative constitutional sources. It was applied directly to internet restrictions in *Anuradha Bhasin v Union of India*, where the Court further observed that any order suspending internet services must be temporary, limited in scope, and subject to judicial review. Similarly, under international human rights law, Article 19(3) of the ICCPR²³ and the General Comment No 34 of the Human Rights Committee²⁴ articulate a cognate framework that requires that restrictions on freedom of expression be prescribed by law, pursue a legitimate aim, and be necessary and proportionate, a standard confirmed by the Committee to be equally applicable to internet-based expression. The blanket prohibition on prisoner internet access by India, although validated by the Apex Court itself, fails at the threshold of both frameworks due to a lack of any statute prescribing the same, in addition to a complete absence of any individualised assessment of necessity or proportionality ever having been conducted.

IV. INTERNATIONAL HUMAN RIGHTS LAW: A FRAMEWORK YET TO BE HONOURED BY INDIA

A. The Nelson Mandela Rules and the Right to Communicate

Known as the Nelson Mandela Rules, the United Nations Standard

²² *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

²³ ICCPR (n 3), art 19(3).

²⁴ UN Human Rights Committee, 'General Comment No 34: Article 19 Freedoms of Opinion and Expression' (12 September 2011) CCPR/C/GC/34, paras 9-12.

Minimum Rules for the Treatment of Prisoners²⁵ were adopted by the General Assembly in December 2015, representing the globally acknowledged minimum standards for prisoner treatment. As a unanimous resolution of the General Assembly, they carry significant weight and have been applied by domestic courts as interpretive aids. India, as a Member State, has sanctioned their principles.

A mandate that prisoners must be provided with an adequate opportunity to maintain and develop relations with family and friends, facilitated through visits, correspondence, and the means of communication available in the institution, is stipulated under Rule 58 of the Nelson Mandela Rules.²⁶ The same is reinforced by Rule 61, which requires prisoners to have adequate facilities to communicate with legal advisers, without delay, interception, or censorship.²⁷ Vitaly, digital communication is prohibited by neither rule. The reference to ‘means of communication available in the institution’ is forward-looking and technology-neutral, requiring only that the means be made ‘adequate.’

The overarching philosophy of the Rules is captured in Rule 3, “imprisonment should not aggravate suffering beyond what is inherent in the deprivation of liberty, and the loss of liberty is punishment— nothing more.”²⁸ This principle is directly violated when access to digital means, which free citizens rely upon as a matter of course for legal preparation, family communication, and access to information, is denied to undertrial prisoners. The Rules do not require that prisoners have unrestricted internet access; they require that the means of communication be adequate for the purposes of maintaining family ties and accessing legal assistance. In the twenty-first century, digital communication is not a supplement to these means; it is increasingly the primary means.

B. ICCPR: Articles 10 and 19 and the Obligation of Humane Treatment

The International Covenant on Civil and Political Rights was ratified by India in 1979. Article 19(2) of ICCPR guarantees the right to seek, receive, and impart information and ideas through any media.²⁹ In General Comment No 34, the UN Human Rights Committee confirmed that this right encompasses all modes of communication, expressly including internet-based expression.³⁰

²⁵ Nelson Mandela Rules (n 4).

²⁶ Ibid, Rule 58.

²⁷ Ibid, Rule 61.

²⁸ Nelson Mandela Rules (n 4), Rules 3, 58 and 61.

²⁹ ICCPR (n 3), art 19(2).

³⁰ UN Human Rights Committee, 'General Comment No 34: Article 19 Freedoms

The Committee further stated that restrictions on this right are permitted by Article 19(3) only where they meet the specific conditions aforementioned, the same tripartite test applied by the Supreme Court in *Anuradha Bhasin*.³¹

General Comment No 34 also addresses the specific application of Article 19 in detention contexts. The Committee has observed that the right to receive information extends to detained persons, who may not be deprived of their ability to access information through lawful means except to the extent justified under the proportionality standard.³² The administrative practice of blanket prohibition, unsupported by legislation, therefore fails even the threshold requirement of being 'prescribed by law.'

Article 10(1) of the ICCPR provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.³³ The General Comment No 21 by the Human Rights Committee clarifies that Article 10 imposes positive obligations on states to ensure that detention conditions respect human dignity.³⁴ The complete exclusion of undertrial prisoners from the information ecosystem, including but not limited to causing the inability to research their own cases online or to access educational or civic content, is increasingly difficult to reconcile with 'respect for inherent dignity.' The UN Special Rapporteur on Freedom of Expression has affirmed that internet access is itself a component of the right to freedom of expression in the modern era.³⁵

The blanket ban on internet access sustained not by parliamentary legislation but by administrative prison manuals is the current approach of India; henceforth, the requirement of ICCPR that restrictions be 'prescribed by law' remains unmet. The Model Prison Manual³⁶ and state prison manuals make no provision for internet access and, a fortiori, a framework calibrated toward rights for its regulation. This regulatory vacuum is a distinct problem from the substantive question of whether access should be granted; it means that the restriction cannot

of Opinion and Expression' (n 24), para 12.

³¹ *ibid*, para 15.

³² *ibid*, para 26.

³³ ICCPR (n 3), art 10(1).

³⁴ UN Human Rights Committee, 'General Comment No 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)' (10 April 1992) CCPR/C/GC/21, para 3.

³⁵ UN Special Rapporteur on the right to freedom of expression, 'Report on the promotion and protection of the right to freedom of expression on the Internet' (16 May 2011) UN Doc A/HRC/17/27, para 21.

³⁶ Ministry of Home Affairs, Model Prison Manual 2016 (Government of India 2016).

even pass the first limb of the proportionality doctrine.

The cumulative force of these international obligations is significant. India is not merely bound by the ICCPR as a treaty obligation; it has also accepted the general principles of international human rights law as a part of the *corpus juris gentium* that its courts have consistently treated as interpretive aids in constitutional adjudication. In *Vishaka v State of Rajasthan*³⁷, the Supreme Court affirmed that international conventions ratified by India may be read into the fundamental rights provision of the Constitution in the absence of domestic law on a subject. Applied to the current context, the ratification of the ICCPR by India and its endorsement of the Nelson Mandela Rules create not merely diplomatic obligations but judicially enforceable constitutional standards.

C. Article 14 and the Equality Dimension

The argument so far has focused primarily on Articles 19 and 21. The equality guarantee under Article 14 adds a further dimension. The concept of 'reasonable classification' as the test for compliance with Article 14 has been developed by the Supreme Court; only if a classification is founded on an intelligible differentia that has a rational nexus to the object sought to be achieved does it attain validity. Undertrial prisoners are a distinct class, but whether their classification for the purpose of blanket digital exclusion has a rational nexus to any legitimate penal or security objective is the relevant question.

No such rational nexus exists in the present case. The blanket prohibition applies uniformly to all undertrials, regardless of the nature of the offence, the assessed risk level of the individual, the length of custody, or the specific communication proposed. It sweeps in the first-time offender awaiting trial for a minor offence and the high-risk organised crime suspect alike, applying the same blunt instrument to wholly different situations. This categorical irrationality, consequent to treating all undertrials as presenting the same security risk warranting the same restriction, fails the Article 14 test.

Moreover, the denial of digital access operates in a markedly discriminatory fashion within the undertrial population itself. Prisoners with the economic resources to secure regular legal representation, to pay for family visits, and to otherwise navigate the analogue communications environment of Indian prisons are substantially less disadvantaged by the prohibition than those without such resources. The financially disadvantaged undertrial,

³⁷ *Vishaka v State of Rajasthan* AIR 1997 SC 3011.

who cannot afford a lawyer to visit regularly and whose family cannot travel to prison, suffers the digital prohibition far more acutely than one who is positioned better financially. The guarantee of equal protection of the laws under Article 14 cannot be satisfied by a measure that is procedurally neutral but substantively discriminatory in its impact on the most economically marginalised members of an already vulnerable population.

V. COMPARATIVE ANALYSIS: HOW OTHER JURISDICTIONS HAVE APPROACHED DIGITAL ACCESS

A. Europe: A Graduated Rights-Based Approach

The European Prison Rules represent the most comprehensive regional framework for prisoner rights. Rules 24.1 and 24.2 provide that prisoners shall be allowed to communicate as frequently as possible by letter, telephone, or other means of communication with their families, other persons, and representatives of outside organisations, subject only to such restrictions and supervision as are necessary in the interests of security and prevention of crime.³⁸ The term ‘other means of communication’ has been interpreted to include supervised digital communication by the Committee of Ministers, and several European states have implemented dedicated prison intranet portals and supervised email systems, treating digital communication not as a privilege but rather as a component of the minimum standards of human detention.

The Prison Act in Germany provides that prisoners have the right to correspond and communicate, with restrictions limited to the extent required by the purpose of the prison sentence or the need to maintain order.³⁹ The same has been reinforced by the Federal Constitutional Court through its jurisprudence on the Resozialisierungsgebot, the constitutional obligation of rehabilitation, holding that restrictions on the rights of prisoners must be justified by reference to the specific, individualised security interest they serve. This proportionality-based framework, in which access is the default and restriction is the exception requiring justification, contrasts starkly with India's approach, where denial is the default and access would require

³⁸ European Prison Rules 2006, revised 2020 (Council of Europe) Rules 24.1, 24.2.

³⁹ German Prison Act (Strafvollzugsgesetz) 1976, s 32; see discussion in Dirk van Zyl Smit and Sonja Snacken, *Principles of European Prison Law and Policy* (OUP 2009) 202.

explicit legislative authorisation.

B. New Zealand and the Common Law World

The New Zealand Corrections Act 2004 provides that prisoners retain rights not otherwise restricted by the fact of their imprisonment, and correctional policy has evolved to permit supervised digital access, particularly for family correspondence.⁴⁰ The New Zealand Department of Corrections has developed a framework for managed internet access that balances security concerns against prisoners' communication rights, providing regulated one-way email communication under the oversight of prison authorities.⁴¹ The key principle is proportionality: the extent of the restriction must correspond to the legitimate security concern, not to a generalised institutional preference for control.

The common law heritage shared by New Zealand, India, and the United Kingdom provides a useful comparator. England and Wales permit prisoners to make telephone calls and, in some institutions, to access legal research portals under supervision. The principle that communication rights may be restricted but not abolished is well-established across common law jurisdictions—a principle that India's courts have themselves affirmed in the domestic constitutional context.

C. The United States: Packingham and the Digital Public Square

The United States Supreme Court struck down a statute that prohibited registered sex offenders from accessing social media platforms in *Packingham v North Carolina*. Writing for the majority, Justice Kennedy described the internet as 'the modern public square,' observing that the most important place for the exchange of views in the modern era is cyberspace.⁴² The statute was held to be a dramatic restriction on free speech, substantially broader than necessary to serve the legitimate interest of the government.

While *Packingham* concerned post-release restrictions rather than prison conditions directly, the Court's articulation of the internet as a fundamental medium of democratic participation

⁴⁰ Corrections Act 2004 (New Zealand), s 69; see also Mandela Rules (n 4), Rule 58.

⁴¹ Department of Corrections (New Zealand), 'Email and Mail' (corrections.govt.nz) <www.corrections.govt.nz/our_work/in_prison/staying_connected_with_people_in_prison/email_and_mail> accessed 26 February 2026.

⁴² *Packingham v North Carolina*, 582 US 98 (2017).

has been influential in academic and judicial discourse on prisoner digital rights. The constitutional framework in the United States permits broader restrictions on the rights of prisoners than the Indian or European frameworks: a prisoner's constitutional claims are assessed under the *Turner v Safley* 'reasonable relationship' standard rather than strict scrutiny.⁴³ Yet, even within that more permissive framework, the growing judicial recognition of internet access as a fundamental medium of civic life has begun to reshape the analysis.

The comparative picture is thus consistent. Across jurisdictions, the trajectory is unmistakably towards recognising some form of supervised digital access for prisoners, calibrated to security needs. India's blanket prohibition is increasingly anomalous.

VI. THE SPECIAL CASE OF UNDERTRIAL PRISONERS: INNOCENCE, INEQUALITY, AND INJUSTICE.

A. The Presumption of Innocence as a Structuring Principle

Precisely because they are presumed innocent, the argument for digital access is particularly powerful in the case of undertrials. Article 14(2) of the ICCPR codifies the presumption of innocence as a fundamental norm of criminal justice.⁴⁴ The deprivation of liberty pending trial is a regrettable necessity under this principle— a precautionary measure to ensure the orderly administration of justice, not a punishment. Therefore, any additional restriction on undertrial prisoners requires compelling justification, one that cannot be supplied by mere administrative convenience or institutional inertia.

As Justice Bhagwati observed in *Francis Coralie Mullin*, a prisoner's rights may be abridged only to the extent that they are incapable of enjoyment by reason of incarceration, not further.⁴⁵ Internet access, where managed through supervised terminals or a secure prison intranet, is plainly 'capable of enjoyment' within a custodial setting. The fact that it is not currently offered does not mean it cannot be. Prisons already manage telephone calls, in-person visits, and written correspondence, all activities that carry comparable or greater security risks. The failure to extend supervised digital access is one of institutional will and legislative imagination, not of physical impossibility.

The scale of the undertrial population amplifies the urgency of this

⁴³ *Turner v Safley*, 482 US 78 (1987); *Overton v Bazzetta*, 539 US 126 (2003).

⁴⁴ ICCPR (n 3), art 14(2).

⁴⁵ *Francis Coralie Mullin* (n 14).

point. With over 3,84,000 persons in pretrial detention⁴⁶, and a significant proportion remaining in custody for over a year without conviction, India is presiding over a systematic deprivation of constitutional rights on a massive scale. The demographic profile of this population is predominantly young, economically marginalised, and from communities with limited access to legal resources⁴⁷, making the denial of digital access not merely a rights violation but a compounding injustice.

B. Three Compounding Harms: Legal Aid, Family, and Dignity

The denial of internet access inflicts three distinct and compounding harms on undertrial prisoners. First, it impedes the preparation of their legal defence. Access to legal information is central to the right to a fair trial. A prisoner who could use a supervised terminal to research relevant judgments, access legal aid portals, or communicate securely with a lawyer would be ultimately better placed than one confined to handwritten letters and infrequent in-person meetings. Given that many undertrials remain in custody for over a year, this handicap is substantial and systematic. The National Legal Services Authority has acknowledged the severe deficit of access to justice among undertrial prisoners; digital access to legal databases would be a low-cost, high-impact remedy.

Second, a disproportionate burden falls on families who are geographically distant or economically disadvantaged via the denial of digital communication. Particularly for families in rural areas visiting urban prisons, physical visits are costly, logistically demanding, and emotionally taxing. Supervised video calls or email, by contrast, are relatively inexpensive means of maintaining the family ties that Rule 58 of the Nelson Mandela Rules expressly requires to be facilitated.⁴⁸ The denial of digital communication imposes what is, in practical terms, an additional penalty, not on the prisoner alone, but on their family, for which there is no legal warrant.

Third, and most fundamentally, the denial of internet access in the digital age is a denial of participation in the information environment that defines contemporary social life. NCRB data shows that nearly half of undertrial prisoners are between eighteen and thirty years old⁴⁹, a cohort for whom digital

⁴⁶ NCRB (n 1); see also National Legal Services Authority, Annual Report 2022–23.

⁴⁷ NCRB (n 1).

⁴⁸ Nelson Mandela Rules (n 4), Rule 58(1).

⁴⁹ NCRB (n 1).

communication is not supplementary but central to social existence. To confine them entirely to the analogue world for potentially years, without conviction and without proportionate justification, is to impose a form of additional punishment that the Constitution and international law do not permit. It is a form of civic death, a severance from the informational commons that no democratic state with a functioning constitution should be able to sustain without compelling and individualised justification.

VII. TOWARDS A RIGHTS-BASED FRAMEWORK FOR SUPERVISED DIGITAL ACCESS

A. The Shortcomings of the Current Regulatory Landscape

The existing regulatory landscape is wholly inadequate. The Prisons Act 1894⁵⁰, a colonial statute drafted long before the advent of digital technology, naturally makes no provision for digital rights. The Model Prison Manual 2016 is silent on internet access as a right, addressing computers only in the context of administrative record-keeping. The Model Prisons and Correctional Services Act 2023, while a welcome and significant reform, provides for 'authorised communication' and e-prison infrastructure but does not establish a rights-based entitlement to supervised internet access for undertrial prisoners.⁵¹

This legislative gap is not neutral. As General Comment No 34 makes clear, a restriction on the right to receive information must be 'provided for by law'—a requirement that administrative silence cannot satisfy.⁵² Thus, the absence of any statutory framework for digital access simultaneously fails to provide a lawful basis for the restriction and fails to create a rights-based mechanism for access, violating the proportionality test and the substantive norm, respectively. The state is claiming both the benefit of the restriction and the immunity of non-legislation; it denies access without the legal authority to do so, and it is insulated from legal challenge because there exists no such statute to be struck down.

This structural problem has a structural solution: legislation. The Model Prisons and Correctional Services Act 2023 provides the appropriate vehicle. What is needed is not a new statute but an

⁵⁰ Prisons Act 1894.

⁵¹ Model Prisons and Correctional Services Act 2023.

⁵² General Comment No 34 (n 24), para 26.

amendment that translates the constitutional and international norms surveyed in this article into operational legal entitlements, accompanied by a regulatory framework for their implementation.

It is worth addressing the objection that practical and infrastructural constraints preclude digital access in Indian prisons. This objection has force as a description of current conditions, but it cannot serve as a legal justification for an ongoing rights violation. The jurisprudence of the Supreme Court on prison reform, from *Hussainara Khatoon* through the ongoing *suo motu* proceedings on prison conditions, establishes that resource constraints do not excuse constitutional non-compliance; they merely determine the timeline for compliance. States are obliged to progress towards constitutional compliance, not to remain stationary in its absence. In any event, the infrastructure argument is weaker than it may appear: smartphones and internet-capable devices are already present in many Indian prisons through unauthorised means, suggesting that the technical barriers are more easily surmounted than institutional resistance implies.

There is also a security objection to be addressed. Prison authorities may legitimately contend that internet access creates vectors for the commission of further offences, the intimidation of witnesses, or the coordination of criminal networks. This objection is not without merit; it is precisely why this article advocates for supervised, graduated access rather than unrestricted connectivity. But supervision is not synonymous with prohibition. The European model demonstrates that robust monitoring and technical restrictions can address genuine security concerns while preserving the core of the communication right. A blanket prohibition is not a proportionate response to a manageable security concern; it is an administrative convenience that has been elevated, without legal authority, to the status of a rights deprivation.

B. Elements of a Rights-Based Framework

A constitutionally and internationally compliant framework for supervised digital access for undertrial prisoners should incorporate the following elements.

First, the framework should enshrine a statutory entitlement to supervised internet access for undertrial prisoners, with restrictions permissible only on individualised, documented grounds of security necessity. This would mirror the approach of the European Prison Rules and satisfy the 'prescribed by law'

requirement of ICCPR Article 19(3).⁵³ A blanket prohibition would no longer be legally available; any restriction would require specific justification referable to the individual prisoner and the specific security concern.

Second, access should be graduated. At a minimum, all undertrial prisoners should have access to supervised legal research portals, official legal aid databases, and regulated email communication with family members and legal representatives. This minimum package would directly address the three compounding harms identified above. At a higher tier, prisoners with a demonstrated compliance record could be permitted broader supervised access, including access to educational content and news. Prisoners assessed as presenting specific, documented security risks could be restricted to the minimum tier.

Third, any monitoring of digital communications should be subject to a proportionality standard and should not extend to legally privileged communications between a prisoner and their advocate—a protection already recognised under Rule 61 of the Nelson Mandela Rules⁵⁴ and implied by Article 22 of the Constitution. The European Court of Human Rights has consistently held that monitoring of attorney-client communications violates Article 8 of the Convention; Indian law should recognise the same principle.

Fourth, the framework should be uniform across states. At present, prison administration is a State List subject, resulting in a patchwork of varying standards. A central legislative framework, embedded within the Model Prisons and Correctional Services Act 2023,⁵⁵ could establish national minimum standards while permitting states to exceed them. This approach would replicate the model used successfully in the domain of legal aid, where central legislation establishes a floor that states must meet and are free to exceed.

Finally, the framework should include an oversight mechanism. Independent prison monitoring bodies of the kind envisaged under the Optional Protocol to the Convention Against Torture (OPCAT)⁵⁶ should be empowered to inspect and report on digital access standards in custodial settings. The Supreme Court's ongoing suo motu proceedings on inhuman prison conditions⁵⁷

⁵³ Anuradha Bhasin (n 20).

⁵⁴ Nelson Mandela Rules (n 4), Rule 61(1).

⁵⁵ Model Prisons and Correctional Services Act 2023 (n 51), s 14.

⁵⁶ Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 18 December 2002, entered into force 22 June 2006) 2375 UNTS 237 (OPCAT), art 19.

⁵⁷ Re Inhuman Conditions in 1382 Prisons, Suo Motu Writ Petition (C) No 406

provide an existing institutional forum within which a monitoring mandate could be developed.

VIII. CONCLUSION

The digital exclusion of undertrials is a serious administrative issue. It is the systematic denial of constitutionally guaranteed rights to a legally innocent population, incompatible with both the Nelson Mandela Rules' standards and India's obligations under the ICCPR. Additionally, as jurisdictions around the world shift toward graduated, supervised digital access for those in custody, its static nature proliferates its contradictions from a comparative standpoint. The constitutional tools to remedy this situation are already available. Francis Coralie Mullin established that the right to live with human dignity encompasses the right to communicate and to access information in diverse forms.⁵⁸ Anuradha Bhasin confirmed that internet access is a medium through which Article 19 rights are exercised, subject only to proportionate restriction.⁵⁹ Applied to the undertrial context, these principles yield a compelling conclusion: a blanket denial of internet access is unconstitutional, incompatible with India's international obligations, and contrary to the emerging global consensus on prisoner digital rights.

What is missing is not legal authority, but political will and legislative imagination. The Model Prisons and Correctional Services Act 2023 represents a genuine step forward in the prison reform trajectory of India. Amending it to include a rights-based entitlement to supervised digital access for undertrial prisoners would be an equally significant step—one that honours the Constitution, fulfils India's international obligations, and affirms that the presumption of innocence is not merely a legal formula but a lived reality for those who endure pretrial detention.

The undertrial prisoners who cannot access a legal database, cannot send an email to their family, and cannot participate in the digital commons of contemporary civic life are not merely inconvenienced. They are experiencing a deprivation of rights that the Indian Constitution prohibits and that international human rights law condemns. The remedy is available. The obligation is clear. The time for action is now. India stands at an inflexion point in its prison reform trajectory. The Model Prisons and Correctional Services Act 2023 represents the most significant legislative modernisation of prison administration since independence. The political and administrative momentum that produced that

of 2013 (Supreme Court of India, ongoing).

⁵⁸ Francis Coralie Mullin (n 14).

⁵⁹ Anuradha Bhasin (n 20), para 49.

statute provides an opportunity that may not recur. Advocates, scholars, practitioners, and public interest litigants should press that opportunity, through legislative lobbying, public interest litigation, and sustained scholarly engagement, to ensure that the digital rights of undertrial prisoners are recognised, codified, and enforced. A country that counts itself among the leading democracies of the world cannot allow 3,84,000 presumptively innocent persons to languish in digital exclusion. That is not merely a legal failure. It is a democratic one.

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