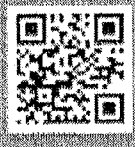




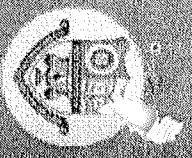
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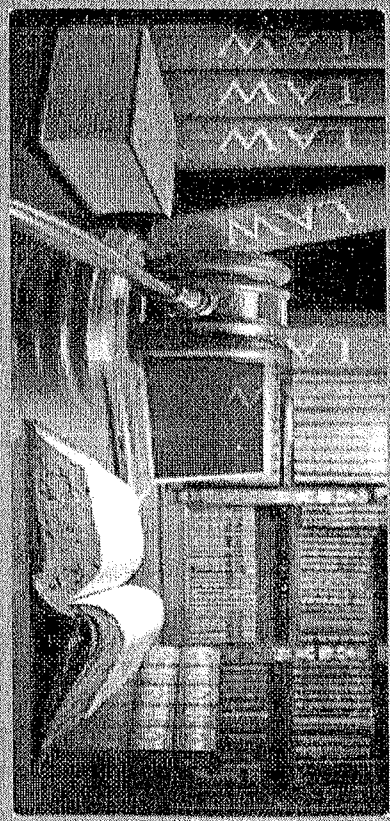


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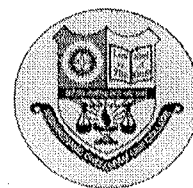
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10th February 2024

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**INTERNATIONAL CONFERENCE**  
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**CONTEMPORARY CONTOURS OF**  
**CONSTITUTIONALISM IN LIGHT OF CHANGING**  
**DIMENSIONS OF GOVERNANCE, JUDICIAL**  
**REVIEW & JUDICIAL ACTIVISM**

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## RETHINKING ON THE TRIALS AND THE TRIBULATIONS OF THE UNDERTRIAL INMATES: A SYNERGIC STATE FAILURE IN INDIA

Sruti Bansal<sup>1</sup>

Research Scholar, School of Law, Gujarat University

Dr. Prachi Motyani<sup>2</sup>

Assistant Professor, School of Law, Gujarat University

### INTRODUCTION:

Prison has always been a place for the reformation of the convict. It has never meant to be a place to keep the Undertrials for such a long period of time. India's problems with prisoners awaiting trial are the result of a collective failure of the state. These are stigmatized individuals; their pleas are rarely heard, their voices are frequently silenced, and their entire lives are spent in dark, overcrowded prisons not because of the crime they have committed but rather to the sluggishness and inactivity of the justice system.<sup>3</sup> A well-known English proverb states, "Justice delayed is justice denied. For some like Machang Lalung<sup>4</sup>, who burned through 54 years in jail without preliminary, it's an impactful sign of our disappointment as a general public.

As per the report of Amnesty International titled "Justice Undertrial: A study of pre-trial Detention in India", which emphasized on the data from the National Crime Records Bureau and data from the organisation, over the past ten years, the proportion of prisoners awaiting trial as a percentage of all inmates in Indian Jails has nearly exceeded 65%.<sup>5</sup> This alarming statistics places us only slightly better than Pakistan but considerably worse than nations like Uzbekistan. Even more troubling and slow and no chronological investigation is a breakdown for the people that make up this astounding number.<sup>6</sup> Another statistics says that in India 42 percent Undertrials have not completed their secondary education.<sup>7</sup> This ratio has a tendency to dehumanise the sufferings that each and every Undertrial goes through from past many years.

Undertrials from the lower echelons of society and members of minority communities clog our jails. We as a system have failed to provide these prisoners with a speedy and fair trial, which is a constitutional guarantee. This systemic failure affects people from underrepresented groups or oppressed classes. Minorities, SCs, and OBCs make up almost 92% of the undertrials. A lot of these people are punished before they even do the wrong thing. Caste is another significant factor. In the legal executive, practically 90% of the appointed authorities have a place with the upper position. Nearly 75% of lawyers belong to the upper caste, even among them.

<sup>1</sup> Research Scholar, School of Law, Gujarat University

<sup>2</sup> Assistant Professor, School of Law, Gujarat University

<sup>3</sup> Shakib Lone, The Trials and Tribulations of Undertrial Prisoners in India, The Probe, Jul. 2022, <https://theprobe.in/investigations/the-trials-and-tribulations-of-undertrial-prisoners-in-india/>.

<sup>4</sup> Samudra Gupta Kashyap, He lost 54 years of life in jail- and dies two years after his release, The Indian Express, December 26, 2007, 00:49 AM

<sup>5</sup> National Crime Records Bureau (Ministry of Home Affairs) Government of India, Prison Statistics India 2021 (26th edition). Available at ncrb.gov.in, [https://ncrb.gov.in/sites/default/files/PSI2021/Executive\\_ncrb\\_Summary-2021.pdf](https://ncrb.gov.in/sites/default/files/PSI2021/Executive_ncrb_Summary-2021.pdf) (last visited Apr 31, 2023)

<sup>6</sup> Surpreet Kaur, The Trials and Tribulations of Undertrials, (2013), <https://www.thehindu.com/opinion/open-page/the-trials-and-tribulations-of-undertrials/article4795498.ece>.

<sup>7</sup> Ajoy Kumar Kumar, Trials and Tribulations of Undertrials in India, The Pioneer, Nov. 2017, <https://www.dailypioneer.com/2017/columnists/trials-and-tribulations-of-undertrials-in-india.html>.





Our Prime Minister Narendra Modi recently advocated for reforms regarding prisoners who have not yet been tried.<sup>8</sup> He was speaking at a joint conference of chief justices of high courts and chief ministers that Undertrials must be granted bail and he requested that district-level committees led by district judges be established to do so. In addition, he advocated for the use of the local language in court to make justice more understandable and accessible to prisoners. However, numerous of these reforms have not yet been put into action.

Article 21 of the constitution expresses that no individual will be denied of his life or freedom besides by the fair treatment of regulation yet the NCRB information shows a consistent expansion in the quantity of detainees passing on in jails the nation over anticipating their preliminary. There have been instances in which a person was sentenced to just one year in prison but ended up serving four. In *Hussainara Khatun & Ors. v. Home Secretary*<sup>9</sup> it was noticed that the documentation kept before the Authorities and amongst the list of Undertrials and maximum were those who were languishing in Jails due to delay in their trial and for which they could have been sentenced; if convicted. This depicts a shocking situation and demonstrates a complete disregard for human values. It demonstrates the indifference of our legal and judicial systems, which are able to remain unmoved by such immense suffering and misery brought on by an entirely unjustified deprivation of personal liberty. In the case of *Aradesh Kumar v. State of Bihar*<sup>10</sup> decision, it was determined that approving confinement is a grave capability. It should be done with extreme care and mindfulness because it affects residents' freedom and opportunities. But after all these efforts we are still lacking the speedy justice.

#### Collective State Failure:

All powers related to imprisonment of Undertrial lies in the State. It is the State to take care of the Prison Justice system and the issues related to the overcrowded Prisons. It's been noticed that many Undertrials are not released even when they have already furnished their half of the maximum punishments because they are least aware of their Fundamental Rights, Preamble of the Indian Constitution and the duties as an abiding citizen. After the amendment in 2005 in the Criminal Procedure Code, section 436<sup>11</sup> and 436 A was added which clearly states that the Undertrials are having the right to apply for bail if the person has served half of the maximum punishment and if a person is indigent in nature then the person may be released without any surety or bond. Even after these provisions still it's seen that the gaps are there in its enforcement. In the case of *UT of J&K v. Jai Parkash*<sup>12</sup>, it was demonstrated the tragic state of the Undertrial who was denied bail while serving 22 years of jail without trial because a fine of Rs. 30,000 was not paid. On November 21, was finally released on bail as part of the remissions granted under "Azadi Ka Amrit Mahotsav". This happened even after the provision of Section 436A of Criminal Procedure Code, 1973 which clearly states that the indigent person should be released on bail without any surety bond. It depicts the helpless state of the Undertrial and sorry state of the affairs of the State. There are many other incidents also which take place on a regular basis when it comes to this issue. According to the Prison Statistics India Report 2021, between 2016 and 2021, there were 9.5% fewer prisoners who were convicted of a crime, whereas there were 45.8% more prisoners who were awaiting trial.

<sup>8</sup> Narendra Modi bats for bail for undertrial prisoners, The telegraph online, May 2022.

<sup>9</sup> 1979 AIR 1369

<sup>10</sup> (2014) 8 SCC 273

<sup>11</sup> If the alleged offense qualifies for bail, the accused person has the legal right to get bail. This right may be exercised in front of the police station or, if the case is transferred to the Magistrates Court, in front of that court. Bail is a right in cases of bailable offenses, not a favor.

<sup>12</sup> 1991 SCC (2) 32



**Inhumane Conditions in Prison:**

The Indian Constitution's Preamble, often known as the "Blueprint," expressly declares that "Justice" is to be administered equally to all people, regardless of their nature, and that all accused persons shall receive a speedy trial. The right to life with dignity is guaranteed under Article 21<sup>13</sup> of the Indian Constitution, which inherently includes the right of prisoners to better living conditions. However, it is clear that the circumstances of their survival are seriously dubious. Now, the question is why we don't promote Health Sensitization for Prisoners when we are already leading forward towards Gender Sensitization. Actually, the mindset of some authorities that jails need to prevent a prisoner from relapsing into crime is a major factor in why conditions in prisons are so horrible.

There are various issues in the proper functioning of Prison majorly overcrowding of Prisoners, Corruption by the Prison authorities in providing the facilities to the Prisoners, No sanitation which leads to their poor health status. Prisoners are less treated as human beings so it is not even expected to treat them as Citizens. And the rights that are discussed are Human rights which should be provided to each and every human residing in Prison. The main root of this issue is the overcrowding of the Prisons which ultimately impact on all the other causes. According to the jail manual, there are more prisoners in each cell than should be housed which anyhow creates the division of availing the facilities provided for that particular cell and the facilities of washrooms, medical room, food are provided as per the capacity allotted in Jail Manual and Regulations. Due to these conditions the Prisoners suffer a lot in availing their basic necessities.

The Undertrials are kept with the Convicts and living with the convicted makes it unsafe for the undertrials since they are kept with them. Lifetime Convicts are heinous in nature as they have done heinous offences too and their mental state is different than the accused ones. So, there must be formation of different cells for the accused and convicts. For lowering the range of Undertrials it is mandatory to speed up the process and this process can only be performed when all the three pillars i.e. Police, Court and lawyers act actively participating and collaborating with each other. There were many other steps taken by the Government to fasten the trial process and then after 2000, Fast track Courts were formed but the issue was still not resolved properly. There are still some lacunas in it which needs to be addressed. Information and Communication Technology was a very good initiative and virtual hearings were started during COVID which ultimately saved lot of time of the people but it doesn't come up with good results because the authorities handling the virtual hearings were not trained enough with ICT and they were able to conduct it smoothly.

**Data Analysis:**

Every year the actual capacity of the Prisons is increasing but ironically, the number of Prisoners is more than the occupancy. As per the Prison Statistics Report of India for the year 2019, 2020 and 2021 released by NCRB,"Ministry of Home Affairs"and the data depicts a great concern regarding the conditions of Prison system.

<sup>13</sup> Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by laws

Year/Types and Occupancy	No. Of Prisons	Actual Capacity	Total no. Of Prisoners at the end of the year	Total no. Of Undertrials
2019	1,351	4,00,934	4,81,387	3,32,916
2020	1,306	4,14,033	4,88,511	3,71,848
2021	1,319	4,25,609	5,54,034	4,27,165

Table 1: Total number of Prisoners and Undertrials as per the capacity<sup>14</sup>

This analysis shows that the number of Prisoners is more than the occupancy rate.

- In 2019 the actual capacity of the Prison is 4, 00,934 whereas the number of Prisoners at the end of the year is 4, 81, 387 and ultimately 69.15% of the Prison Population are Undertrials.
- In 2020 the actual capacity of the Prison is 4, 14,033 whereas the number of Prisoners at the end of the year is 4, 88,511 and ultimately 76.11% of the Prison Population are Undertrials.
- In 2021 the actual capacity of the Prison is 4, 25,609 whereas the number of Prisoners at the end of the year is 5, 54,034 and ultimately 77.10% of the prison population are Undertrials.

Table 2: Total number of Undertrials on the basis of the types of Offences<sup>15</sup>

Year/Offences	Total No. Of Undertrials	Offences against Human Body	Offences against Property	Offences against Rape	Offences against Dowry death	Offences against Liquor & Narcotic Drugs	Offences against Arms & Explosives	Offences against SC/ST Communities
2019	3,30,487	1,64,945	74,713	34,368	13,287	41,985	11,625	2,627
2020	3,71,848	1,86,114	77,531	40,545	14,465	53,369	13,463	4,394
2021	4,27,165	2,08,595	94,160	44,134	14,402	66,881	14,677	4,846

This analysis shows that the number of Undertrials charged under various Offences.

- In 2019 the actual number of Undertrials are 3,30,487 in which the Undertrials charged under Offences against Human Body are 49.9%, Undertrials charged under Offences against Property are 22.6%, Offences against Rape are 10.3%, Offences against Dowry Death are 4.0% , Offences against Liquor & Narcotic Drugs are 12.7%, Offences against Arms and Explosives are 3.5% and Offences against SC/ST Communities are 0.7% of the maximum number of Undertrials in India.
- In 2020 the actual number of Undertrials are 3,71,848 in which the Undertrials charged under Offences against Human Body are 50.5%, Undertrials charged under Offences against Property are 20.8%, Offences against Rape are 10.9%, Offences against Dowry Death are 3.8%, Offences against Liquor &

<sup>14</sup> National Crime Records Bureau (Ministry of Home Affairs) Government of India, Prison Statistics India 2021 (26th edition). Available at ncrb.gov.in, [https://ncrb.gov.in/sites/default/files/PSI2021/Executive\\_ncrb\\_Summary-2021.pdf](https://ncrb.gov.in/sites/default/files/PSI2021/Executive_ncrb_Summary-2021.pdf) (last visited Apr 31, 2023)

<sup>15</sup> National Crime Records Bureau (Ministry of Home Affairs) Government of India, Prison Statistics India 2019 (24th edition). Available at ncrb.gov.in, [https://ncrb.gov.in/sites/default/files/PSI2019/Executive\\_ncrb\\_Summary-2019.pdf](https://ncrb.gov.in/sites/default/files/PSI2019/Executive_ncrb_Summary-2019.pdf) (last visited Apr 31, 2023)



Narcotic Drugs are 14.3%, Offences against Arms and Explosives are 3.6% and Offences against SC/ST Communities are 1.1% of the maximum number of Undertrials in India.

- In 2021 the actual number of Undertrials are 4,27,165 in which the Undertrials charged under Offences against Human Body are 48.8%, Undertrials charged under Offences against Property are 22.0%, Offences against Rape are 10.3%, Offences against Dowry Death are 3.3% , Offences against Liquor & Narcotic Drugs are 15.6%, Offences against Arms and Explosives are 3.4% and Offences against SC/ST Communities are 1.1% of the maximum number of Undertrials in India.

Year/Time period of Imprisonment	5 years and more	3-5 years	2-3 years	1-2 years	Upto 1 year
2019	5,011	14,049	22,451	44,135	2,44,841
2020	7,128	16,603	29,194	54,287	2,64,636
2021	11,490	24,033	32,492	56,233	3,02,917

Table 3: Total number of Undertrials on the basis of Sentences & Incarceration<sup>16</sup>

This analysis shows the no. of Undertrials in Prison on the basis of Sentences and Incarceration.

- In 2019, the number of Undertrials charged with the punishment of 5 years and more are 1.5%, charged with the punishment of more than 3 years but less than 5 years are 4.2%, charged with the punishment of more than 2 years and less than 3 years are 6.7%, charged with the punishment of more than 1 year but less than 2 years is 13.3%, charged with the punishment of upto 1 year is 74.0%.
- In 2020, the number of Undertrials charged with the punishment of 5 years and more are 1.9%, charged with the punishment of more than 3 years but less than 5 years are 4.4%, charged with the punishment of more than 2 years and less than 3 years are 7.8%, charged with the punishment of more than 1 year but less than 2 years is 14.5%, charged with the punishment of upto 1 year is 71.1%.
- In 2021, the number of Undertrials charged with the punishment of 5 years and more are 2.6%, charged with the punishment of more than 3 years but less than 5 years are 5.6%, charged with the punishment of more than 2 years and less than 3 years are 7.6%, charged with the punishment of more than 1 year but less than 2 years is 13.1%, charged with the punishment of upto 1 year is 71.0%.

As per the analysis of the following years it is noticed that in 2019 Undertrials occupied 83% population whereas the maximum population in Undertrials are having the punishment of upto 1 year which constitute 70% of the maximum population. In 2020, Undertrials occupied 76.1% population whereas the maximum population in Undertrials are having the punishment of upto 1 year which constitute 71.1% of the maximum population. Also, in 2021 Undertrials occupied 77.1% population whereas the maximum population in Undertrials are having the punishment of upto 1 year which constitute 71.2% of the maximum population. This clearly depicts that Undertrials are more in population than the total actual capacity of the Prison and maximum are kept in Prisons without trial. Even if we have a look at the statistics and provide justice as per the years of the Punishment allotted to them then also it can be presumed that the population will be reduced.

<sup>16</sup> National Crime Records Bureau (Ministry of Home Affairs) Government of India, Prison Statistics India 2020 (25th edition). Available at ncrb.gov.in, [https://ncrb.gov.in/sites/default/files/PSI2020/Executive\\_ncrb\\_Summary-2020.pdf](https://ncrb.gov.in/sites/default/files/PSI2020/Executive_ncrb_Summary-2020.pdf) (last visited Apr 31, 2023)

### Legal Developments in Speedy Justice:

Speedy justice is a fundamental human right that ought to be respected and the fight of Undertrials started a long way back. The venerable English newspaper The Indian Express wrote about the plight of undertrial detainees in 1979, marking the beginning of significant judicial intervention on the subject. The newspaper published a number of articles detailing the appalling conditions that thousands of prisoners endure while serving lengthy sentences without ever being tried. The story prompted a lawyer activist to file a writ petition with the Supreme Court. After accepting the case, the Supreme Court of India only reached a significant conclusion in 1979 with the Hussainara Khatoon judgment which clearly stated a fast trial constituted a fundamental constitutional right for criminal defendants.

The High Court halted the proceedings in *State of Bihar v. Uma Shankar Ketriwal*<sup>17</sup> on the grounds that the prosecution, which started 16 years ago and is still ongoing, is abusing the court's process and should not be permitted to continue. The Supreme Court, which declined to overturn the High Court's ruling in the appeal, stated that there must be a time limit placed on the length of time that criminal litigation can continue during the trial stage because it causes significant harassment to the accused.

The right to a fast trial was deemed to be a vital component of the fundamental rights to life and liberty in the case of *Katar Singh v. State of Punjab*<sup>18</sup>. The bench decided in *Abdul Rahman Antulay v. R.S. Nayak* that the type of case should dictate specific provisions and rules pertaining to the accelerated trial and dismissal of cases.

Thus, it can be said that the accused has a right to a swift trial, which includes all phases, including the investigation, inquiry, trial, appeal, revision, and retrial.

The Executive has recently made some constructive decisions involving convicts awaiting trial. For instance, the Ministry of Law and Justice developed "The Mission Mode Programme for Delivery of Justice & Legal Reforms-Undertrial Programme" "in 2010 in response to the issue of the high pendency of undertrial cases. By July 31, 2010, the plan hoped to resolve two-thirds of all pending cases and relieve jail overcrowding. In order to secure the release of undertrial inmates who were legally eligible to be released, the Mission Mode Programme worked with state governments to identify these individuals and connect them with the Legal Service Authority.

The most definite answer to the situation of undertrials came in 2014. On September 5, 2014, the Supreme Court Bench issued a number of structures to several entities in charge of the nation's criminal justice system after observing little discernible progress on its earlier directions. In a major departure from its previous orders, the Court directed court authorities in every state to expedite the ongoing trial process and release offenders who had served "half of the maximum sentence prescribed for the offences under Criminal Code." Noting the gross carelessness of its previous judgement on undertrials, the SC declared the problem of undertrials remaining in jails to be "serious" and directed the Center to convene a meeting of home secretaries of all the states to find a solution. In *Common Cause Case*<sup>19</sup>, the Supreme Court ruled that even those accused of small infractions must endure lengthy delays in order to have their cases heard. If they are helpless and impoverished, there is no one to bail them out, so they rot in jail. By itself, the prolonged pending of criminal cases acts as an oppressive engine. In order to safeguard and enforce the citizens' right to life and liberty, guaranteed by Article 21, the Court adopted a set of basic guidelines for releasing those who were still facing charges on bail or personal bonds where their cases had been pending for at least a year.

<sup>17</sup> (1981) 1 SCC 85.

<sup>18</sup> (1981) 1 SCC 85.

<sup>19</sup> (2018) 5 SCC 1



During COVID 19 Supreme Court issued guidelines to each and every state to release maximum to maximum undertrial prisoners from the Prison on bail in which Punjab, Delhi and Haryana played a very active role and irrespective to the guidelines released the highest number of Prisoners but the NCRB reports depicts a concern by showing the increment in the number of Undertrials which actually create a gap between the facility and reality.

**Conclusion:**

In the event of a miscarriage of justice, numerous developed nations have enacted stringent laws requiring the State to compensate victim. According to paragraph 6 of Article 14<sup>20</sup> of the International Covenant on Civil and Political Rights (ICCPR)<sup>21</sup> states that unless it is established that the defendant's failure to disclose the unidentified fact in a timely manner was entirely or partially attributable to him, the person who was punished as a result of the conviction is entitled to compensation in accordance with the law. If a person was found guilty of a crime by a final decision and that conviction has been overturned or he has been given a pardon on the grounds that a new or newly discovered fact shows that there was a miscarriage of justice. However, India has not yet adhered to these legal provisions. In a recent judgment<sup>22</sup> of the Hon'ble Supreme Court it was held that every Undertrial is having an unrestrained right to participate and apply for bail in case of bailable Offences from beginning from investigation to Appeal. There is a need of various steps to be taken from the end of Justice providing Bodies and also, there is a need of process of reengineering to be done by involving the executive, legislative, and judicial branches in the solution-finding process. It is necessary to look upon the working of the proper functioning of Lok Adalats. Generally, Compromise occurs frequently in family conflicts, hence it is vital to speed up the process since compromise is mainly the end of several family dispute cases. Psychology plays a very important role in human's life in the sense that the convicts are already aware of their judgment and they have the understanding to live in Prison for the designated amount of time allotted to them but the accused are still holding out hopes because their verdict is not delivered and still presume they will be released from the prison being "Not Guilty". Now, this hope gets affected when they live with convicts under the same roof. There is a stigma in the society that the Undertrials when released on bail or on "Not proven Guilty" are treated alike convicted ones which impact a lot on the psychological mindset of the individual and makes difficult to survive in the society on release. There must be a concept of Open Prisons for the Undertrials so that they can live their life with the basic human rights and help their families financially. Every concept is having some pros and cons but simultaneously we need to focus on the progress and well being of the human. Open Prison gives an opportunity to the Prisoners to live and earn in a free atmosphere and not caged in bars which creates a bar of security to survive in society after release. Additionally, it is also to be noted that the accused are kept in the same environment along with the convicts which harms their mental state and make them acquire the attributes of Convicts as the surrounding area. Collectively, the State needs to alter their surroundings, and they should keep away from convicts because they tend to be hard-core criminals, making the environment harmful for them. We frequently discuss the benefit of the doubt, the burden of proof, and the presumption of innocence, but this cannot be limited to the written word and these principles must be carried out in letter and spirit.

<sup>20</sup> All people shall be treated equally before courts and tribunals, according to Article 14 of the ICCPR. Everyone has the right to a fair and public hearing before a qualified, unbiased, and independent tribunal that has been created by law in order to determine the outcome of any criminal charges against him as well as his rights and obligations in a lawsuit.

<sup>21</sup> Article 6(1) of the ICCPR states that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

<sup>22</sup> S.L.P.(Crl.) No. 2640 of 2022



# COMPARATIVE PUBLIC LAW

FOREWORD BY  
Justice Dipak Misra  
Former Chief Justice of India

Editor : Dr. Bhavana Sharma  
Co-Editor : Mr. Nishit Ranjan Chaki

