



A Study of Undertrial Prisoners in India

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ABSTRACT

When we think about prisons the image that comes to our mind is that of hard core criminals who were imprisoned for committing crimes. But in actual fact 64.7% of prisoners in Indian jails are undertrials who may or may not be punished. Thousands of them, arrested on suspicion of committing petty crimes, languish in jails for a much longer period than the maximum punishment under the law for the crime which they have committed. The presence of higher number of undertrials in the prison results in their overcrowding, which in turn causes many socio economic problems in the society.

Keywords : Undertrials, convicts, overcrowding, jail, prisoner, occupancy rate, crime, prison, imprisonment

The system of imprisonment has originated in the first quarter of the 19th century. In the initial stages the prisons were used as a place for detention of the undertrials. It has undergone a radical change and the penology of the present day has become centered on imprisonment as a measure of rehabilitation of the criminals. But unfortunately even now our prisons are crowded with undertrial prisoners. Many of them are innocent persons who are caught in the web of the law eagerly waiting for their trial date and several of them are prepared to confess their crime and accept their sentence¹.

According to Prison Statistics India 2011², in the Indian prisons 2,41,200 undertrial prisoners were kept for committing IPC, Special and local laws and civil offences. Out of these 2,30,266 (95.5%) are male and 10,934 (4.5%) females. At the end of 2011 the share of undertrial prisoners in the different jails can be seen as, in the central jails 77295 (47.5%), district jail 121520 (76.8%), sub jail 36248 (91.2%), women's jail 1652 (54.0%), brostal school 879 (76.8%), Special jails 3546 (67.5%), Others 60 (74.1%). From this we can see that in the sub jail, only below 9% were of other type of prisoners and also in most of other type of prisons majority are undertrials.

Some States and UTs have reported very high percentage of undertrials to total prisoners. They were D&N Haveli (100.0%), Arunachal Pradesh (89.1%), Bihar (83.5%), Meghalaya (83.9%), Jammu & Kashmir (79.3%), Delhi (73.5%), Jharkhand (72.8%), Odisha (71.0%) and Manipur (70.2%). Only a very few States like Himachal Pradesh (942 convicts, 665 undertrials), Tripura (569 convicts, 330 undertrials) Pondicherry (130 convicts, 112 undertrials), have got less number of undertrials than that of convicts. While we are looking at the all India statistics on prison population we can see that the number of undertrials is more than double, than that of convict prisoners (128592 convicts, 241200 undertrials). The percentage of undertrial prisoners to the total prisoners in prison is 64.7% in the country and the share of convicted prisoners is 34.5%. Their number has increased as in 2011(2,4,1200) over 2005(2,3,7076).³ It has also increased marginally by 0.5% in 2011 (2,41,200) over 2010 (2,40,098)⁴. From this we can see that the number of undertrial prisoners in the prison is increasing.

In *Hussainara Khatoun V. Home Secretary, State of Bihar*⁵ and many other cases the Supreme Court has observed that speedy trial is a constitutional mandate and the state cannot

avoid it by pleading financial or administrative inability. Justice delayed is justice denied. The cause of delay can be attributed to delay by the police administration in collecting the evidence. Then the judiciary, here the lawyers unnecessarily ask for adjournment of cases and the judges who postpone and delays the cases and not delivering the judgments on time. Provisions of Section 167 of the CrPC with regard to the time limit for police investigation in case of accused undertrial prisoners have not been strictly followed both by the police and the courts.

Even after introducing the explanation appended to the Section 436-A of Cr.P.C which provides for the release of undertrial prisoners under bond if they have served for a period extending up to one half of the maximum period of imprisonment for that offence under law, at the end of 2011, a total of 1,486 (0.6%) undertrial prisoners were kept in the Indian prisons for a period more than five years. 7615 (3.2%) between three to five years. 13592 (5.6%) between two to three years. 30261 (12.5%) between one to two years. 41455 (17.2%) between 6 months to one year, 50126 (20.8%) for 3 to 6 months and 96665 (40.1%) up to 3 months.

The presence of large number of undertrial prisoners and their continuing stay for longer period definitely indicates the slow pace of trials which will leads to the overcrowding of our prisons. In the National Human Rights Commissions view, unnecessary and unjustified arrests made by the police and the slow judicial processes causing congestion of undertrial prisoners are the main causes of overcrowding in jails.

The poor are particularly worse off when confronted with criminal justice system. Many undertrials are detained because they have no money to get a bail or hire a lawyer to assist them. If he is unable to furnish surety, he cannot get bail and spends years in a prison. Quite often, the surety amount asked by the court is large that the poor cannot furnish it as a result he goes to the prison.

The problems of overcrowding and increase in undertrials among prison inmates have thrown the system haywire. An important aspect of prison administration is the number of prisoners that the authorities have to handle in the prisons. A major problem that is being faced in most of the Indian jails is overcrowding of prisons resulting in inadequate infrastructure facilities, insufficient number of prison staff and lack of essen-

tial services for the prison inmates.

The occupancy in any jail changes daily due to the addition of new prisoners as well as due to the release of old ones. So there is no fixed number of prisoners. In the jails in India, the total capacity is 332782 and the inmates present at the end of 2011 are 372926. The prisons have 40144 prisoners more than its capacity. The occupancy rate⁶ has been calculated to determine the 'crowding of prisons'. The occupancy rate of all the prisons in India is 112.1%. In some states and UTs like A&N Islands (362.1%), Chhattisgarh (256.3%), Punjab (149.1%) the occupancy rate is very high.

The number of undertrials in the prisons far exceeds the convicts. 86.1% of the inmates in the sub jail were undertrials, 82.7% in district jails and even in central jail, almost half (46%) were undertrials. In the women's jail 41.6% were undertrials, in borstal school it is 40.1%, in special jail it is 76.6% and in other jails it is 66.8%. This large number of undertrials present in the prisons mainly contributes to the overcrowding of the prisons. This makes it difficult to administer correctional techniques for their reformation, and also only convicts are administered correctional techniques for reformation or any work. Under trials are merely kept in the prison wasting away their time and nations money.

Age group of undertrial prisoners can be seen as 64(0%) between 16-18 years. 114533 (48.20%) between 18-30 years, 97035 (40.80%) between 30-50 years and 25967 (10.90%) above 50 years. From this we can see that about 90% of the undertrial prisoners were below 50 years and should be able to serve the country instead they are languishing inside the jail.

At the end of 2011 in various prisons in India, 51695 (26.9%) persons out of 1, 91,990 undertrial prisoners who have committed IPC crimes, were lodged for committing murder. Theft and Attempt to Murder were the next two IPC crimes which contributed large number of undertrial prisoners (23,267 for Theft and 20,525 for Attempt to Murder).

A total of 48,656 persons were lodged as undertrial prisoners in various prisons of the country for committing crimes under Special and Local Laws. 11,779 undertrial prisoners were reported under NDPS Act which accounted for 24.2% of the total undertrial prisoners under SLL. This was followed by Arms Act (18.6%) and Excise Act (12.0%).

A total of 74,203 undertrial prisoners were illiterate and 1, 02,852 were educated below class Xth standard among undertrials lodged in various jails in the country. These two categories have accounted for 30.8% and 42.6% respectively which taken together constitute 73.4% of the total undertrial inmates. Lack of education is one cause for the presence of

more undertrials.

Classification of undertrial prisoners professing different faiths revealed that 70.5% (1, 70,068 out of 2, 41,200) of them adhered to Hindu religion while 21.2% (51,206) were from the Muslim community and the rest belonged to other religions. The analysis on the basis of caste based classification of undertrial prisoners reveals that 35.1% (84,650) and 29.5% (71,104) belonged to General and OBC categories respectively. 22.3% (53,794) belonged to Scheduled Castes while 13.1% (31,652) belonged to Scheduled Tribes.

Imprisoned persons are unable to look after their families. In the absence of the main breadwinner, many families are forced into destitution. This combined with the social stigmatisation and ostracism that they face, leads to circumstances propelling children towards delinquency and exploitation by others. It is a vicious circle. The problems become acute when they belong to the socio-economically marginalized and exploited sections of the society.

One of the horrible plights a person can undergo is spending years in a jail as undertrials and at the end he was found not guilty. In such a situation can anyone compensate them for the mental agony and torture they and their family have suffered or give back to them the lost years, the loss of honour and reputation. The undertrials should not be kept in the jails as far as possible. If unavoidable then they should be kept separately with in the prison so that they are not allowed to mix with the convicts. Within the undertrials also a classification should be made so that the first and young offenders should be kept away from the hard core criminals thereby preventing contamination.

Overcrowding contributes to a greater risk of disease, higher noise levels, which affect the health of the prisoners, and adversely affect the hygienic conditions, surveillance difficulties, which increase the danger level. This apart, life is more difficult for inmates and work is more onerous for staff when prisoners are in over capacity. In Chapter 9 of the 78th Report of the Law Commission of India on "congestion of under trial prisoners in jails" had made some recommendations. Acceptance of which would relieve congestion in jails⁷.

In order to mitigate the conditions of the undertrial prisoners the first and foremost thing that has to do is to bring down their population drastically. This cannot happen unless all the branches of the criminal justice system work hand in hand. The presence of large number of undertrial prisoners is really shame to any criminal justice administration. For this we have to take these undertrials out of the prison or not to keep them for a long period as well as not to sent more undertrials to the prison.

REFERENCES

Prof.N.V.Paranjape,Criminology and Penology,(2009), Central Law Publications, p.407 | See Prison Statistics India (2011). The Statistics used here are based on the data published in this Government publication by National Crime Records Bureau, Ministry of Home Affairs, Government of India. | | See Prison Statistics India (2005, 2011). | See Prison Statistics India (2010, 2011). | | AIR 1979 SC 1360 | Occupancy rate = Inmate population/Total Capacity X 100 | These suggestions include liberalization of conditions of release on bail. Overcrowding may also be taken care of by taking recourse to alternatives to incarceration. |