

VICTIMS OF PROLONG INCARCERATION: UNDERTRIAL PRISONERS IN INDIA

Abstract

Two-thirds of prisoners in Indian police custody are undertrials. As per Indian Criminal Justice System, they are presumed to be innocent. Most undertrial prisoners remain incarcerated because of their inability to secure bail owing to poverty, which throws light on the economic discrimination prevalent in the system. This paper attempts to highlight the failure on the part of the Indian Judiciary in implementing the Section 436A of the Code of Criminal Procedure, 1973, and also questions in respect of Article 14 of the Constitution of India, which ensures the right to equality to everyone, by suggesting inclusion of the term "non-discrimination based on economic status" enshrined under Article 15. Further, the paper focuses on the legal presumption of "innocent until proven guilty", which is often found to be denied to the undertrials. This paper attempts to show the prejudiced bail system prevalent in the nation, which always favours the rich and the unfair idea of justice with inadequate representation of the poor. The paper also focuses on police torture, legal aid and substandard of life led by the undertrials, including the failure to distinguish between the treatment made to convicted criminals and the undertrials. Finally, through various precedents, the author attempts to emphasise the right to a speedy trial and the reasons for its denial, which has led to an increase in the number of undertrials. The author lastly attempts to give a few suggestions for reforming the present state of undertrial prisoners.

Keywords: Undertrials, Police Custody, Prisoners, Indian Criminal Justice System, Indian Judiciary

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I. INTRODUCTION

In simple terms, any person who is not yet convicted for the charges levied upon them or whose trial is being conducted in any competent court are undertrial prisoners. They are presumed to be innocent in the eyes of the law. They must be held in judicial custody, but unfortunately, they are held in jails. The main reason for keeping an undertrial prisoner in jail is to ensure that they do not influence the witness and there is a fair hearing. However, the main issue here is the delay in the case trials which increases the number of undertrial prisoners in the nation. Such prisoners are often made to stay in jail for more than the time period for which they would have stayed if they were actually convicted of the crime. The undertrial prisoners who are poor and unaware of their rights, and the corrupt administrative system of the nation does not allow the poor population to become aware of their constitutional rights. There exists disparity in the treatment of the poor undertrials as they are not able to afford the bail amount and hence are deprived of their liberty.

According to the latest data of National Crime Report Beaurue, India has approximately three lakh undertrials, which forms a total of two-thirds population of the prison. The Apex Court has directed the National Legal Services Authorities has received directions of the Apex Court for establishing an Undertrial Review Committee in coordination with the state authorities and the Home Ministry. The said committee shall consist of the District Judge, District Magistrate and Superintendent of Police of every district in the nation. The committee shall be obliged to ruminare and give recommendations for undertrial prisoners entitled to benefits under Section 436A of the Code of Criminal Procedure, 1973. The last two decades have witnessed various efforts to reduce the number of undertrial prisoners. However, the concern remains that even after the establishment of fast-track courts and various other steps, there is no decline in the number of undertrial prisoners.

In India, the undertrials are kept in the same place where the convicts are kept. However, it has been made compulsory for the officers in the prison to provide a separate accommodation to undertrials. There are various reasons for which an undertrial is kept in jail; firstly, he or she has been accused of a heinous offence; secondly, the accused may influence the witnesses or interfere with the course of justice; and lastly, the accused may commit the same or other offence or may not appear for trial.

II. GROUND REALITY

The civilisation in society since ancient times has witnessed debates on the topics concerning the relationship of the state with its citizens, as well as recognition of liberties and rights of an individual and the principles of justice and equality. This has also highlighted the discussion pertaining to undertrial prisoners.

The Indian Express, an English daily in 1979, for the first time wrote about the issues faced by undertrial prisoners, which led to the intervention of the Indian Judiciary on this issue. A series of reports covered the issue and exposed the unbearable conditions in which the undertrial prisoners are kept and forced to spend years without their guilt being proven. A writ petition was filed in the Apex Court, and the Court accepted the plea and held that speedy trial was a crucial constitutional right for every criminal defendant that cannot be denied by the state merely because it lacks financial resources to meet the minimum expenditure required to improve judicial as well as administrative apparatus.

A statistical Outlook Upon the Trial Prisoners in the Nation: Currently, the total number of undertrials in India is 2,78,000 out of the total number of prisoners, which is 3,81,000 lakhs. Despite so many laws and precedents, the number of undertrial prisoners has only increased. National Criminal Record Bureau in its statistical report, has stated that in the year 2008, out of the total prison population, 67% were undertrials (having a capacity of 2,97,777 prisoners in all the prisoners of the country, the total number of prisoners was 3,84,753, out of which 2,57,928 were undertrials). This has resulted in overcrowded prisons, which further leads to improper living conditions.

This country also witnessed several cases where the undertrials were their family's sole breadwinners, and their delayed trial has made the entire family suffer financial crunches. Women who are undertrials are often forced to live in prisons along with their small children due to less availability of resources to the child thereby, suffers serious moral crunch in such an environment.

In 2015, the Home Ministry also submitted a report providing statistics showing the status of the Undertrials, according to which

- The total number of undertrials was 2,82,076, constituting 67.2% of the total prison population, out of which 4.2% were females while 95.8% were males;
- 35.2% of the undertrials were detained in prison for a period of three months, whereas 1.3% of the undertrials were detained in jail for a period exceeding five years;
- The total number of undertrials released was 12,92,357, whereas the total undertrials who were acquitted were 82,585;
- Out of the total population of undertrial prisoners, 5,225 were postgraduates, 16,365 were graduates, 58,160 were undergraduates, 1,19,082 had qualified class X, while 80,528 were illiterates;
- Out of the entire prison population of undertrials, only 94,673 received legal aid, 1,286 were rehabilitated, and only 416 were provided with financial assistance upon release;
- More than 50% of the total population of undertrial prisoners belong to Dalit or tribal society.

III. RIGHTS OF THE UNDERTRIALS

The Indian Law defines a vast difference between an undertrial and a convicted person; however, in sociological scenarios, these categories receive similar treatment.

The undertrials during their investigation, enquiry or trial period have certain rights, which are crucial for him or her to get justice. Some of the rights of an undertrial are:

1. **Right to Life and Personal Liberty:** It includes living with dignity and in proper human conditions.
2. **Right to Know the Ground of Arrest:** As soon as possible, a person arrested must be informed about the reason for his arrest. It is also provided under Section 50 of the Code of Criminal Procedure, 1973.

3. **Right to Consult a Legal Practitioner:** A person arrested has the right to consult or be defended by a legal practitioner of his or her own choice, which cannot be denied to him. This right is necessary for ensuring the trial to be a fair trial. It is also recognised as a Directive Principle of State Policy.
4. **Right to be Examined by a Medical Practitioner:** An arrested person has the right to be examined by a registered medical practitioner.
5. **Right to Bail:** Every undertrial prisoner has the right to secure a bail for his release.
6. **Protection Against ex Post Factor Law:** A person cannot be convicted for an offence which has not led to the violation of a law in place at the time of the commission of his offence. Further, he must not be charged with a penalty more significant than what is available under the law at the time of the commission of the offence.
7. **The Doctrine of Res Judicata:** A person cannot be tried for an offence more than once.
8. **Prohibition Against Self-Incrimination:** An accused cannot be compelled to be a witness against himself.
9. **Compensation for Wrongful Arrest:** The Court may order a person to compensate another for misleading a police officer into arresting an innocent person.
10. **Right to Appeal:** If an undertrial is convicted by a court having jurisdiction to try his case, the accused may approach a higher Court by filing an appeal.
11. **Right to be Heard:** Every accused has the right to an equal opportunity to be heard.
12. **Right to Fair Trial:** It is the most crucial aspect of the entire criminal procedure and must be ensured and not threatened or hampered in any manner.
13. **Right to Security of Life Inside Prison:** The undertrials have the right to live with security inside the prison and it is the duty of the prison officials to ensure the same.
14. **Right to have the Benefit of Presumption of Innocence:** Every accused is presumed to be innocent until found guilty, i.e., when his guilt is proved beyond doubt. The responsibility is on the prosecution to prove the guilt.
15. **Right to be Tried by an Independent and Impartial Judge:** Every accused has the right to be tried by a judge with no interest in the case and is not biased.
16. **Right to Hear the Sentence upon Conviction:** Every accused has the right to hear the sentence upon conviction.

IV. FACTORS RESPONSIBLE FOR THE INCREASING NUMBER OF UNDERTRIALS IN INDIA

Despite various programs by the Judiciary and the Executive branch of the government, there has not been any significant change in the plight of undertrial prisoners. As a result of procedural and structural bottlenecks existing in the criminal justice system, thousands of undertrials are spending their lives in prisons without their cases being heard.

There are various factors responsible for the increase in number of undertrials in the country, such as:

- 1. Justice Delayed and Justice Denied:** The Indian Constitution under Article 21 guarantees every citizen the right to life and personal liberty. This article acts as the cornerstone of the code of human rights in India, which restricts any inhumane or unfair treatment or torture to any person and the right of every individual to get a speedy trial. Further, in Section 309 of the Code of Criminal Procedure, the proceedings of every trial or enquiry must be held expeditiously. The same must continue as soon as the examination of witnesses starts until all witnesses examination.

The main reason for the delay in the conduct of trials is the lack of judges in the Courts, which results in an immense backlog of cases. Yet another reason is the failure to serve summons to witnesses. The system in India entrusts the police to act as the investigatory agency and ensure law and order are intact, which makes it difficult to pursue or investigate the same in Court.

To reduce the delay in matters of criminal trials and appeals and the sufferings of undertrial prisoners, the Criminal Law (Amendment) Act of 2005 introduced the concept of plea-bargaining. Moreover, the National Policy on Prison Reform and Correctional Administration, to reduce prison overcrowding, has stipulated the establishment of Lok Adalats, the Special Courts for expediting the disposal of cases that are undertrial along with the existing courts. The Judiciary has also laid down specific guidelines to deal with prison crowding. The Apex Court has issued 'one-time' directions for several pending cases, for example- the *Supreme Court Legal Aid Committee vs. Union of India* and *Shaheen Welfare Assn. vs. Union of India*.

- 2. Dysfunctional Prison:** Administration of prison includes prison superintendents and staff guards, who all play a crucial role in solving issues pertaining to undertrials in the criminal justice system. An example of this is the Prisons Act of 1984 which recommends the maintenance of a register by the Superintendent having details of all the prisoners and one containing details of all released. The freedoms and rights of the prisoners entrusted with the authorities of the prison, who are actually the custodians of the rights of undertrial prisoners.

There are certain prisons where the registers are appropriately maintained. However, the Indian legislator should check the increasing number of undertrials and introduce provisions that will safeguard their dignity and effectively protect and exercise the rights of the citizens to personal liberty and life.

It is worth mentioning that the Scheme implemented by the Indian Government for the Modernisation of Prisons has led to the creation of additional capacity in the prison. As per the Scheme, the states and the union territories have been provided with the financial assistance of Rupees eighteen hundred crores by the central government for the construction of new jails, extra barracks, repairs as well as renovations of the staff quarters, existing prisons, and better water and sanitation facilities in prisons. Further, rupees five thousand crores were also given for the central government's improvement of the justice administration. Out of the entire amount, two hundred crores were to provide legal aid to the prisoners.

- 3. Police have an Imperious Attitude:** Yet another important factor responsible for the increasing number of prisons is the indiscriminate arrest carried out by police officials, as they have the arrest powers granted under the Code of Criminal Procedure. This gives the power to the police officials to arrest even if someone cooperates with them. It has been observed by the Indian Courts that arrest is not a rule but an exception. However, this has not led to much difference in the situation today.

Under the CrPC (Amendment) Bill of 2006, the power of police officers to arrest unsystematically has been limited. As per the law, an individual cannot be detained merely because he is the subject of a complaint, but only if the police officials have proper reasons to believe that the said individual has committed the offence and such information or complaint is credible. Further, a police official can make an arrest under certain conditions, such as when a person is charged with an offence for which the punishment provided in the law is a minimum of seven years. The officer arresting must keep a record of reasons for such arrest in writing. If any condition is not satisfied, the officer may summon a notice for appearing before them rather than arresting a person. If these provisions are properly implemented, the undertrials will decrease soon.

After witnessing the challenges undertrials face, it is evident that a solution to this issue is not very easy. The Apex Court has implied its recent directives in the *Bhim Singh case* and held that the way for alleviating this situation should be comprehensive instead of knee-jerk, such as fast-track courts, as it has time-bound as well as active collaboration with stakeholders like police, prosecutors, courts, legal aid teams, prison administration as well as the undertrials. In *Moti Ram case*, it was observed that on various occasions, the law demands better systems in existence and considers undertrials as against liberty because they are considered to be innocent in the eyes of the law.

The consequences faced by the undertrials are immense. Those who are presumed to be innocent are often subjected to physical as well as psychological deprivations in prisons. The accused is at times even not allowed to contribute in preparing his defence.

V. STAND OF INDIAN JUDICIARY ON THE ISSUE OF UNDERTRIALS

Time and again, the Judiciary have highlighted and sown concerns for the undertrial issue through its judgements and dictates. Many times, Of has been stressed through precedents and rulings. Not only the apex court but the high courts as well have shown them in this same matter. Below are some of the vital and landmark judgements highlighting the major in undertrial prisoners in the country.

1. **In State of Rajasthan vs. Balchand**, the Court criticised the discriminatory system of bail and observed that it is a failure on the part of the Judiciary that the accused who are poor are forced to stay in prison for long for minor offences as the amount to secure bail is not within the purview of their meagre means.
2. **In the landmark judgment of Bhim Singh vs. Union of India**, various directives were issued by the Apex Court to the state authorities for facilitating the release of undertrials who have already served half of the maximum prison term for the offence they committed. The Court further set a deadline of two months and also gave directions to the district judges and the prison officials to oversee the entire process. The Court referred to the criminal justice system as dysfunctional, under which the undertrials are forced to stay in prison for years before their cases are heard.
3. **In Moti Ram and Ors. vs. State of Madhya Pradesh**, the plaintiff appealed to the Apex Court that even after paying the bail amount, he was not able to secure release as the exorbitant amount of Rupees ten thousand was fixed by the Chief Judicial Magistrate as a surety amount. The plaintiff's brother's surety ship was declined as his assets were located in a different district. The plaintiff wanted the Apex Court to either release him on personal bond or reduce the amount of surety. The Court observed that the undertrials face grave consequences and the innocent people are also subjected to physical and psychological deprivations. The Court further observed that many poor are forced to stay in cellular servitude as the trials are not concluded in time and their resources are not enough to secure bail. Hence, there is a need for the bail provisions to be interpreted liberally, for securing the interests of individual freedom, indigent persons and social justice.
4. **In Hussainara Khatoun & Ors. (II) vs. Home Secretary, Bihar, Patna**, the Court observed that the right to free legal aid is a basic element of fair, just and reasonable procedure, in the absence of which a person with economic or other disability will always remain deprived of the opportunity to secure justice.
5. **In Khatri & Ors. vs. State of Bihar**, the Apex Court, while replying to numerous writ petitions filed by the undertrials, reiterated its stance in Hussainara Khatoun's case and held that if the poor illiterate and ignorant accused are not provided with free legal aid, it would remain a mere promise and the purpose would fail. The Court directed the magistrates and the judges of the sessions court of the nation to inform accused appearing before the of their right to free legal aid at the cost of the state.
6. **In Common Cause (a registered society) vs. Union of India**, various directions were given by the Apex Court pursuant to the release of the undertrial prisoners on bail and also directed the High Courts to issue relevant directions to all other criminal courts under their supervision and control.
7. **In Charles Sobraj vs. Superintendent Central Jail, Tihar, New Delhi**, the Apex Court observed that imprisonment does not mean that a person gets deprived of his fundamental rights. The right to life, ensured under Article 21 of the Indian Constitution, means the right to live with dignity and in a proper environment, and the same cannot be taken away even in prison.

- 8. In Sunil Batra vs. Delhi Administration & Ors.**, the Apex Court observed that it is the distinctive duty of the courts to inject consciousness pertaining to the Constitution and reform the prison practices in the criminal justice system. Undertrials must be deemed prisoners in custody but not those serving punitive imprisonments and should be treated accordingly.
- 9. In Selvi vs. State of Karnataka**, the Court declared the conduct of Polygraph test, Brain Mapping and the Narco-analysis as unconstitutional and a violation of basic human rights. It further provided various guidelines for conducting these tests to maintain harmonisation and balance between the interests of the investigating agencies and the accused.
- 10. In M.H. Haskot vs. State of Maharashtra**, the Apex Court stated that the government is duty-bound, or in other words, has the statutory duty to ensure that free legal aid services are provided to every accused as it is an "imperative procedural place of criminal justice in India".

VI. RECOMMENDATIONS

Nevertheless, a significant reform is a need of the hour to bring forth through effective legislative implementation. The facilities and the administration must be sufficient to provide basic human needs. For this, the following steps be taken into consideration:

- The prisoners must be classified into various parameters, such as based on the amount of serving time in prison. They must be kept according to the parameters they are falling under. Further, custodial homes or separate prisons must be established for the undertrials without further delay.
- Every undertrial prisoner must receive free legal aid and a lawyer. The said lawyer must be accountable to an autonomous body that has been set up to review the administration of such lawyers. This would aid in ensuring accountability for quality work done by the lawyers. This will also ensure that minimum standards are met in countering the expertise level that is not equal.
- There must be some revisions done in the system of securing bail, and they must be made available at affordable rates. There should be an introduction of various slabs of the bail amount, which must be dependent upon the income of an accused. Further, the ambit of personal bonds may be increased to include more offences. Not appearing on a personal bond may be an offence to check the fear of the accused absconding. This will only be secured if there is non-discrimination on economic status, and the same gets included under Article 15 of the Constitution of India.
- Sections 436 and 436A of the Code of Criminal Procedure, 1973 must be enforceable, wherein the undertrial prisoners must get an immediate release based on the implementation of the rule of the Apex Court in a strict sense, which had directed the prisoners to be discharged if they have served half the sentence of the offence for which they have been found guilty and are held in custody. The section must stand unambiguous in stating that the grant of bail under the said Section is a right, which cannot be taken

away without demanding or imposing any excessive or unreasonable sureties. Section 440 of the Code must be kept in consideration while demanding sureties, having due regard to the circumstances of the case, not being excessive in amount.

- The nation should envision a policy for helping the undertrials to stand on their feet post-release. A scheme for granting monetary compensation must be offered to those undertrials declared innocent by the Court. Section 358 of the Code recognises this policy but lays down a maximum limit of Rupees one thousand. Hence, in order to make this policy work, an amendment must be made to Section 358 of the Code.
- The prison departments must create a team of trained social workers for working with the prisoners, the families of the prisoners, and the ones who are acquitted towards the promotion of their rights and rehabilitation. Further, laws such as Section 377 of the Indian Penal Code, 1860; decriminalisation of minor offences or the ones which could form a part of tortious liability; efficiency in trials; proper implementation of the Probation of Offenders Act of 1958, etc. are a few measures for ensuring that fundamental human rights of the prisoners are not trampled upon.
- Lastly, the most crucial action is an increase in the ratio of the Indian Judiciary and the Indian population to such standards as has been advised by numerous committees. The appointment of the Judiciary has become a topic of national debate. The selection of more judges can solve the issue of undertrial prisoners to a great extent at the bottom level.

It is not wrong to state that the nation has failed to meet its obligations towards the undertrials. Various judgments of the Apex Court have highlighted this as a crucial issue, but there is a need to resolve the issue with more attention.

VII. CONCLUSION

The main concern surrounding undertrial prisoners is that their right to no punishment till the guilt is established by the procedure established by law is violated. There is no proper distinction between convicts and undertrials as both are kept in the same prison, and their liabilities or services are similar. This creates doubt about the entire system. The victims of undertrials are generally uneducated, destitute or from backward classes. Whenever a question about justice arises, the only thing that must be considered is establishing that the accused has committed the act beyond a reasonable doubt. Unfortunately, the poor are the ones who always get entrenched.

It is sad that the undertrial's right to life and equality are violated. Before a person is convicted, the detention should be justifiable and minimal, not abiding to which is a violation of the fundamental rights of the undertrials. The fact that the undertrials are kept as prisoners raises the question against the justice system regarding adherence to the concept of 'innocent until proven guilty'. This failure remains unanswered or unaddressed. Hence, there is an ardent need for proper reforms in the country's trial and investigation process. Every reform aims to restore the faith of the nation's citizens in the Indian justice delivery system.

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