

UNDERTRIALS: DELVING INTO THE LEGAL DIMENSION

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ABSTRACT

This article bestows an overall knowledge about the legal aspect of undertrial prisoners in India, their condition and various rights guaranteed to them by the Indian Statutes. The Undertrial detainees are the ones whose trial is pending before the court of law, and their liberty is curbed for an uncertain period till the court of law arrives at a particular decision. This research article primarily focuses on the various International and Indian laws and provisions governing undertrial detainees in Prisons. The various laws and Statutes articulate the many aspects regarding their detention and release. The Statutes provide them with rights to ease their hardships during the trial.

Keywords: Rights, Investigation, Trial, Undertrial Prisoners.

INTRODUCTION

Innocent until proven Guilty is the well-acknowledged principle of Criminal Jurisprudence. It is such an irony in the present scenario when we go through the data released by the NCRB relating to the Under-trial prisoners in India. Among the 5,54,034 inmates across India's prisons, 77.1% were under-trials and 22.2% were those who had been convicted by a court of law, data from the National Crime Records Bureau (NCRB) shows.¹

More than three-fourths of India's jail inmates are under trial prisoners, according to the data released by the National Crime Record Bureau (NCRB).² India is currently ranked as the sixth-highest holder of pre-trial detainees in the world, as per the data collected by the World Prison Brief.³

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¹ Akshi Chawla, 'The Burgeoning Share of Undertrial Prisoners in India's Jails' (ceda.ashoka.edu.in, September 27, 2022) <<https://ceda.ashoka.edu.in/the-burgeoning-share-of-under-trial-prisoners-in-indias-jails/>> accessed June 18, 2024

² Abheet Mangaleek, 'Rights of Under-trial prisoners in India' ([slideshare](https://www.slideshare.net/slideshow/rights-of-undertrial-prisoners-in-india/267351433), April 19, 2024) <<https://www.slideshare.net/slideshow/rights-of-undertrial-prisoners-in-india/267351433>> accessed June 18, 2024

³ Akshi Chawla, 'The Burgeoning Share of Undertrial Prisoners in India's Jails' (ceda.ashoka.edu.in, September 27, 2022) <<https://ceda.ashoka.edu.in/the-burgeoning-share-of-under-trial-prisoners-in-indias-jails/>> accessed June 18, 2024

Most of the prisoners are imprisoned for minor offences and don't have the adequate means to procure bail for their financial conditions. This condition is prevailing in the entire Nation and needs proper diagnosis. How can a system that calls itself just and fair, deprive these many individuals who have not yet been convicted by a court of law, of their property guaranteed by, The Constitution of India?

UNDERTRIAL PRISONERS: THEIR PLIGHT

Any person confined in prison under the order of a competent authority is referred to as a Prisoner, as defined in the MODEL PRISON MANUAL, 2003.⁴ Undertrial detainee is an individual currently in jail whilst the charges framed against him or her are pending to be tried before a competent court. The 78th Report of Law Commission states a person who is in judicial custody on remand during the investigation will also come under the purview of the definition of an 'Undertrial'.⁵ As per the MODEL PRISON MANUAL, 2003 an Undertrial prisoner is "A person who has been committed to prison custody with pending investigation or trial by a competent authority."⁶

UNDERTRIALS: RATIONALE BEHIND THEIR CONDITION

As stated by, the third India Justice Report (IJR), released in 2021, three out of four of the total population of inmates in India were Undertrials. This is a rise of eight percentage points since 2019, indicating a concerning trend which needs proper attention by the concerned authorities.⁷

Based on the above context, it is necessary to understand why undertrial detainees continue to languish in Indian prisons.

Dawdling The Investigation Procedure Causing Indiscriminate Arrest

A large number of detainees are stuck in jails due to the negligence of the police which in turn results in the delay of the investigation process, and filing of the chargesheet within the timeframe allowed to them by the statute. The very matter is quite serious as such individuals

⁴ MODEL PRISON MANUAL FOR THE SUPERITENDENCE AND THE MANAGEMENT OF PRISONS IN INDIA, 2003 (*MinistryofHomeAffair*) Ch I, Provision 25 and 31

⁵ 'Poor state of undertrials' (*visionias.in*, December 13, 2022) <<https://www.drishtias.com/daily-updates/daily-news-analysis/poor-state-of-undertrials>> accessed June 19, 2024

⁶ MODEL PRISON MANUAL FOR THE SUPERITENDENCE AND THE MANAGEMENT OF PRISONS IN INDIA, 2003 (*MinistryofHomeAffair*) Ch I, Provision 25 and 31

⁷ 'Undertrials in India' (*BYJU'S*) <<https://byjus.com/free-ias-prep/undertrials-in-india-upsc-notes/#:~:text=India%20has%20a%20shortage%20of,stood%20at%20over%204%20crores>> accessed June 19, 2024

suffer even though they are not convinced. 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.⁸ 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, the Magistrate must release the accused on bail, provided he is ready to furnish bail.⁹ This provision shields the accused from suffering incarceration on account of the inability of the investigating agency to wind up its investigation.¹⁰

Investigating officers very often arrest people without proper evidence or investigation, leading to the wrongful detention of innocent individuals.¹¹

Delay In Trial Leading To Prolonged Detention

A plethora of cases being pending before the courts is a hindrance in the judicial procedure. Insufficient judicial assets and framework along with a huge workload leads to a lethargic legal system throughout the country. In addition to this, legal complications, as well as countless adjournments, registering applications and witness cross-examinations can contribute to the delay in legal proceedings. Anxiety and stress of confinement can also cause depression, mental agony and overall deterioration in the well-being of the undertrial detainee. The loss of livelihood, unavailability of employment or work opportunities and increasing legal expenditure can give rise to financial deprivation and can aggravate social injustice. The extension of detention can obstruct convalescence, restrict the retrieval of education, and skill-based profound sessional training and hence will affect the chances of effective reunification with society.

⁸ Madhurima Dhanuka, 'UNDERTRIAL PRISONER AND THE CRIMINAL JUSTICE SYSTEM' (*humanrightsinitiative.org*)

<<https://www.humanrightsinitiative.org/download/1457162682Undertrial%20Prisoners%20and%20the%20Criminal%20Justice%20System.pdf>> accessed June 19, 2024

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ 'Undertrials in India' (*BYJU'S*)

<<https://byjus.com/free-ias-prep/undertrials-in-india-upsc-notes/#:~:text=India%20has%20a%20shortage%20of,stood%20at%20over%204%20crores>> accessed June 19, 2024

Deficit Of Legal Service And Legal Representation For Undertrial Prisoner

The undertrial detainees, in particular those belonging to the undervalued and financially backward section of society, tackle the issues of legal representation in our country. Further, there are various machineries set up for this very purpose, which includes The National Legal Services Authority (NALSA), State Legal Services Authorities (SLSAs), District Legal Services Authorities (DLSAs), and Taluk Legal Services Committees (TLSCs). These institutions assure justice by providing them with legal aid and by representing these under-trial detainees along with the whole backward communities. A lot of these detainees and the members of the backward sections of the society don't have any knowledge and are unaware of the availability of legal aid services, and their right to be represented legally, that which is prescribed in the statutes. Finite Resources, Short-staffed legal aid institutions, and lack of adequate finance induce a haphazard legal aid system.

UNDERTRIALS: THEIR BASIC RIGHTS

"Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care." - Mahatma Gandhi.¹² The saying justifies granting detainees certain basic rights for their fair trial and existence. The Indian judiciary recognized certain human rights of the undertrial detainees. The Hon'ble Apex Court of India has stated "There be several factors that lead a prisoner to commit a crime but pra prisoner is required to be treated as a human being entitled to all the basic human rights, human dignity and human sympathy."¹³

Legal Rights Guaranteed To The Prisoners By The Indian Statutes

Section 436 and 436A, Cr.P.C

Section 436 of Cr.P.C, provides for conditions required to grant bail, as the provision of bail is a matter of right, given to the individuals by the statute. Section 436-A of the Code of Crimfinalinal Procedure, 1973 provides that in a case where punishment for the offence cannot be death and a person has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence, he shall be released on bail.¹⁴ In

¹² 'Rights of Prisoners' (National Human Rights Commission, India) <<https://nhrc.nic.in/sites/default/files/11%20Rights%20of%20Prisoners-compressed.pdf>> accessed June 20, 2024

¹³ *Ibid*

¹⁴ (Legalserviceindia.com) <<https://www.legalserviceindia.com/legal/article-5076-analyzing-the-gamut-of-section-436-a-of-the-code-of-criminal-procedure-1973.html>> accessed June 19, 2024

Moti Ram and Ors. V. State of Madhya Pradesh¹⁵ the Hon'ble court stCourt "bail is a rule and jail is an exception if, after the completion of the trial, it is proved that the accused has not committed any crime, then it will be grave ina justice to curb his liberty.

Section 167, Cr.P.C

The said provision provides for the Right to be released on bail when the police have failed to finish the investigation procedure as per the time limit prescribed to them by the statute. "Section 167 is a key part of the Code of Criminal Procedure, which states if an investigation into an offence is not completed within 24 hours and the accused is in custody, the concerned police officers shall forward the accused to the nearest Judicial Magistrate. This section entitles the magistrate to either send the accused to police custody or judicial custody while an investigation is going on. It also states that if within the stipulated time of his custody, no such substantial evidence is obtained against him in the investigation, then he can be released on default bail. The provisions of this section protect his fundamental right to personal liberty."¹⁶

Article 22(1), 39A, Constitution of India and Section 304, Cr. P.C

Article 22(1) of the Constitution of India provides the arrested person the right to consult and to be defended by a legal practitioner of his choice.¹⁷ But most of the undertrials belong to marginalized communities, who are not able to engage a lawyer or to furnish the bonds for release, hence Article 39A of the Constitution of India provides for free legal aid.¹⁸ This is a constitutional guarantee and a fundamental right.¹⁹ Where the detainee sentenced to imprisonment, is unable to defend or appeal before the court for want of a lawyer, then the court has the power under 'Article 142 read with Article 21 and 39-A of the Constitution', to provide a lawyer to the prisoner. The Supreme Court observed in the case of Hussainara Khatoon (IV) V. State of Bihar,²⁰ that the right to free legal services is an essential ingredient of a 'reasonable, fair and just' procedure, guaranteed under Article 21, for a person accused of

¹⁵ 1978 AIR 1594

¹⁶ (Ipleaders.in) <<https://blog.ipleaders.in/section-167-crpc-1973/>> accessed June 20, 2024

<<https://www.writinglaw.com/section-167-crpc-explained/>> accessed June 20, 2024

¹⁷ (Legalserviceindia.com) <<https://www.legalserviceindia.com/legal/article-5178-the-rights-of-an-accused-person-in-india.html>> accessed June 20, 2024

¹⁸ (Legalserviceindia.com) <<https://www.legalserviceindia.com/legal/article-5178-the-rights-of-an-accused-person-in-india.html>> accessed June 20, 2024

¹⁹ Rights of Prisoners' (National Human Rights Commission, India)

<<https://nhrc.nic.in/sites/default/files/11%20Rights%20of%20Prisoners-compressed.pdf>> accessed June 20, 2024

²⁰ (1979) AIR 1369

an offence.²¹ The Hon'ble Apex Court, in *Sheela Barse Vs. The state of Maharashtra*²² directed that "whenever a person is arrested by the police and taken to the police lock-up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps to provide legal assistance to the arrested person at cost of the State, provided he is willing to accept such legal assistance."²³

Article 21, Constitution of India

The Hon'ble Supreme Court of India, observed in the case of *Hussainara Khatoon v. State of Bihar*, that speedy justice is a fundamental right within 'Article 21 of the Indian Constitution'. Every individual imprisoned in jail has a right to be tried fairly without unnecessary delays. The Supreme Court held that "a procedure which keeps such large number of people behind bars without trial for such long intervals cannot possibly be regarded as reasonable, just or fair so as to conform with the requirement of Article 21".²⁴ The Apex Court in the case of *Rattiram v. State of M.P.*,²⁵ also held that the accused is entitled to speedy trial. The ultimate objective behind the provision of speedy trial is to overcome the existing hurdles in the same.

Right against custodial violence and death

Custodial violence primarily refers to violence against prisoners in police custody and judicial custody. Detainees have the right to protest against any custodial violence or torture while under police custody, which may be physical torture, rape or sexual harassment, or even custodial death.²⁶

²¹ 'Bail Reform in India: A Path to Justice' (*nextias*, July 5, 2024) <[²² 1983 AIR 378](https://www.nextias.com/ca/editorial-analysis/05-07-2024/bail-reform-in-india-a-path-to-justice#:~:text=%E2%80%93Hussainara%20Khatoon%20(IV)%20Vs.person%20accused%20of%20an%20offence.> accessed July 7, 2024</p></div><div data-bbox=)

²³ 'Rights of Prisoners' (*National Human Rights Commission, India*) <<https://nhrc.nic.in/sites/default/files/11%20Rights%20of%20Prisoners-compressed.pdf> > accessed June 20, 2024

²⁴ *Ibid*

²⁵ (2012) 4 SCC 516

²⁶ 'Rights of Prisoners' (*National Human Rights Commission, India*) <<https://nhrc.nic.in/sites/default/files/11%20Rights%20of%20Prisoners-compressed.pdf> > accessed June 20, 2024

Prison Act, 1894

The present 'Prisons Act, of 1894' is a pre-independence era Act and is almost 130 years old. The Act mainly focuses on keeping criminals in custody and enforcement of discipline and order in prisons.²⁷

Section 4 Accommodation for prisoners

The State Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners".²⁸

Section 27 Separation of prisoners

The requisitions of this Act concerning the separation of prisoners are as follows:-

In a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners;

In a prison where male prisoners under the age of [twenty-one] are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not;

Unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners;

Civil prisoners shall be kept apart from criminal prisoners."²⁹

Section 33 Supply of clothing and bedding to civil and unconvicted criminal prisoners

Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

²⁷ (*pib.gov.in*, May 12, 2023) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1923682>> accessed June 20, 2024

²⁸ (*MinistryofHomeaffairs*) <https://www.mha.gov.in/sites/default/files/Prisons_act1894.pdf> accessed June 20, 2024

²⁹ *Ibid*

When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner may be released.”³⁰

CONCLUSION

The underutilization of Bail provisions has been reiterated on various occasions. There shall be no sufferings relating to the deprivations of confinement before a person has been convicted by the competent court. Curbing the right to personal liberty by imposing forced imprisonment, the prevailing legal institution “punishes” the detainees which in turn curtails their Fundamental Rights. “To ensure justice for under-trial prisoners, it is essential to effectively implement the existing provisions of the Cr.P.C. All the agencies of the criminal justice system including the police, the judiciary, the prosecution, the defence lawyers and the prison department must adopt a concerted and well-coordinated approach to ameliorate the plight of the ‘forgotten souls’ i.e. under-trial prisoners, who languish in prisons unnecessarily.”³¹

³⁰ *Ibid*

³¹Madhurima Dhanuka, ‘UNDERTRIAL PRISONERS AND THE CRIMINAL JUSTICE SYSTEM’
([humanrightsinitiative.org](https://www.humanrightsinitiative.org))

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- 10) (Legalserviceindia.com) <<https://www.legalserviceindia.com/legal/article-5178-the-rights-of-an-accused-person-in-india.html>> accessed June 20, 2024

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- 12) (pib.gov.in, May 12, 2023)
<<https://pib.gov.in/PressReleasePage.aspx?PRID=1923682>> accessed June 20, 2024
- 13) (MinistryofHomeaffairs)<https://www.mha.gov.in/sites/default/files/Prisons_act1894.pdf> accessed June 20, 2024

