
ISSUES OF THE UNDER TRIAL PRISONERS AND THEIR LEGAL STATUS

A. Jeffry Andrew* & M. Athma Rubavathi**

Introduction

Under trial denotes an unconvicted prisoner. One who has been detained in prison during the period of investigation, inquiry or trial for the offence s/he is accused to have committed. This is the fact that most of the under trials are people who are from the weaker sections of the society. Those poor and illiterate who can't access their rights and unable to negotiate in this criminal justice system which is bias to them. They are most vulnerable in this system.

Presumption of innocence and the duty of the prosecution to prove the guilt of the person accused of an offence, is the golden thread in criminal law jurisprudence.¹ Every individual charged with a crime has a right to be presumed innocent until proven guilty.

Reason for under-trials:

1. Indiscriminate arrests

As the Law Commission in its 268th report remarked that over 60 per cent of arrests are unnecessary. Law commission submitted in its 268th report by the head of Dr. Justice B.S.Chauhan, Former Judge of Supreme Court of India, **Report No.268** titled “**Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail**”.

2. Failure to pay Bail Bond/Surety:

The grant or refusal of bail on economic conditions i.e monetary surety, violates Articles 14 and 15 of the Constitution of India and runs contrary to the constitutional ethos.

Moti Ram vs. State of Madhya Pradesh², the Supreme Court clarified that the definition of the term bail includes both release on personal bond as well as with sureties. It is to be noted that

*Assistant Professor, SOEL, Tamil Nadu Dr. Ambedkar Law University, Chennai.

**Assistant Professor, Faculty of Law, SRM Institute of Science and Technology, Kattankulathur.

¹ Golbar Husain & Ors. Vs. State of Assam & Anr. (2015) 11 SCC 242 and Vinod Kumar Vs. State of Haryana (2015) 3 SCC 138.

² AIR 1978 SC 1594.

even under this expanded definition, ‘bail’ refers only to release on the basis of monetary assurance-either one’s own assurance (also called personal bond or recognizance) or third party’s sureties.

Various reports from the Ministry of Home Affairs show that a total of 2, 31,340 under-trial prisoners from various States and Union Territories were lodged in jails for committing crimes under Indian Penal Code (IPC), and 50, 457 were under-trials under special laws, e.g. Customs Act of 1962, Narcotic Drugs and Psychotropic Substances Act of 1985, Excise Act of 1944, etc. A large number of 12, 92,357 under-trials were released during 2015 out of which 11, 57, 581 were released on bail.³

3. Slow investigation by police

4. Slow trials

The Right to Speedy Trial, as recognized by the Supreme Court in **Hussainara Khatoon vs. Home Secretary, Bihar** is violated due to protracted delays. This delay is due to various reasons such as:

- i) Grossly inadequate number of judges and prosecutors.
- ii) “Remands being extended mechanically” by the presiding judge due to lack of time and patience.

The Supreme Court ordered the release of under trial prisoners whose period of incarceration had exceeded the maximum period of imprisonment for their offences pointing towards the failure of Magistrates to respect section 167(2) Cr.P.C. which mandates for the release of the under trial prisoners on the expiry of 60-90 days respectively. Justice Bhagwati on the issue of right of speedy trial observed that the under-trial prisoners languish in jail because they were downtrodden and poor, and not because they are guilty.

5. Lack of use of provisions

6. Failure of Legal aid Schemes

7. Lack of coordination

The main human right issue of under trials is delay in trial of cases. Right to speedy trial is a right to life and personal liberty of a prisoners guarantees under Article 21 of the Indian

³ National Crime Records Bureau, Prisons Statistics (Ministry of Home Affairs, 21st Edition, 2015)

Constitution, which ensures just, fair and reasonable procedure.

A writ petition has been filed before the Delhi High Court seeking implementation of Section 436A of Cr.P.C, for release of those under trial prisoners who are facing trial under and have spent half of their maximum sentence in lower offences.

The maximum period for which an under trial prisoner can be detained. It states that where a person has, during the period of investigation, inquiry or trial of an offence under any law, (except in cases where punishment of death is specified as one of the punishments) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence, he shall be released by the Court on his personal bond with or without sureties⁴.

Section 436 of Cr.P.C is mandatory in nature and the court of the police has no discretion in the matter. Any accused person arrested for a bailable offence willing to provide bail must be released. The only discretion available with the police is to release the accused either on a personal bond or with sureties. In cases where the accused is unable to provide bail, the police officer must produce the accused person before the Magistrate within 24 hours of arrest specified under Section 57 of Cr.P.C. Subsequently, when the person accused of an offence is produced before a Magistrate and is willing to furnish bail, then the Magistrate must release the accused person and the only discretion available is to release either on personal bond or a bond with sureties. The Magistrate cannot authorize detention of a person who is willing to furnish bail with or without sureties even for the purposes of aiding the investigation.⁵

The plea filed by **India Under trial Prisoner Support Forum** through **Advocate Anubhav Taneja** alleges that over 1200 under-trials lodged in Delhi prisons have completed half of their maximum sentence but only 416 such people have been released.

"Even a single day delay in release of under trial prisoners, who are entitled to that release as per Section 436 A, will amount to serious violation of their right to life under Article 21 of the Constitution".

Setting up the review mechanism for the implementation of Section 436-A, The Hon'ble Supreme Court passed the following discretions in the case of **Bhim Singh vs. Union of India**

⁴ Section 436 A of the Criminal Procedure Code, 1973

⁵ <https://www.intolegalworld.com/note?title=provisions-for-bail-under-crpc/>

and Ors.⁶

1. Composition: The Jurisdiction Magistrate/Judicial Magistrate/Sessions Judge will have the authority to review under trial prisoners for purposes of implementation of Section 436A.
2. Frequency: The concerned authority shall hold one sitting every week in each jail for two months, commencing from 1st October 2014.
3. Function: The concerned judicial officer will identify under prisoners who have spent half of their maximum sentences in jail or the maximum period of imprisonment provided for the said offence under the law. The judicial officer will pass an order in the jail itself for the release of such under trial prisoners who fulfill the requirement of Section 436A.
4. Monitoring Mechanism: The report of each sitting will be forward to the Registrar General of the Concerned High Court, and at the end of two months, the Registrar General of each High Court will submit the report to the Secretary General of the Supreme Court. The Jail Superintendent has to provide all necessary facilities for holding the court sittings.

Under Trial Review Committees:

Prisoners in India are chronically overcrowded.

An under trial review committee, set up in every district, deliberates and recommends the release of under trial prisoners and convicts who have undergone their sentence or are entitled to be released from jail due to bail or remission granted to them.

Article 21 of the Indian Constitution (No person shall be deprived of his life or personal liberty except according to procedure established by law). Important components of Article 21 are the following: i) person; ii) deprivation of life; iii) deprivation of personal liberty; iv) Procedure established by law.

In the *Maneka Gandhi vs. Union of India*⁷ case, which has totally changed the scope of Article 21 by demanding that the procedure must not only be established by law but that it must be just, fair and reasonable. It is not enough that there is, in force, a law which is formally enacted

⁶ Bhim Singh vs. Union of India and Ors. (W.P. (Criminal.) No. 310/2005) – Under Trial Prisoners and the Criminal Justice System by Madhurima Dhanuka

⁷ Maneka Gandhi Vs. Union of India AIR 1978 SC 597

by a competent Legislature and which authorizes the deprivation of life or liberty. The procedure must be such that it is in conformity with justice, fairness and reasonableness. Subsequent judicial pronouncements have spelt out the operation of this principle in varying situations.

Free and fair trial:

*K.Anbazhagan vs. Superintendent of Police*⁸, Free and fair trial is *sine qua non* of Article 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law.

Bail - Grant of. –

*Rajesh Ranjan Yadav @ Pappu Yadav vs. CBI*⁹ While it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. while it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, such as the interest of the society. Thus, grant of bail depends on the facts and circumstances of each case and it cannot be said there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted.

The guideline that bail is a general rule and jail an exception, is the logical and consistent adaptation of the presumption of innocence of pre-trial stage. It is also found in **State of Rajasthan vs. Balachand** where it was held that a basic rule may perhaps be put as bail not jail except where there are circumstances suggestive of feeling from justice or thwarting the cause of justice or creating other troubles in shape of repeating offence or intimidating witness and like by petitioner.

Rasiklal vs. Kishore s/o Khanchand wadhvani The SC held right to bail for bailable offences is an absolute and infeasible right and no discretion can be exercised as the words of Section 436 of Cr.P.C are imperative and the person accused of an offence is bound to be

⁸ K.Anbazhagan vs. Superintendent of Police AIR 2004 SC 525

⁹ Rajesh Ranjan Yadav @ Pappu Yadav vs. CBI AIR 2007 SC 451

released as soon as bail is furnished. It is further observed that there is no need for the complainant or public prosecutor to be heard in case where a person is charged with a bailable offence.

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 negotiation 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.

Law Commission of India in its 268 report made recommendation to make available bail easier.

Analysis of the Prisoner Act 1894:

One of the old legislations for governing the Prisoners enacted in the year of March 22nd, 1894. In this Act totally contains 61 Sections and XII Chapters. The prison system in India is still governed by an archaic and obsolete law of colonial period which is Prison Act, 1894.

The plights of prisoners and problems in this prison system have been acknowledged on several occasions by the Supreme Court and ordered states to reform the Prison Act, 1894 and incorporate case laws regarding prisoner's right. Apart from this, different committees were formed such as Mulla Committee (1980), NHRC suggestion (1996), Bureau of Police Research and Development (2005) to latest the Supreme Court guidelines (2015) were issued for prison reforms were discussed and strong suggestions were made but little has been done thereafter.¹⁰

CHRI – Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is a self-governing, non-partisan, worldwide non-governmental organization, mandated to guarantee the practical realization of human rights in the countries of the Commonwealth. CHRI's objectives are to promote awareness of an adherence to the Harare Commonwealth Declaration, the Universal Declaration of Human Rights, and other internationally recognized human rights instruments,

¹⁰ <https://lexisnexisindia.wordpress.com/2017/08/22/undertrial-prisoners-in-india/>

as well as domestic instruments associate human rights in Commonwealth member states.¹¹

The Prison Reform Programme of CHRI is focused on increasing transparency of a traditionally closed system and exposing malpractice. The agenda aims to improve prison situations, reform prison management, enhance responsibility and foster an attitude of cooperation between the various agencies of the criminal justice system in place of the prevailing indifference and discrimination.

Conclusion:

Under the Indian Laws, the persons have rights who are in the under trial prison. As I already mentioned because of that reasons peoples are in the under trial prison for long time. Most of the innocent peoples are affected because of the lengthiest trial process and it take many years for final decision they were forced to unemployment, education and they missing their dignity in the society. If Indian Government make some changes in the procedural laws and rules, the trial process will be finished without delay and the innocent people will be released from the jail.

¹¹ <https://www.humanrightscareers.com/magazine/international-human-rights-organizations/>

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