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The Unsung, Uncertain Rights of The Undertrial Prisoners in India

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Abstract : This article highlights the plight of undertrial prisoners in India, emphasizing their right to a fair and timely trial as guaranteed under Article 21 of the Constitution. It discusses the alarming statistics, challenges faced by undertrials, and the adverse effects of prolonged detention. The article critiques systemic delays, inadequate legal representation, and poor prison conditions, while advocating for reforms to ensure speedy justice and better treatment for undertrials, in line with constitutional and international standards.

INTRODUCTION

Being a law student, made me to ruminate upon the purpose of justice. Is it really based on a principle of fairness, equity and good conscience as taught us in law schools, or are there more layers to it? Conceptually, the purpose of justice is to carter the foundational order of a civilization. Any civilization made its inception with cooperation, held aloft with order and shattered with wanton and whim of the people. The role of justice is not only limited to deciding the rights of the parties but also to ensuring those rights in a time-bound manner. The right to a free and fair trial is our fundamental human right as enshrined under Article 21 of the Indian Constitution. The denial of such a right is the gross disdain of our democracy altogether.

Home Minister Amit Shah, in a recent police conference, announced the Indian government's plan to release under-trial prisoners who have served one-third of their sentences in non heinous cases all across the Indian Jail. (Courtesy: https://economictimes.indiatimes.com/news/india/may-release-those-who-haveserved-1/3rd-sentence-amit-shah/articleshow/115461210.cms?from=mdr)

The Indian legal system is systematic and procedural oriented system, where an accused charged with an allegation of committing a crime has to face a stringent trial process involving the hunt for truth, fairness, and the principle of equality before the law finds abode within it. But visualise a situation where an individual is get stuck behind the bars without facing a fair and proper judicial trial and spending the peak years of his life in such conditions, and on a cost of getting high earned order of acquittal later on. Late justice comes with a huge cost of loss of time, money, and especially quality of life.

The National Legal Service Authority (NALSA) has relaunched a unique nationwide campaign to reduce the number of undertrial prisoners. At the launch event, Retd. Justice S.K Kaul emphasized and stressed the exigency of undertrial prisoners and urged the Undertrial Review Committees (UTRCs) of the Supreme Court to identify undertrial prisoners eligible for bail and encouraged the magistrate to modify conditions so that liberty over the pre-trial or undertrial prisoners can be ensured.

WHO ARE UNDERTRIAL PRISONERS?

Before diving deep into this topic, let us be aware of the term undertrial prisoner. An undertrial prisoner is an alleged accused person who is being held in custody by a court of law and is waiting for a trial to commence. They have not been convicted of any crime and are presumed innocent until proven guilty. Sometimes undertrial prisoners remain in prison due to inability to secure bail and delay in initiation of their trial. As per the **78th Law Commission Report**, an undertrial prisoner also includes that person who is in judicial custody or on remand during an investigation...

THE FACTS AND NUMBERS:

According to the National Crime Record Bureau's report prison statistics India 2022,of the 5,73,220 people incarcerated in India prisons, 4,34,302 (75.8%)are undertrial against whom cases are still pending. Among the 23,772 incarcerated women, 76.33% are undertrials and 8.6% of all undertrials have been in prison for over three years.

And According to a report by supreme court's centre research and planning, Indian prisons operate at 131% occupancy, housing 5,73,220 inmates against a capacity of 4,36,266. Notably 75.7% of these inmates are undertrials, reflecting a substantial judicial backlog. The number of undertrials prisoners has increased from 4, 27,165 in 2021 to 4, and 34,302 in 2022, increasing by 1.7% during the span of just 1 year. Out of this total counting, the district jail is at the top, followed by sub-jails and central jails.

In terms of state-wise list, 59.7% of undertrial inmates were from six states - Uttar Pradesh has reported 21.7% of the total number of undertrial prisoners, followed by Bihar with 13.2%, Maharashtra at 3rd with 7.6%, Madhya Pradesh (6.2%), Punjab (5.6%), and West Bengal (5.4%) at the end of the year 2022.

Report shows some other data:

- 65.2% of undertrials were either illiterate (26.2%) or had received education till at most class 10th (39.2%)
- 19.3% of undertrial was Muslim, 4.7% Sikh, more than the communities' respective shares in population (14.2% and 1.7% in 2011 Census)
- 20.9% of undertrial inmates were SCs, 9.3% were STs. Their shares in population are 16.6% and 8.6% respectively (2011 Census)
- 14.6% of undertrials had spent for 1-2 years, 7.8% 2-3years, 6% 3-5 years, and 2.6% more than five years.

This picture shows the apparent denial of justice, considering the social aspect of our system.

CHALLENGES FACED BY THE UNDERTRIAL INMATES

Spending a good portion of your life in confinement is often surrounded by uncertainty, deadlock and stalemate, hard nightmare ever lived. The undertrial prisoners are subjected to violence and abuse, very much prone to ragging, torturing mishandling, etc. Most of the prison cells in India are overcrowded, have poor management, have no sanitation or hygiene, and have hell-like living conditions, making way for many other types of problems such as the spread of disease, etc. Economic and social status can also be one of the determining reasons for the denial of bail, as a lack of resources often leads to the parties' not being able to submit their points and arguments.

One of the most significant issues is that many undertrial remain in prison for extended periods due to delayed court proceeding, inefficient legal processes and overcrowded judicial system which violate the fundamental rights of undertrial prisoners. The lack of adequate legal representation is another critical problem because many of undertrial prisoners cannot afford legal representation on their behalf.

Those imprisoned are unable to look after their families as a result dominant class does not fail and loose time in taking advantage of this situation to exploit the remaining family member to the fullest possible extent. This can take the form of rape or forced prostitution of the prisoner's wife and his daughter. Sir Alexander Patterson Stated: I gravely doubt whether an average man can serve more than ten continuous years in prison without deterioration.

The denial of one right always hampers the accessibility of other rights as well. As illustrated, suppose A, the undertrial prisoner, is being denied of its right of expeditious trial, and he is the sole earner of his family now; due to this denial, the other member of family B (wife) and C (his daughter) is forced into the state of destitution and misery. Therefore, no right to education, no right to shelter, no right to food, etc. In a broader sense, the undertrial situation is totally against the principle of Reformative Justice has a great possibility of turning a first-time offender or accused into a hardcore criminals or history-sheeter.

The hardened criminals doesn't Separate from undertrial prisoners As a result of contamination they develop other hardened nature. It is an often given quote – 'Prison are universities of crime where people go in as under-graduate and come out with PhDs. In crime.

In several Recent and landmark judgements, the Supreme Court meticulously talks about the right and corrective measures to improve the condition of undertrial prisoners. In the case of **Re-inhuman conditions in 1382 prisons v. Director general of prison and correctional service and ors. Case**, The Supreme Court recognized section 479 of Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023, as a vital tool to address prison overcrowding. The court emphasized that the law should be applied fairly to all eligible undertrial, regardless of when their cases were filed. This means individuals arrested before the law's enactment can also benefit.

There are two main groups eligible for release under the law, first Regular undertrial who has served half of their potential maximum sentence and Second First-time offenders who have served one-third of their potential maximum sentence. The court urged swift action and directed higher authorities responsible for overseeing undertrial review committees, were tasked with ensuring proper implementation. This new law is seen as more favourable than old law (CrPC), especially for first-time offenders, broadening the scope of eligible undertrials. Another recent judgment of **Supreme court bail grant under UAPA**, The court has stressed that prolonged detention without trial violate an individual's right to personal liberty under article 21 of the Indian constitution. In UAPA Cases, generally bail procedure is very hard. The court has also called for faster trials and judicial scrutiny to prevent unjust detention.

In the Landmark Judgment of **BHIM SINGH V. UNION OF INDIA (year)case**, the apex court gave a set of instructions to state officials to enable the release of undertrial prisoners who have completed half of the maximum prison term. The court set a two-month deadline for district judges and prison official to oversee this process, highlighting the urgency in addressing prolonged pre-trial detention.

Another Landmark judgment of **HUSSAINARA KHATOON V. STATE OFBIHAR 1979**, established the right to speedy trial as the fundamental right under Article 21 of the Indian Constitution. This judgement set a determining precedent for future judgment delivery in undertrial cases.

Gideon v. Wainwright (1963), In this case US Supreme court ruled that person have the right to legal counsel at all stage of the criminal process, including pretrial detention.

Evaluating the legal Framework

Prison is the state subject as per **Entry 4 of List 2 of the 7th Schedule of the Indian Constitution,** so primarily state governments must look into the management and administration of state prisons and ensure the humane treatment of jail inmates. **The Model Prisons Act 2023** may serve as an illuminating way to set out the basic unavoidable list of guidelines for state governments.

Article 39A, Indian Constitution: - The provision under this article is given under part 4, The Directive Principle of State Policy was later inserted by the **42nd Amendment Act of 1976**. Which talks about the idea of equal justice and free legal aid. The exact wording of this article states that 'The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.

Article 21, Indian Constitution: - The direct descendent of the procedural **Magna Carta** for the right of personal life and liberty, which means that no person shall be deprived of his personal life and liberty except according to procedures established by law. We must stress this part of the procedure established by law, which shall not be arbitrarily accompanied with irrational logic. In the landmark case of **Francis Coralie Mullin V. The Administrator (1981),** Hon'ble Justice Bhagwati said that 'Article 21 embodies a constitutional value of supreme importance in a democratic society.

Article 22, Indian Constitution: - An arrested person must be promptly informed of the reason for their arrest and has the right to consult and be defended by a lawyer of their choice. And article 22 interpreted in the landmark judgment of **A.K. Gopalan v. State of Madras (1950)** which focused on the scope of preventive detention and the rights of the detained.

Under **Section 436A Of CRPC**, provided that the court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without securities, provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offences under the law. However under the new counterpart, a reflection of this section is given under **Section 479 of BNSS**, which has brought some crucial changes in the provision of granting bail to the under-trial prisoners, such as Early release of first-time offenders, bail note to be granted if multiple cases are pending, bail can be granted on the report of the Superintendent of Jail, etc

Apart from these essential general procedural and substantive statutes, there are several specific acts that - assist the legal framework of undertrial prisoners, such as the colonial time **Prison Act of 1894** recently been replaced with a new post-independent **Modern Prisons Act, 2023**, making the need to replace the punitive approach with reformative approach. Some of the salient features of this new act include Security assessment and segregation of prisoners, Robust grievance redressal mechanism, establishment of a prison development board focused on the physical and mental well-being of jail inmates, providing legal aid assistance in the matter of furlough, bail, parole and giving vocational and skill training impartment of knowledge, thus making prison a formative institute.

In the UK Law, Undertrial prisoners' rights are governed by Several provision of law. **The Bail act 1976** in this act individuals can apply for bail under section 4. **The Human rights act 1998** incorporates the European Convention on Human Rights, article 6 ensuring the right to a fair trial and humane treatment and article 5 which protects the right to liberty. **Prison Act 1952 and Prison Rules 1999** regulate the prison conditions.

In The USA Law, **The Bail reform acts of 1984** stated release undertrial prisoners on bail unless there are compelling reasons for detention. **Six Amendment** of USA law guarantees the right to a speedy and public trial. This is beneficial for undertrial prisoners ensuring that They are not lived for unreasonable period without trial. And **14th amendment** (Due Process) protect the undertrial prisoners from arbitrarily action and unfair treatment

International Organisation of Universal Declaration of Human Rights 1948, Article 10 Guarantees the right to a fair and just hearing and individual is entitled to be presumed innocent until proven guilty.

And In **Rome Statue of the international criminal court (1998)** stresses the importance of due process of law and ensure the treatment with dignity, have access to legal representation.

United Nations Standard Minimum rules for the treatment of prisoners (Nelson Mandela Rules) Set international benchmarks for the treatment of prisoners, covering aspects such as living condition, access to healthcare or other amenities for undertrial prisoners.

Concluding Remarks

The pendency of cases and the snail pace disposal of the same is day by day becoming iffy Blot on the identity of our Indian legal system, with highlights of the recent data on around 47 million cases are pending in courts as of May 2022, and the total sanctioned judges as of 2022 is only 21.03 judges per million population, which means there has already been a long waiting queue for your turn to come. The government and different stakeholders of our legal system must take the responsibility of finding alternative redressal forums like NALASA, undertrial prisoner's bureau and several other kinds of alternative fast track case disposal mechanism.

Delay in the commencement of fair trial for the under trial prisoners put them in a grey area of their life where the curtailment of fundamental right seems obvious. Delivering justice is not the one time end task rather it engulf a series of steps and procedures, which must be interwoven with the thread of the principle of natural justice.

Supreme Court, in several cases, reiterates the accepted norm: "Bail is the rule, and jail is an exception''. This idea shall not resonate only on formal sheets of paper or remain a damp squib; rather, it should be followed in letter and spirit.