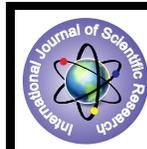


Undertrial Prisoners in India: Issues and Concerns



Law

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ABSTRACT

Right to speedy trial is a right to life and personal liberty of a prisoner guaranteed under article 21 of the Constitution, which ensures just, fair and reasonable procedure. The Supreme Court of India has been very vigilant against encroachments upon the Human Rights of the prisoners by giving a liberal and comprehensive meaning to life and personal liberty. Undertrial prisoners are those persons who are facing trial in any court, unable to furnish surety, and have no access to legal aids, are kept in prison for years together, which amounts to gross violation of their human rights. Undertrial prisoners constituted 71.14% of the total prison population in the country

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The people who are facing trial in any court and during the trial are kept in judicial custody in prison are known as 'undertrial prisoners'. The rights to life and personal liberty as enshrined in article 21 of Indian Constitution¹ are the back bone of the human rights in India which prohibits any inhuman, cruel or degrading treatments to any person including prisoners. 'When a person is in custody and his personal liberty is taken away, except as a result of conviction for an offence, he is said to be in detention. This may be because the person is waiting to be brought before a magistrate on formal charges, or is waiting for a trial and is unable to secure bail.'² The purpose of keeping undertrials in the custody is to ensure fair trial so that they cannot be in a position to influence or induce the witnesses. Undertrial prisoners constituted 71.14% of the total prison population in the country. 11 States/UTs have undertrial prisoners exceeding 80% of the total prison population. These are: Dadra & Nagar Haveli (100%), Meghalaya (94.71%), Manipur (92.51%), Jammu & Kashmir (88.90%), Bihar (85.66%), Daman & Diu (84.15%), Nagaland (83.31%), Uttar Pradesh 82.47%), Delhi (81.45%), Chandigarh (80.42%) and West Bengal (80.20%). Chhattisgarh is the only State which has less than 50% undertrial prisoners (48.57%).³ Present research paper emphasizes on two aspects, issues of under trial prisoners, how to reduce their number and to protect their rights.

The main human rights issue of undertrials is delay in trial of cases. Right to speedy trial is a right to life and personal liberty of a prisoner guaranteed under article 21 of the Constitution, which ensures just, fair and reasonable procedure. However, eighty present prisoners are undertrials, and some of them are not released even after granting bail as they are unable to furnish surety bonds due to lack of money or verification of addresses, as some prisoners don't have houses. "The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent. Everyone is presumed to be innocent until the guilty is proved. So, the quality or innocence of the accused has to be determined as quickly as possible. It is therefore, incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed. It is pertinent to mention that delay in trial by itself constitutes denial of justice which is said to be justice delayed is justice denied. It is absolutely necessary that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is absolutely necessary. The right to speedy trial has become a universally recognized human right."⁴

The Indian Code of Criminal Procedure, 1973 while giving the courts power to postpone or adjourn proceedings lays stress upon trial within a reasonable timeframe. Section 309 of the Code says that in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined. There are many other reasons which attribute delay in trial. First major reason for delay in trial is shortage of judges, which is responsible for huge backlog of pending cases. The number of judges should be substantially increased to reduce the burden of the judges. Another reason for delay is non-service of summons to witnesses and even after the service of summons, witnesses do not appear. Police, being the investigating agency is responsible for service of summons to the witnesses. Since there is no hard and fast rule to compel the witnesses to attend the court proceeding, even after services of summons, witnesses do not turn up. Many a time even non-appearance of police witness delays the trial. In India, police have to maintain law and order and to function as investigating agency. It becomes cumbersome for the police responsible for the maintenance of law and order to investigate the cases and pursue the same in the courts. There should be a separate department in the police to ensure timely service of summons to the witness and production of accused in court on time. In the era of advance information technology, the rules of service of summons should be amended so as to accommodate the service of summons by alternative methods in electronic form like email etc. Valuable working hours of the courts can be saved by timely service of summons and appearance of witnesses on the given time and date.

Responsibility of producing the undertrials before the trial courts on each and every date of hearing lies on police. However, as discussed herein above, police has to maintain the law and order in addition to investigation of crime and pursue the same in the court. Each district should set up separate and dedicated police squads for production of undertrials in the courts. Further video-conferencing facility should be encouraged to facilitate smooth and speedy trials. Undue adjournments on flimsy ground should be curtailed so far as possible by the trial courts. Delay in trial can be avoided by proper co-ordination between various agencies of criminal justice administration like police, judiciary, and prosecution. Defence advocates take undue adjournments in order to delay trial and sometimes undertrials released on bail do not appear on the date of trial on the pretext of illness and furnish false medical certificates. There is a need to speed up the judicial process with minimum adjournments so that the guilt or innocence of the accused can be determined as quickly as possible.

In order to reduce pendency of cases in courts, a new concept of

'plea bargaining' was introduced in criminal justice administration of India by Code of Criminal Procedure (Amendment) Act 2005 which came into effect from 11 January, 2006. Plea Bargaining' implies a pre-trial negotiations between the accused and the prosecution whereby the accused agrees to plead guilty in exchange of concessions by the prosecution in the form of lesser punishment. In order to reduce the delay in disposing criminal cases, the Law Commission in its 154th Report recommended the introduction of 'plea bargaining' as an alternative method to deal with huge backlog of criminal cases. "This has certainly changed the face of the Indian Criminal Justice System. Some of the salient features of 'Plea Bargaining' are that it is applicable in respect to those offences for which punishment is up to a period of 7 years. Moreover it does not apply to cases where the offence committed is a socio-economic offence or where the offence is committed against a woman or a child below the age of 14 years. Also, once the court passes an order in the case of 'Plea Bargaining' no appeal shall lie to any court against that order." ⁵ However, the Supreme Court contrary to the above, in *State of Uttar Pradesh v. Chandrika* ⁶ held that it is a settled law that on the basis of plea bargaining, court cannot dispose of the criminal cases. The court has to decide it on merits.

In order to protect and effectuate the right to life and personal liberty of citizens, the Supreme Court in *Common Cause v. Union of India*,⁷ held that an undertrial accused of an offence punishable with imprisonment for up to three years, who has been in jail for a period of more than six months, punishable with imprisonment for up to five years, has been in jail for more than six months or punishable with imprisonment for up to seven years, has been in jail for more than one year, should be released on bail. The court further directed that the accused should be discharged or acquitted if the offence is non-cognizable and bailable and the trial is pending more than two years, or offence is punishable with only fine and trial is pending for more than two years, or if the offence is punishable with imprisonment of up to one year and trial has not commenced within a year. "All men are born equal and are endowed by their creator with some basic rights. These rights are mainly right to life and liberty, but if any person doesn't comply with ethics of the society then that person is deprived of these rights with proper punishment. Many experts believe that the main objective of prisons is to bring the offenders back to the mainstream of the society. Various workshops had been organized by the State Government in collaboration with NGO's to bring reforms in the current prison systems."⁸

Though section 27(3) of Prisons Act, 1894 provides that undertrials should be kept separate from the convicted prisoners, nonetheless they are kept together due to lack of space in detention facilities. ⁹ Even as per the Model Prison Manual convicted prisoner should not be kept in the same area in which undertrial prisoners are kept, or be allowed to have contact with undertrial prisoners. Convicted prisoner should not be allowed to enter the undertrial yard or block.¹⁰

The Indian socio-legal system is based on non-violence, mutual respect and human dignity of the individual. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitutes human dignity. Even the prisoners have human rights. The prison torture is not the last drug in the Justice Pharmacopoeia but a confession of failure to do justice to living man. For a prisoner, all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment.¹¹ Problems of undertrials can be tackled to a great extent by developing the concept of legal aid and expanding its scope so as to enable to them to have access to courts in case of any violation of their human rights. Legal aid is one of

the constitutional rights and it is the legal machinery that is expected to deal with it. The basic idea behind the legal aid is that the legal remedies should not be out of reach of the people, especially poor, looking desirous of enforcing their legal rights and mechanism of administration of justice should be accessible to them. Human Rights are part and parcel of Human Dignity. The Supreme Court of India in various cases has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners and persons in police lock-up. The Supreme Court read the right against torture under Articles 14 and 19 of the Constitution. The court observed that the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14.¹²

Conclusion

Speedy trial is the essence of criminal justice system and there is no doubt that delays in trial by itself constitutes denial of justice. A person who is detained as an undertrial cannot be deprived off his right to life and personal liberty as guaranteed under article 21 and is entitled to right to equality and equal protection of law enshrined under article 14 of the Constitution. Keeping undertrials prisoners in jail for long period sometimes beyond the term of the actual punishment for the offence alleged to have committed by them is the gross violation of human rights. In case of violation of any fundamental right of the prisoner then the State should give adequate compensation to the victim. The State should provide quality legal aid services for undertrial prisoners who are unable afford the services of good lawyers to defend themselves in court. The concept of plea bargaining as introduced by Code of Criminal Procedure (Amendment) Act 2005 by inserting a new chapter XXIA should be encouraged to dispose of cases coming under the purview of this provision, so as to reduce pendency of cases in courts.

In order to avoid the over crowded population of prisoners and ensuring the human rights of the undertrial prisoners, the directions given by the Supreme Court in *Common Cause v. Union of India* should be strictly adhered to by the State. Further it is the duty of the State to prove assistance to prisoners to ensure their safe and timely releases, and to aspire to safeguard the rights of these prisoners to a fair and speedy trial. Further undertrial prisoners should be kept separately from the convicted prisoners. In fact so far as possible there should segregation between among the undertrial hard-core criminals of serious and heinous crimes and first time criminals of petty offences. Video conferencing between jail and court should be encouraged to record the statement of accused, examination in chief and cross examination so as to avoid delay in trial for the want of production of the accused in court.

References

- 1) Constitution of India - Article 21-No person shall be deprived of his life and personal liberty except according to procedure established by law.
- 2) Handbook of Human Rights and Criminal Justice System in India, the System and Procedure, 2nd edn. South Asia Human Rights Documentation Centre, Oxford University Press, p. 72
- 3) National Human Right Commission, Annual Report 2004-05, New Delhi, 2005, p. 17, retrieved from <http://nhrc.nic.in/Documents/AR/AR04-05ENG.pdf>, accessed on 12/04/2016)
- 4) Nidhi Beniwal, Role of Judiciary in Protecting the Rights of Prisoners, retrieved from <http://www.legalservicesindia.com/article/article/role-of-judiciary-in-protecting-the-rights-of-prisoners-1616-1.html>, accessed on 16/04/2016
- 5) Soura Subha Ghosh, Plea Bargaining - An Analysis of the concept, retrieved from http://www.legalserviceindia.com/articles/plea_bar.htm, accessed on 18/04/2016
- 6) State of Uttar Pradesh V. Chandrika (2000 Cr.L.J. 384(386)
- 7) Common Cause v. Union of India AIR 1996, 1619
- 8) Arnav Sood, Prison Reforms In Indian Prison System, <http://www.legalservicein>

dia.com/article/1174-Prison-Reforms-In-Indian-Prison-System.html, accessed on 06/04/2016

- 9) Prisons Act, 1894, Section 27 (3) - Separation of prisoners- unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners.
- 10) Model Prison Manual, for the Superintendence and management of prisons in India, (2003), BPR & D, New Delhi, Para 22.45, No convicted prisoner shall be kept in the same area in which undertrial prisoners are kept, or be
- 11) Saurbh Kothari, Taking Prisoner's Rights Seriously, <http://www.legalserviceindia.com/articles/po.htm>, accessed on 06/04/2016
- 12) <http://www.legalservicesindia.com/article/article/role-of-judiciary-in-protecting-the-rights-of-prisoners-1616-1.html>, accessed on 16/04/2016