

**JOURNAL FOR LAW STUDENTS AND RESEARCHERS****UNDER-TRIAL PRISONERS IN INDIA: THE PROLONGED  
LIBERTY**

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"I was produced before, then produced before a magistrate. As all law students know, this measure has been introduced into the legal procedure to allow detainees to complain about custodial torture, something I could establish quite easily since my face was swollen, ears bleeding and soles so sore that it was impossible to walk. But from the deliberation in the court, I already gathered that the police had already accounted for the injuries in the story they had conceded about my arrest. In their version, I had fought hard with the police to try to avoid capture."

**INTRODUCTION**

The population of under-trial constitute a good majority of the prison population, i.e., 68.9% of prisoners who classified as prisoners deemed to be "innocent" in the eyes of the law. But has the system that calls itself 'fair' and 'just' deprived these prisoners of their liberty?

"The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to psychological and physical deprivations of jail life, usually under more rigorous conditions that are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."

Every person so detained, has a right to trial within a reasonable time or to release. Prolongation of such trials can hamper the liberty of such under-trial individuals and also the increase their risk of torture and ill-treatment.

According to the Constitution of India, the management of the prison is the responsibility of the government of the respective states of India. However, the Government of India has slightly disregarded the rights of these prisoners.

It is the irony of the oppressed masses that many a time in their struggle for the realisation of the collective and positive rights, the civil liberties are blatantly violated by the State. The numerous exploited sections in India who are struggling against their exploitation, for a minimum standard of living or a more just and democratic society have been arrested, incarcerated and denied liberty in the prisons. The subject matter of this study is concerned with this irony of the oppressed, by virtue of them becoming 'political prisoners'.

### **THE UNDER-TRIAL PRISONERS OF INDIA**

The lack of strictness with which we put our citizens into prison depicts our lack of appreciation for the afflictions of imprisonment; the coldness or heartlessness with which we leave them there reflects our lack of deference for humanity. It also demonstrates our imprudence when our prisons are bursting at their seams. For the prisoner himself, imprisonment for trial is as shameful as imprisonment on conviction for an offence, since the condemnatory finger and abusive eyes of society do not distinguish between the two. The predicament of the under-trial seems to gain focus only on a mindful enquiry by this court, and soon after, quickly diminishes into the backdrop.

The criminal law of India, being a replica to the colonial laws, is still hostile to the downtrodden and the underprivileged sections of the society. The law has been lending assistance to the more affluent class of the community while the weaker class remains the disadvantaged class of the society that has to serve the jail time. The massive costs of the litigation have put enormous pressure upon this more vulnerable section of the society and thus, making it a far-fetched dream for them to reach the temple of justice in India.

India's under-trial prisoners' population is estimated to be the 16th highest in the world ranking of under-trial prisoners in India.

The National Crime Record Bureau of India has decided to throw light on some of the details which are abominable, related to the state of under-trial prisoners in India. There have been reports stating that there are thousands of under-trial prisoners in India, with Uttar Pradesh having the maximum number of under-trial prisoners, followed by Bihar and then Maharashtra.

The under-trial prisoners of India constitute more than the actual prisoners who have been prosecuted and convicted for an offence, which is a matter of concern in itself.

While we expect these numbers to decrease, but the opposite has happened with the number of these prisoners drastically increasing.

## **CHALLENGES FACED BY THE UNDERTRIAL PRISONERS IN INDIA**

The quote "Justice Delayed is Justice Denied" aptly fits this scenario. While the Indian Constitution, The Universal Declaration of Human Rights and the Standard Minimum Rules for Treatment of Prisoners stipulate the way prisoners have to be treated. Still, reality is far from this rule. Thus, it is essential to note that there are specific problems which these under-trial prisoners face. These issues need to be summarised as soon as possible.

### **VIOLENCE IN THE PRISON**

Violence is part and parcel in the life of these inmates. In a three-day riot in the Chhapra District prison in Bihar in the vicinity of March 2002, there were deaths of 6 people in the shootout that had taken place when commandos of the Bihar Military Police were summoned to settle the riots. Meek and first-time offenders were tortured and made to do all the menial tasks. Failure to comply saw them sleeping in front of smelly and overflowing toilets in the night.

However, the most devastating form of violence was witnessed in *Khatri v. the State of Bihar*, where the police had blinded 80 merely accused and suspects using a needle poured acid on them. This was one of the worst forms of police brutality that happens to fall against the inmates.

But the steps taken by the Supreme Court of India to issue a compliance of non-violence against these prisoners in the case of *Sunil Batra v. Delhi Administration*, where the court had issued a writ directing the authorities that the prisoners shall not be subjected to any brutality or any violence or any mishandling; physically or mentally, by the jail authorities, and also provide them with medical facilities. Are these steps actually being complied with? This is a question one needs to ponder upon.

### **VIOLATION OF THEIR FUNDAMENTAL RIGHTS**

Where the Constitution of India recognises this as a right for the inmates, it is, however, in reality not complied with.

For example, the Right to Speedy Trial, as acknowledged by the Supreme Court in *Hussainara Khatoon vs. Home Secretary, Bihar* is continually being violated due to the protracted delays. There may be various reasons for these kinds of setbacks, such as:

1. Systematic delays
2. Inadequate judges and lawyers

3. Insufficient witnesses

4. Absence of summons

And a few others as the case may be.

In another case, where the spirit of the judgement given by Supreme Court in *Moti Ram v. State of Madhya Pradesh*, regarding the bail has been continuously violated. The Right to Bail of these prisoners is being snatched away from them due to the excessive amount of bail that they are required to pay even in case of bailable offences, making them necrose in jail as they are impuissant to pay these absurd amounts of bail.

In the truancy of a system that takes an active role in safeguarding the rights of these inmates, and providing them with legal services, another right of theirs, that is, their Right to Free Legal Aid or their Right to Effective Legal Aid is being violated. This may be due to the active politicisation of these legal services that were supposed to be provided to these prisoners, but has not come close to them because of individual lawyers hired at political consideration who do get a fixed salary without being under the pressure of disposing off the cases in the interest of the prisoners at the earliest.

### **SAFEGUARDS OF PRISONERS IN INDIAN LAW**

The police in India have ample powers to make arrests. A person once suspected of a criminal offence when arrested is to be brought by the police, before the magistrate within twenty-four hours. This protection is deliberated to protect the accused from the possibility of torture in the custody or any other kind of ill-treatment which may be faced by them. The courts have held that non-compliance to bringing an accused in front of the magistrate during this specified period makes the detention wrongful. The person charged, once brought before a magistrate, the magistrate may stretch the period of detention in police or judicial custody up to fifteen days if he or she has determined that the process of investigation cannot be completed within 24 hours. If any more investigation is required, the person who is accused may also be remanded in judicial custody, in periods of fifteen days for 60 or 90 days, which depends on the nature of the offence. During this period, the denounced individual has an option to be discharged on bail, on the off chance that they are blamed for an offence ordered as 'bailable'. But if the offence is ordered as 'non-bailable', the court can choose whether to concede bail or not, considering conditions, for example, the gravity of the offence and the likelihood of the charged individual departing suddenly, or messing with proof, or threatening observers. The Supreme Court has decided that bail, not imprisonment, ought to be the standard and that if the presence of the blamed individual in court can be verified through

different methods, at that point, it isn't essential to confine them. When the court takes discernment, remand can be reached out in 15-day time frame.

Article 39A of the Constitution of India expresses that free lawful guide must be given to guarantee that entrance to equity isn't prevented on the grounds arising from claiming financial or different inabilities. The Supreme Court of India has expressed that the privilege to free official guide is a piece of the privilege to life and individual freedom under Article 21 of the Constitution.

In 2005, the Criminal Procedure Code (In Short, "Cr.P.C.") was changed to embed Section 436A, which expresses that if an under-trial has carried out a large portion of the most extreme punishment of the offence for which he has been charged, he can be discharged on an individual bond, as long as the offence isn't culpable with a capital punishment. Around the same time, an open intrigue suit was recorded under the watchful eye of the Supreme Court in *Bhim Singh v. Union of India* case, looking for successful usage of Section 436A. In 2012, the Ministry of Home Affairs passed a number of orders to lessen congestion of detainment facilities by guaranteeing that states lead intermittent observing to recognise under-trials qualified for discharge under Section 436A.

In May 2017, the Law Commission of India guided in a report that provisions regarding bail in the Cr.P.C. be amended to facilitate a reduction in the number of under-trials in prison. The Supreme Court in its judgement's order in *Re-Inhuman Conditions in 1382 Prisons* dated 24 April 2015, coordinated the National Legal Services Authority (NALSA), the Ministry of Home Affairs and State Legal Services Authorities (SLSAs) to guarantee that Undertrial Review Committees (UTRCs) were shaped in each area of the nation, and met each quarter. This request likewise coordinated the UTRCs to audit situations where under-trials allowed bail were not discharged because they were not ready to outfit sureties. In a resulting request in a similar case on 5 February 2016, the court requested that an e-detainment facilities application be planned with the goal that all primary jail data could be halfway collected.

The Ministry of Home Affairs documented a sworn statement on 22 January 2016 in this writ appeal, expressing that a definite assessment of the product for the e-detainment facilities venture had been finished, and rules had likewise been coursed to every one of the states for their proposition, and for practicing their alternative for choosing the suitable programming. Anyway, there seems to have been little progress on prison management programming since this hearing.

## **RECOMMENDATIONS FOR THE IMPROVEMENT OF THE SITUATION OF THE UNDERTRIAL PRISONERS IN INDIA**

- To systematise the remuneration paid to legal aid lawyers across India, and ensure that lawyers are paid competitive salaries in a time to time manner.
- To set up a database which is computerised and system for tracing of the convicts in all jails, which will keep alerting jail authorities on under-trial prisoners who are eligible for their release.
- To appoint more legal aid lawyers according to the needs of the society.
- To strengthen the legal aid lawyers' effectiveness to ensure accountability and quality representation.
- To ensure that legal aid lawyers are paid monthly.
- To ensure that alternatives to under-trial detention take place.
- To check the implementation of the Home Ministry guidelines and hold accountable officials who fail to meet their duties.
- To ensure that district and central prisons maintain updated lists of under-trials and information of cases against them, which are sent to district attorneys, the Prisons Department, the Undertrial Review Committee and the relevant legal services agency, and made available to all non-official tourists.

