

ANALYTICAL STUDY OF UNDERTRIAL IN INDIA THEIR HUMAN RIGHTS, CONSTITUTIONAL REMEDIES AND REFORMS REQUIRED

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ABSTRACT

The Indian law system is a reflection of the colonial law system where most of the laws were made by the Britishers to rule and control India. The most popular among them is the Indian penal code which is one of the reflections of the colonial law system. In that era, laws were framed basically to control and curb the voices and protest against British rule. The laws are framed to expand their colonial rule without considering the basic human rights. Even after independence, the Indian law system is in favour of affluent people and against the poor. It is in favour of the rich and dominant class of the society and against the unprivileged class of society. Those who are poor, unprivileged and cannot afford and pay the lawyers hefty fees are still languishing in jails even if they are not proven guilty. "undertrial" is a person who is still imprisoned on remand and is currently on trial. In other words a person who is still on trial in a court of law. The data revealed by National crime records showed that prisoners are languishing in jails and continue to be so even if half of the punishment for the main offence has expired, they continue to be in jail even if half of the punishment for the offence which they have committed has expired. So drastic is the situation of the undertrials that it needs to be resolved and urgent steps are required to stop it.

INTRODUCTION

Undertrial is a person who has committed a crime and is in custody awaiting trial for his crime. The problem of undertrial prisoners is increasing day by day and one of the reasons is large scale poverty in India. Where one of the family members is earning and those who depend on him are large in number with fewer resources and more dependents a family cannot afford hefty lawyers fees and the time consuming long trials. **Justice delayed is Justice denied** meaning thereby that delay in justice means denial of justice and this is compromised in the Indian system. Many of the undertrial prisoners are neglected in India. In some cases, punishment exceeds the maximum

punishment provided for the offence. What is the need of the hour is that the centre, state government and judiciary must work in tandem with each other .there must be coordination among them in working and look for those who need help because it ultimately does not serve any need it is not beneficial to anyone neither to the state nor to the accused. Everyone is aware of the problems which are faced by an undertrial in prison even though the constitution and the universal declaration of fundamental rights prescribe the minimum standards for undertrial prisoners. ¹Some of the most common problems faced are prison violence, criminalizing effect of prisons in other words a prison is a place where hardcore criminals are trained and made it serves as universities of crime, another problem faced is health problems where large criminals are stored and poor hygiene conditions are present which also led to the health problems .another rampant problem in prison is drug abuse plus it also affects the families of the prisoners the mental trauma faced by them in prolonged trials.

LEGAL PROVISIONS IN INDIA FOR UNDERTRIALS

Prisons are made for the reform purpose of the prisoners so that they give up those criminal activities and lead a normal life. Prisons are a very crucial aspect of criminal justice but the state pays very little attention to the prison reforms which are often neglected. The drastic situation of the undertrial prisoners was first highlighted in 1979 when a member of the national police commission KF RUSTOMJI brought into light the conditions of undertrials. The problem with the Indian prison is overcrowding and the large number of undertrial prisoners who are awaiting their trials. Because of this overcrowding, judicial decisions and law are also not implemented properly. Above mentioned are some of the reasons other reasons include the delay done in the conduct of trials and this fault may be because of anyone either due to the overload of cases in the court, absence of lawyers or magistrates, or it may be because the case involves complicated issues. Another problem is the denial of bail to the accused, often bail applications are rejected in the court leading to multiple bail applications or where the majority of the population support they cannot afford the cost of lawyers. The problem of arbitrary arrest is also rampant, often police officials involved in indiscriminate arrest ignoring the law totally which leads to more and

¹ The problems of undertrial – legal service India
www.legalservicesindia.com/article/1280/The-Problems-of-Undertrials.html

more people languishing in jail awaiting their trials and which often took several years to prove their innocence. Although section 41 of the CrPC provides the safeguard but often police officials ignore it. Some basic guidelines provided are preparation of the arrest memo, informing the local guardian regarding arrest, providing the assistance of a lawyer during the interrogation etc. but often these provisions which are made in the favour of the accused to create a balance in the society are often ignored which need to be addressed. even the Supreme court also in many cases provided for certain basic guidelines which are often ignored by officials so their implementation is still needed to be addressed. And take action against those officials who fail to observe it.

ARTICLE 21 CONSTITUTION OF INDIA – which provides “ no one shall be denied life and personal liberty except according to the procedure established by law .”² So this article is the soul of the Indian constitution which guarantees the right to life and liberty plus it is placed in part 3 of the Indian constitution which means that it is beyond the power of the parliament to amend meaning thereby beyond the amending power of the parliament. So basic things which legislature, the executive must keep in mind that there should be a law and the law must provide a fair procedure which is just, fair and reasonable before depriving any person of his life and personal liberty. Even this article of the Indian constitution cannot be suspended by ARTICLE 359 of the Indian constitution.

SECTION 428 AND 436A CrPC- From reading these provisions one can get the idea as to what it is the meaning of undertrial prisoner which means a person who is in prison during the investigation, inquiry and trial of an offence which he/she is accused to have committed.

Section 436A is another safeguard for the undertrial prisoner which provides that where a person has already suffered half of the maximum imprisonment provided for the offence he or she shall be released by the court on his bond and the punishment has been suffered by the accused during the investigation, inquiry or trial of the offence. So it guarantees the undertrial prisoner not to

² see the Right Of Undertrial Prisoners in India.

<https://www.lawyersclubindia.com/articles/rights-of-undertrial-prisoners-in-india-11417.asp>

languish for a prolonged period but to be released on bail as soon as half of the punishment provided for the offence has expired.

ARTICLE 22 CONSTITUTION OF INDIA- This article protects from arbitrary arrest it provides that the undertrial prisoner have the right to consult and be defended by a legal practitioner of his choice and it is also a part of the procedure provided for depriving a person of his life and liberty which provides that the procedure provided must be fair and reasonable. This article provides that no person shall be arrested without informing the grounds for which he is arrested. The Prisons Act 1894 This Act provides for the separation of male and female prisoners and of undertrial prisoners from convicted criminal prisoners. Another significant added advantage provided is that undertrial prisoners can purchase food, clothing etc and can have visitors visiting them.

PROBLEMS FACED BY UNDERTRIALS IN PRISON

1. MENTAL HEALTH- First time offenders or those who have committed the crime for the first time when landing up into the prison may find it difficult to stay in the prison and also face physical as well as mental trauma in the prison. The mental trauma may be of such a nature and so intense that he may find it difficult to continue in prison and also faces mental health problems³.

2. HEALTH PROBLEMS- Prisons are often overcrowded with prisoners and lack of hygiene may often end up in contacting the disease. Most of the Prisoners do not have a strong family background. They come from socio–economically disadvantaged sections of the society where disease, malnutrition are prevalent. When such people are mingled with other people it ends up with others also getting infected with infectious and communicable diseases⁴.

³ Mati Ram vs State of MP, AIR 1978 SC

⁴ Law Commission of India,78th Report on Congestion of Undertrials in Jails

3. DRUG OVERUSE- Being in prison for such a long time and being cut off from society and family members often lead to mental health problems. In such a situation an undertrial person often resorts to drugs or other banned substances. A prison is a place where prisoners are captive, bored and depressed so they just want to relax and release from the grim everyday reality.

4. MENTAL TRAUMA ON FAMILIES OF PRISONERS- the undertrial may be the sole bread earner of his family he being the sole bread earner of the family often end up in prison which may lead to his family face financial crises which they may find it difficult to afford to bear the litigation expenses. All this may lead to mental trauma on the family of the undertrial prisoner. To overcome all these financial problems female members or other members may become vulnerable to the higher society of people often end up in the female members resort to prostitution or other illegal means to satisfy their financial needs.

5. VIOLENCE IN THE PRISON- Prison is not the safest place it is considered a dangerous place for the people they are holding. often we encounter several news stories in the paper and the television where we heard of the violence in the prison. As Happened in the Bihar state where the police blinded about 80 prisoners by puncturing their eyes and throwing acid upon them. So prisons are full of examples that prisoners often face while in prison.

6. CRIMINALIZING EFFECT OF PRISONS- Prisons are filled with hardened criminals and where there are no scientific and intelligent classification methods to separate from the others often end up in contamination of young and circumstantial offenders into proper or full-fledged criminals occurs regularly. Prisons are often considered as the university of crimes.

HUMAN RIGHTS OF PRISONERS: INTERNATIONAL PERSPECTIVE

Human rights are those rights that are essential for the very human existence it is based on the idea that every human being is entitled to certain basic rights without any discrimination based on religion, caste sex etc. human rights are a special sort of inalienable moral entitlement. They attach to all persons equally by their humanity irrespective of race, nationality, sex etc. The

provision for human rights is provided in various international instruments some of them are United Nations standard minimum rules for the treatment of prisoners, the international covenant on civil and political rights, the Universal declaration of human rights and the United Nations Basic Principles for the treatment of Prisoners. All these conventions provide for some of the basic rights to the prisoners which are as Right to consult a lawyer of their choice, production before a proper judicial officer, Right to be defended, Health and safety of a prisoner, Regular medical Examination etc. there is a long list of all this and the State must ensure that these rights are provided to the prisoner and must make legal provisions for that purpose.

SUGGESTION AND CONCLUSION

1. Under trials who had done petty crimes which are not serious must not be lodged into the prison but instead of that, they should be put in reformatory centres where they shall do community service and in addition to that they should be educated to not to resort to crime in the future.

2. Bail should be a rule and Jail should be an exception: It means that accused shall not be denied bail and jail should be an exception. Accused to be lodged in jail only when there are compelling factors that compel the court to put the accused in jail such as if the accused has committed a heinous crime, or is a habitual offender then only the accused must end up in prison.

3. The scope of compoundable offences must be widened. The victim shall be given the right to compound the petty offences so that the accused is not troubled by lengthy and complicated trial process and there is a scope of out of court settlement and the accused is not subjected to the lengthy and burdensome trial process.

4. The amendments in-laws and the judgement of the supreme court should be given effect from time to time legislature and the Apex court pass several judgements and legislature pass several laws for the benefit of undertrials so what is needed to be done is those laws and the judgements of the supreme court should be implemented with full force.

7. The emphasis should be on reducing the industrial population by proper effect given to the statutory provisions, and the decisions of the apex court regarding bail, and the maximum period for which a person can be detained.

8. Undertrial are not punished yet it is not that they have been proven guilty so in such a case under trial should be placed in open jails where they can roam and move freely without any restriction and also side by side they have their living.

9. Legal aid should be provided from time to time to the undertrial prisoners so that their innocence if they are.

10. Automatic extension of remand while in jail is needed to be stopped which is given only for the mere convenience of the authority just for the convenience of authority basic human rights cannot be suppressed⁵.

11. Another big problem is adjournment which also delays the trial of an offence so in the case of an undertrial, prisoners adjournment should not be granted unless it is required.

12. Prison is generally considered as the University of crime so violence assault etc are daily part of the routine so what needs to be done is that there should be a check upon this and in case of violation of any fundamental right it should be properly addressed and proper compensation should be provided in such a case⁶.

13. A committee should be established which will consist of officials from various departments of legislative, executive etc which will address the case of violation of rights of undertrial and

⁵ All India Committee, Report on Jail Reforms (Ministry of Home Affairs, 1980-1983)

⁶ Supreme Court Legal Aid Committee vs Union of India (1994) 6SCC 731

they should also visit jails and highlight the problems and address the situation and take the proper action⁷.

REFERENCES

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⁷ Dr JN Pandey Constitutional Law of India (central law agency)