

Study on the Plight of Under Trial Prisoners in India

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Abstract

The goal of the criminal justice administration system is to strike a balance between two interests: the interests of the accused on the one hand and the interests of society at large on the other. The provisions of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) attempt to strike this balance. But is it actually being implemented? No, it does not. The pitiful situation of the under-trial detainees is clear evidence of this. Because seeing the conditions of under-trial prisoners in Indian jails reveals that access to justice, and more specifically, access to court, is a pipe dream for many of them. Despite the fact that the Cr.P.C., the Indian Constitution, and many international treatiesThe Indian prison reality depicts jails overflowing with under trial prisoners, the majority of whom are from poor and marginalised communities. Despite landmark decisions by the Supreme Court and other high courts, thousands of them remain imprisoned.

Introduction

*An under trial prisoner is an accused person who is kept in judicial custody during the time their case is being heard in the court.*¹Criminal justice administration is intended to provide the greatest level of security to the general public by dealing with crimes and accused in an efficient, expeditious, and lawful manner. At the same time, it protects the rights of the accused and ensures a fair trial, ensuring a fine balance between the interests of the accused on the one hand and society at large on the other. That is why the law guarantees the rights of all individuals and protects the interests of both the victim and the accused.²

An effective criminal justice system must inevitably ensure that the accused is tried for the crimes they are accused of committing. This is the historical basis for incarcerating people accused of crimes. Depending on the gravity of the offense,³the police have the authority to detain a person for 24 hours, after which any further detention must be authorised by the judiciary. ⁴ with a few exceptions, everyone has the right to be released on bail. ⁵

¹What are the rights of undertrial prisoners?, Nyaaya (2022), <https://nyaaya.org/nyaaya-weekly/what-are-the-rights-of-undertrial-prisoners/#:~:text=An%20undertrial%20prisoner%20is%20an,being%20heard%20in%20the%20court>. (last visited Nov 9, 2022).

²Sarbani Sarkar. The plight of under-trial prisoners in India- A gap between access to justice and criminal justice administration. International Journal of Law, Volume 8, Issue 1, 2022, Pages 113-117

³ No person can be detained by the police in a bailable offence if s/he is ready to furnish bail. See section 436 Cr.P.C.

One of the most critical aspects of criminal justice administration is the detention of the under trial prisoners. Under trial prisoners is one of the categories of prison population that have been found responsible as an important factor behind overcrowding in the jails. They form a major portion of prison inmates among others. These people remain in prison pending trial which may or may not lead to conviction. The purpose of keeping under trial prisoners in the custody is to ensure fair trial so that they cannot be in a position to influence or induce the witnesses. “A huge majority of under-trial prisoners are poor and as well as illiterates. They are denied bail for want of monetary security and thus they continued to stay as under trial prisoners without any voice. “It is high time that the public conscience is awakened and the government as well as the judiciary begins to realize that in the dark cells of our prisons there are a large number of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice a commodity which is tragically beyond their reach and grasp⁴

The Legal Chassis

A just, reasonable, and effective administration of justice is the foundation of a civilization and a necessary component of public trust. According to Section 436 of the Criminal Procedure Code, 1973, if an under trial person arrested for minor offences remains in prison for more than a week after his bail order has been issued, he/she can be presumed to be indigent and must be released on a Personal Release Bond by the trial court.

Section 436A of the Criminal Procedure Code of 1973 states that in serious offences, if the under trial prisoner has completed more than half of the maximum sentence that can be awarded to him/her under the section for which he/she has been charged, he/she will be released on Personal Release. Section 436A of the Criminal Procedure Code of 1973 states that in serious offences, if the under trial prisoner has completed more than half of the maximum sentence that can be awarded to him/her under the section for which he/she has been charged, the trial court shall release him/her on a Personal Release Bond. Section 436-A was inserted into the Criminal Procedure Code, 1973 in 2005 with the goal of ensuring that under trial prisoners were not imprisoned indefinitely due to the slow progress of their cases. Section 436-A Cr.P.C. only applies to pre-trial detainees and has only two requirements for its application: First, the prisoner must be on trial for a crime other than one attracting a death sentence; and second, the prisoner should have been detained for a period equal to half of the maximum sentence of imprisonment specified by law. When these conditions are met, the Court has the authority to release the prisoner on personal bond, with or without sureties. The second proviso to the Section further states that no person may be detained for a period of time that exceeds the maximum period of imprisonment provided for the offence under trial⁵

The Supreme Court has ruled that when exercising discretion in non-bailable cases, the judge must consider several factors, including the gravity of the crime, prior convictions, the possibility of tampering with evidence or intimidating witnesses, and the risk of plight. In addition, in any case triable by a

⁴Volume 6, July 2019 ISSN 2581-5504 www.penacclaims.com Page 1 “Detention of Under Trial Prisoners: A Bird's Eye View of the Judiciary” Dr. N. Bhagya Lakshmi I DSNLU, Vishakhapatnam, .

⁵D.n.kher, Mischief likely to be caused by section 436-A of the code of criminal procedure, 1973 Live Law (2017), <https://www.livelaw.in/mischief-likely-caused-section-436-a-code-criminal-procedure-1973/> (last visited Nov 9, 2022).

Magistrate, if the trial cannot be completed within sixty days of the first date set for taking evidence, the accused may be released⁶ if he has been in custody for the entire period. If a person accused of a non-bailable offence is detained after the trial but before the judgement is rendered, and the court has reasonable grounds to believe that the person is not guilty of the offence, the court may release the person.

The person should be released on a bond with no sureties for his appearance at the hearing⁷ Where Bail Must Be Granted If the investigation could not be completed or the charge sheet could not be filed within sixty or ninety days, as the case may be, the accused is entitled to be released on bail⁸ If the person has served one-half of the maximum prescribed sentence for an offence (other than a capital offence) as an under trial prisoner in custody, the court should release him on his personal bond with or without sureties. During this time, no one can be detained during the period of investigation, inquiry, or trial for a period longer than the maximum period of imprisonment prescribed for an offense⁹

Recently, in *Hussain and others v. Union of India*¹⁰, the Hon'ble Supreme Court ruled as follows: "As a supplement to Section 436-A of the Cr.P.C., but consistent with its spirit, if an under trial has completed a period of custody in excess of the sentence likely to be awarded if conviction is recorded, such under trial must be released on personal bond." Such an assessment must be made on a regular basis by the relevant trial courts."

THE JUDICIAL FRAMEWORK

The position of the judiciary is in general to make certain the only and right implementation of the Rule of Law starts off evolved from the safety of Rights. In *State of Rajasthan v. Balchand*¹¹, the court room docket held that, "The primary rule may also possibly be tersely positioned as bail, now no longer jail, besides in which there are occasions suggestive of fleeing from justice or thwarting the route of justice or creating different issues with inside the form of repeating offences or intimidating witnesses and the like, with the aid of using the petitioner." The discriminatory bail gadget has been criticized with the aid of using the apex courtroom docket pointing out that "it's far a travesty of justice that many bad accused are pressured into lengthy mobile servitude for little offences due to the fact the bail system is past their meager means." In a recent, landmark judgment in *Bhim Singh v. Union of India*¹² the Supreme Court (SC) issued a sequence of directives to country government to facilitate the discharge of under trial prisoners who have served 1/2 of in their probably most jail time period and it's far tremendously substantial in that the Apex Court set a cut-off date of months-and directed district judges and jail officers to oversee the process. The maximum courtroom docket's wonderful directive become in reaction to a crook justice gadget this is extensively appeared as 'dysfunctional', in which under trial prisoners are made to watch for years earlier than their instances are even heard. A very massive wide variety of under-trial prisoners go through extended incarceration even in petty crook subjects simply for

⁶ Section 437 (6)

⁷ Section 437 (7)

⁸ Section 167(2)(a)(i) & (ii)

⁹ Section 436 A (Inserted by the Code of Criminal Procedure Amendment Act, 2005 [Section 436]

¹⁰ (2017) 5 SCC 702

¹¹ AIR 1977 SC 2477

¹² (2015)15 SCC 605

the motive that they're now no longer in a position, even in bailable instances, to provide bail bonds and get launched on bail¹³ In *Moti Ram & Others v. State of Madhya Pradesh*¹⁴ Moti Ram, a mason appealed to the Supreme Court that regardless of being granted bail with the aid of using the Court, he become not able to steady his releasedue to the fact the Chief Judicial Magistrate constant an exorbitant sum of Rs 10,000, because the surety amount. Moti Ram stated that the Justice of the Peace rejected the surety deliver provided with the aid of using his brother simplydue to the fact his brother resided in any other district and his belongings had been positioned thereMoti Ram requested that the Supreme Court either reduce the surety amount or release him on a personal bond. The Court had to decide whether a person could be released on bail under the Cr.P.C., 1973 on a personal bond without requiring other people to stand as sureties for him. The criteria for determining the bail amount, as well as whether a surety offered by a person can be rejected because he lives in a different district or state, or his property is located in a different district or state

REASONS FOR INCREASED NUMBER OF UNDER TRIAL PRISONERS

"Justice postponed is justice denied."

In India, the criminal justice delivery system saw over 0.2 million undertrial prisoners languish in jail for many years, in many cases exceeding the maximum sentence for the crime they had committed. The poor continued to suffer in prisons due to a lack of coordination between the Centre, Judiciary, and State Governments, as well as a lack of anyone to stand as guarantors or assets to furnish as bail bonds. There have been instances where the bail amount was disproportionately high. One such case reached the Supreme Court.¹⁵

1. Indiscriminate Arrests

The power of the police to arrest people is very wide and they arrest people even when they cooperate with the investigation and are not likely to evade trial. This results in unnecessary detentions The Code of Criminal Procedure (Amendment) Bill 2006 modifies the existing arrest provisions, namely section 41. (and also inserts section 41A into the Cr.P.C). Section 41 restricts police officers' indiscriminate arrest powers. A person cannot be arrested simply because a complaint has been filed against her/him. It must be a "credible" complaint/information, and the officer must "have reason to believe" that "such person has committed the aforementioned offence." ¹⁶In cases involving an offence punishable by imprisonment for up to seven years, a police officer may arrest a person only under certain legal conditions. Offenses punishable by up to 7 years in prison - who would otherwise have been imprisoned during the investigation or inquiry.

2. Delay In Investigation

May prisoners languish in prisons because the police do not finish investigation, and file the chargesheet in time. This is a very serious matter because such people remain in prisons without any linking of a po

¹³Liberty at the cost of Innocence - Commonwealth Human Rights Initiative, https://www.humanrightsinitiative.org/publications/prisons/liberty_at_the_cost_of_innocence.pdf (last visited Nov 8, 2022).

¹⁴ AIR 1978 SC 1594

¹⁵legal Service India, The problems of Undertrials, <http://www.legalservicesindia.com/article/1280/The-Problems-of-Undertrials.html> (last visited Nov 9, 2022).

¹⁶ Section 41, Cr.P.C

lice case against them.

Section 167 Cr.P.C. lays down the maximum period within which the police investigation must be completed and a chargesheet filed before the court. This period is 90 days for offences punishable with death, life imprisonment or imprisonment for a term of not less than ten years, and 60 days for all other offences. Where the investigation has not been completed within the stipulated timeframe, it is mandatory upon the Magistrate to release the accused on bail, provided he is ready to furnish bail. This provision shields the accused from suffering incarceration on account of the inability of the investigating agency to wind up its investigation.¹⁷

Challenges Faced By Under-Trials

1. Abuses Confronted In Prison

- **Prison violence:** Prisons are regularly risky places for the ones they hold. Group violence is likewise endemic and riots are not unusual place.
- **Physical mishandling:** Physical mishandling with the aid of using prison officers isn't any uncommon phenomena in India.
- **Extra-judicial torture:** No behavior of the jail authority is criminalized and it offers them immunity and presumes their proper religion in acts of severe forget about that would and do bring about the dying of inmates.¹⁸

2. Corruption And Extortion In Prisons:

Extortion with the aid of using jail staff, and its much less aggressive corollary, protect corruption, is not unusual place in prisons across the world. The jail guards are commonly given extraordinarily low salary, so this factor could act as an annoying element which inspires the jail guards to take corruption which ends in the unfairness within side the state of affairs of the below trials in India and maximum of the growing international locations throughout the world. This trouble is so extreme that a number of the below trials get unique foods, mobile phones, unique comforts etc. as in trade to the bribing of the guards. An unpublished PhD dissertation from Punjab University on “The Functioning of Punjab Prisons: An appraisal within side the context of correctional objectives” cites numerous times of corruption in jail. Another article recommended that meals offerings are the maximum not unusual place reasserts of corruption within side the Punjab jails. Ninety five percentage of prisoners felt disappointed and disgusted with the meals served.¹⁹

Suffering Of The Families

- **Livelihood crisis:** In the absence of the principle bread winner, the own circle of relatives is many a time compelled into destitution with youngsters going astray.

¹⁷ Volume 6, July 2019 ISSN 2581-5504 www.penacclaims.com Page 1 “Detention of Under Trial Prisoners: A Bird's Eye View of the Judiciary” Dr. N. Bhagya Lakshmi I DSNLU, Vishakhapatnam

¹⁸[burning issue] problem of undertrials in India, *Civildaily* (2022), <https://www.civildaily.com/burning-issue-problem-of-undertrials-in-india/> (last visited Nov 9, 2022).

¹⁹PROBLEMS OF UNDER TRAILS IN INDIA By Dr. T. Giri576 & T.S.R Praneetha

- **Social stigma and boycott:** This mixed with the social stigmatization that they face, ends in situations propelling own circle of relatives closer to delinquency and exploitation with the aid of using others.
- **Exploitation:** The dominant elegance regularly take gain of this case to take advantage of the last own circle of relatives contributors to the fullest viable extent. This can take the shape of rape or compelled prostitution.²⁰
- **Prolonged incarceration:** Many under-trial prisoners are held in prisons for extended periods of time, which in some cases can be fatal. Cases extend beyond the maximum period of imprisonment prescribed for the offence charged.

Section 436A Cr.P.C.²¹ provides that an under trial has the right to apply for bail after serving one-half of the maximum term of sentence if convicted. The court shall hear the public prosecutor on a bail application filed under this section and may order the following:

1. Release of such person on a personal bond with or without surety;
2. Release of such person on bail instead of a personal bond; or
3. Continued detention of such person.²²

Women On Trial

Women on trial should normally be escorted by female police officers. When no women police officers are available, they should be accompanied by a female prison guard. As much as possible, separate transportation should be provided for women under trial prisoners. Female staff members will be in charge of women on trial. The Lady Assistant Superintendent or Senior Matron should be present when women on trial are admitted and released. She should be responsible for all work involving women on trial. Women on trial should be handed over to their relatives as soon as possible after their release. If this is not possible, a female police officer or prison guard should escort the released woman under trial prisoner to the nearest station or transport bus stand.²³

Facilities Available To The Under Trial Prisoners

The following facilities should be extended to all under trial prisoners:-

- Legal defense;
- Interviews with lawyers or family members; (For legal purposes),
- Signing Vakalatnama,
- Delegation of power of attorney
- Execution of will,
- Essential religious necessities as per rules,

²⁰Supra, 16

²¹ This section was inserted in the Cr.PC by the Code of Criminal Procedure (Amendment) Act 2005 vide Act 25 of 2005, wef June 23, 2006.

²² In cases pertaining to (2) and (3) the court is required to record reasons in writing.

²³ PLIGHT OF UNDER TRIAL PRISONERS: A STUDY UNDER HUMAN RIGHTS PERSPECTIVE Authored by: Amrita Chakraborty*

Right To Speedy Trial

The criminal justice administration is additionally to be darned for the plights of the beneath trials. the proper to speedy trial is untouchable attributable to varied obstacles that return up in under trials' way. there's an enormous pendency of cases owing to the massive population that our country has. However, the amount of judges in India is extremely negligible with reference to the specified strength. In India there are 19.66 judges for ten hundred thousand folks creating the quantitative relation extremely inadequate due to dependency on the legal system. Witnesses play a crucial role in determinant the case however it's delayed and adjourned thanks to the non-appearance and lack of cooperation by witnesses. it's discovered that witnesses back track from their positions due to inconvenience of showing many times and sheer worry issue of criminal administration system within the absence of a friendly, hassle-free court proceedings. many an times, it is additionally seen that due to commutation issues beneath trials fail to achieve the courts, though it is the responsibility of the various police stations to require the under trials to courts on the dates of their hearings. during this digital age wherever almost everything will be done from a place, it's additionally possible to video conference and let the proceedings of the court carried out. Thus, video conferencing between the jail and therefore the courts ought to be encouraged.²⁴

Role And Position Of Legal Aid

The Legal Services Authority Act, 1987 was enacted in the direction of providing "unfastened and able felony offerings" to humans from prone sections of society. It empowers applicable government to border schemes, and make use of budget for allotting equitable felony resource. The CrPC additionally offers that whilst an accused is supplied earlier than a crook court, he's to be furnished with felony illustration if he can't have enough money a lawyer.²⁵ In 1980, with inside the case of Hussainara Khatoon v. State of Bihar, the Supreme Court dominated that the proper to unfastened felony offerings is implicit with inside the proper to existence and private liberty assured beneath neath Article 21 of the Constitution, as an "vital component of 'reasonable, truthful and just' technique for someone accused of an offence".²⁶ The Court stated that states ought to paintings in the direction of constructing an powerful felony resource gadget which may be effortlessly accessed with the aid of using the negative. Soon after this, in *Katriv. State of Bihar*, the Supreme Court directed Magistrates and Sessions Judges to tell accused men and women approximately their proper to unfastened felony illustration.²⁷

The Supreme Court has additionally set apart convictions at the floor that the accused did now no longer have get admission to to unfastened felony illustration. The Supreme Court has additionally exact suggestions that could permit NGOs and different groups to avail authorities guide for his or her felony resource initiatives.²⁸ More recently, in a 2016 order surpassed with

²⁴ Diva Rai - et al., The plight of under trials in the Criminal Justice System iPleaders (2020), <https://blog.ipleaders.in/the-plight-of-under-trials-in-the-criminal-justice-system/> (last visited Nov 9, 2022).

²⁵ Supreme Court, See section 304 of the Code of Criminal Procedure, 1973

²⁶ Supreme Court, AIR 1979 SC 1369

²⁷ Supreme Court, 1981 SCC (1) 627

²⁸ Supreme Court, *Center For Legal Research v. State Of Kerala*, AIR 1986 SC 1322.

the aid of using the Supreme Court within side the Re-Inhuman Conditions in 1382 Prisons case, the Court directed felony resource attorneys to have interaction with the gadget in order to launch undertrials. The Court remarked that the State and District Legal Service Authorities ought to empanel able attorneys, with a purpose to prevent 'felony resource for the negative' from becoming 'negative felony resource'.²⁹ The NALSA lays down guidelines for making felony offerings to be had and powerful. It additionally allocates budget and presents to State Legal Services Authorities (SLSAs) and NGOs for imposing felony resource schemes. In each state, an SLSA is predicted to put in force guidelines as directed with the aid of using NALSA to offer felony offerings and conduct Lok Adalats (opportunity dispute redressal mechanisms). Legal offerings government are alleged to be installation on the district, and taluk (sub-district) levels.

Conclusion

On numerous occasions, the importance of bail provisions and their underutilization has been emphasized. No one should be subjected to the hardships of incarceration. In the eyes of the law, s/he has been proven guilty. The current system "punishes" the accused by depriving them of their right to liberty through unnecessary detention, in violation of the basic principle of criminal jurisprudence that everyone is presumed innocent until proven guilty. To ensure justice for under-trial prisoners, the existing provisions of the Cr.P.C. must be effectively implemented. To improve the criminal justice system, all agencies, including the police, the judiciary, the prosecution, defense attorneys, and the prison department, must work together.

²⁹ Supreme Court, order dated 5 February, 2016, Re – Inhuman Conditions in 1382 Prisons, WPC 406 of 2013.