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Human Rights of Undertrial Prisoners with Special Reference to the Role of Judiciary in India

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ABSTRACT

Human dignity is the spine and the spike of human rights, as well as the very foundation upon which they are built. Human rights are the fundamental rights to which every man and woman born anywhere in the world is entitled simply by virtue of being a human being. Human rights are available to everyone, regardless of caste, religion, gender, race, or birthplace.

In our society, anyone who commits an offence or a crime should be punished through the criminal justice system. In modern times, the state has taken on the responsibility of providing adequate security for individuals as well as a reasonable opportunity for each individual to develop their own identity. The purpose of this study is to understand the plight of undertrial detainees through the perspective of human rights and judicial efforts.

Keywords: Human dignity, Fundamental Rights, Virtue, Society, Wrongdoer.

I. INTRODUCTION

Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty.²

Human rights are defined in several key documents, namely, the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social, and Cultural Rights. The Vienna Declaration, adopted at the World Conference on Human Rights in 1993, further expanded the meaning of human rights.³

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² What are Human Rights?, available at: <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx> (Visited on February 23, 2022).

³ Amrita Chakraborty, "Plight of Under Trial Prisoners: A study under human rights perspective", Vol. 7 Issue 7 *Journal of Contemporary Issue of Law* 38 (2021).

II. UNDERTRIAL PRISONERS

Undertrial Prisoners are unconvicted prisoners. In layman's language when the accused is in jail during the period of investigation, inquiry or trial of the offence in which he was arrested can be known as under trial Prisoners. The two elements (i) Accused in Jail (ii) period from arrest to the period just before the outcome of the criminal case are essential to explain the term. Generally, under trial prisoners are those accused who are charged with non-bailable offence and their bail has been denied or the accused who are charged with bailable offence and their bail has been granted as a matter of their right provided by the law but fail to furnish the bail bond and sureties. It also includes the accused who has been granted bail in the non-bailable offence but they failed to fulfil the mandatory conditions stated in order by the courts of law.⁴

The person against whom a criminal complaint or case is registered generally treated as an accused, but the guilt or innocence can only be decided by the competent court through the process of law. There is a famous dictum 'accused is presumed innocent until proven guilty'. A person does not lose all his basic human rights merely on the ground that he is a under trial prisoner or he is an accused of a crime. Under trial prisoners are persons who have not been convicted of the charges for which they have been detained, and are presumed innocent in law.⁵ The majority of under-trial prisoners are from the poorer and less privileged elements of society, with no to very little education, since they are unaware of their rights and lack the resources to represent themselves in court.

An Undertrial Prisoner may be Warranted in Prison on the following grounds

- a) in case of a very grave offence;
- b) if the person arrested is likely to interfere with witnesses or impede the course of justice;
- c) if the person arrested is likely to commit the same or any other offence;
- d) if he may fail to appear for trial.

The criminal justice system in our country is based on two principles i.e. any person arrested is presumed to be innocent unless proven guilty and secondly the duty of the state and the court to see that justice is done to the people and the victim. To achieve these principles the process

⁴ Muskan Gupta, The state of Prisons and undertrial incarceration in India, available at: <https://blog.ipleaders.in/state-prisons-undertrial-incarceration-india/> (Visited on February 25, 2022).

⁵ Dr. N. Bhagya Lakshmi, Detention of Under Trial Prisoners: A Bird's Eye View of the Judiciary, available at: <http://www.penacclaims.com/wp-content/uploads/2019/07/Dr-N.-Bhagya-Lakshmi.pdf> (Visited on February 25, 2022).

of investigation and trial should be completed without any delay. But they are not being achieved and undertrials keep on languishing in jail for years.⁶

III. PLIGHT AND PROBLEMS FACED BY UNDER TRIAL PRISONERS

The criminal justice delivery system in India saw more than 0.2 million undertrial prisoners being neglected in jail for many years, in many cases it exceeded the maximum sentence for the crime which they had committed. Lack of coordination between the Centre, Judiciary & State Governments & also because they did not have anyone to stand as guarantors nor assets to furnish as bail bonds, the poor continued to suffer in prisons. There have been cases where the amount of bail is disproportionately high.⁷

Given below are some challenges faced by undertrial prisoners:

- **Detention in bailable cases owing to poverty:** Many people are not granted bail in bailable offences primarily because they are unable to furnish surety. This is a serious concern considering bail is a matter of right in such cases and those people end up spending a long period of time in the prisons just because they are poor.

- **Delay in investigation and trial in certain cases:** Many prisoners languish in prisons primarily because the police do not finish investigation and does not file the chargesheet on time. This is a very serious matter because due to delay in trials and police investigation such people remain in prisons for longer than necessary.

- **Prolonged detention:** A large number of undertrial prisoners are detained in prisons for long periods, which in some cases exceed the maximum sentence prescribed for the offence for which they are charged.

- **Criminalizing effect of a Prison:** With hardened criminals and in the absence of any scientific classification methods of separating them from others, there is a chance of first time and circumstantial offenders to turn into criminals.⁸ The Model Prison Manual states that no convicted prisoner shall be kept in the same area in which undertrial prisoners are kept, or be allowed to have contact with undertrial prisoners.⁹

⁶ Akib Khan, The Human Right of Under trial Prisoners, available at: <https://www.legalserviceindia.com/legal/article-4537-the-human-right-of-under-trial-prisoners.html> (Visited on February 25, 2022).

⁷ Ritwik Sneha & Rishab Garg, The Problems of Undertrials, available at: <http://www.legalservicesindia.com/article/1280/The-Problems-of-Undertrials.html> (Visited on February 25, 2022).

⁸ P.N. Bhagwati, "Human Rights in the Criminal Justice System", Vol. 27 No. 1 *Journal of the Indian Law Institute* 1-22 (1985).

⁹ Model Prison Manual for the Superintendence and Management of Prisons in India, available at: <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf> (Visited on February 25, 2022).

- **Effect on families of Undertrial prisoners:** Those imprisoned are unable to look after their families. In the absence of the main bread winner, the family is many a time forced into destitution with children going astray. This combined with the social stigmatization that they face, leads to circumstances propelling children towards delinquency and exploitation by others. It is an inexorable circle. The problems become acute when they belong to the socio-economically marginalized and exploited sections of the society. The dominant class does not fail and lose time in taking advantage of this situation to exploit the remaining family members to the fullest possible extent. This can take the form of rape or forced prostitution of the prisoner's wife and or his daughters.¹⁰

- **Overcrowding:** Due to overcrowding in the prison and shortage of adequate space to lodge prisoners, most of the prisons face problems to keep them in safe and healthy conditions. Most of the prisoners including the undertrials come from socio-economic and disadvantaged sections of the society where disease, malnutrition and absence of medical services are common. When such people are cramped in with each other in unhealthy conditions, infectious and communicable diseases spread easily among them.¹¹

- **Prison Violence and Mishandling by the Police:** Prisons are often a dangerous place for those they hold, specially the first-time offenders who are vulnerable to group violence and mishandling by the police. An example of worst form of Prison violence was witnessed in *Khatri vs. State of Bihar*¹², where the police blinded 80 undertrial prisoners by puncturing their eyes by needles and pouring acid in them.

- **Homosexual Abuse:** Prisons are the places where same sex people are lodged. Being removed from their natural partners, forces the prisoners to look for alternative ways to satisfy their sexual urge. This often finds vent in homosexual abuses where the young and feeble are targeted. Resistance from the side of prisoners leads to aggravated violence on them. At times, prisoners are subjected to massive homosexual gang-rapes. Apart from causing severe physical injuries like the rupture of anus and spreading sexually transmitted diseases including HIV/AIDS, it also induces severe trauma in prisoners forcing some of them to commit suicide. If they do not, they carry a lot of anger and frustration in themselves which they take out on the next innocent prisoner who gets admitted.¹³

¹⁰ Ritwik Sneha & Rishab Garg, The Problems of Undertrials, available at: <http://www.legalservicesindia.com/article/1280/The-Problems-of-Undertrials.html> (Visited on February 25, 2022).

¹¹ Dr. T. Giri & T.S.R Praneetha, "Problems of Undertrials in India", Vol. 2 Issue 1 *International Journal for Legal Development and Allied Issues* 244 (2016).

¹² AIR 1981 SC 928.

¹³ Dr. T. Giri & T.S.R Praneetha, "Problems of Undertrials in India", Vol. 2 Issue 1 *International Journal for Legal*

IV. HUMAN RIGHTS OF UNDERTRIAL PRISONERS

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."¹⁴

In recent years, the Supreme Court of India has been particularly attentive regarding violations of inmates' human rights. Article 21 of the Indian Constitution states that "no one shall be deprived of his life or personal liberty unless in accordance with the procedure established by law". The right to life and personal liberty is the core of human rights in our country. The Indian judiciary has functioned as an institution for delivering efficient remedy for violations of human rights by its positive stance and activism. The courts have created and established a multitude of rights by giving "life and personal liberty" a liberal and comprehensive interpretation. The court defined the Fundamental Rights enshrined in Article 21 in a very specific and explicit way.

In A.K.Gopalan's case, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in Maneka Gandhi case and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that "the ambit of Personal Liberty by Article

Development and Allied Issues 244 (2016).

¹⁴ DR. Anil Kumar Singh, "Undertrial Prisoners in India: Issues and Concerns", Vol. 5 Issue 5 *International Journal of Scientific Research* 336 (2016).

21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation” and also opined that the procedures prescribed by law must be fair, just and reasonable.¹⁵

The Supreme Court has ruled in the following cases: Maneka Gandhi, Sunil Batra (I), M.H.Hoskot, and Hussainara Khatoon, that the provisions of Part III should be given the broadest possible interpretation. It has been held that the right to legal aid, a speedy trial, the right to an interview with a friend, relative, or a lawyer, the right of prisoners in jail to be protected from degrading, inhuman, and barbarous treatment, the right to travel abroad, the right to live with human dignity, the right to a livelihood, and other rights that have not been specifically mentioned are Fundamental Rights under Article 21 of the Constitution. Thus, the Supreme Court of India has significantly broadened the scope of Article 21 and determined that its protection will be accessible for defending inmates' fundamental rights and enacting jail reforms. The Supreme Court of India has created Human Rights jurisprudence to preserve and protect the right to human dignity of prisoners. The Apex judiciary's concern can be seen in the many cardinal judicial rulings. The Supreme Court's decision in Sunil Batra was a watershed moment in the evolution of Indian jail jurisprudence.

V. JUDICIAL APPROACH

The role of the judiciary is primarily to ensure the most effective and proper implementation of the Rule of Law beginning from the protection of Rights. In *State of Rajasthan vs. Balchand*¹⁶, the court held that, “The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner.” The discriminatory bail system has been criticized by the apex court stating that “it is a travesty of justice that many poor accused are forced into long cellular servitude for little offences because the bail procedure is beyond their meager means.”¹⁷

In a landmark judgment in *Bhim Singh vs. Union of India*¹⁸ the Supreme court issued a series of directives to state authorities to facilitate the release of undertrial prisoners for those who have served half of their probable maximum prison term and directed district judges and prison

¹⁵ Nidhi Beniwal, Role of Judiciary in Protecting the Rights of Prisoners, available at: <http://www.legalserviceindia.com/article/1616/Role-of-Judiciary-in-Protecting-the-Rights-of-Prisoners.html> (Visited on Feb 24, 2022).

¹⁶ AIR 1977 SC 2477.

¹⁷ Dr. N. Bhagya Lakshmi, Detention of Under Trial Prisoners: A Bird's Eye View of the Judiciary, available at: <http://www.penacclaims.com/wp-content/uploads/2019/07/Dr-N.-Bhagya-Lakshmi.pdf> (Visited on February 25, 2022).

¹⁸ (2015)15 SCC 605.

officials to oversee the process. The highest court's extraordinary directive was in response to a criminal justice system which is widely regarded as 'dysfunctional', where undertrial prisoners are made to wait for years before their cases are even heard.

A very large number of under-trial prisoners suffer prolonged incarceration even in petty criminal matters merely for the reason that they are not in a position, even in bailable cases, to furnish bail bonds and get released on bail.¹⁹

In *Sheela Barse vs. State of Maharashtra*²⁰, the apex court dealt with the treatment of women prisoners in police lock ups. It issued various directions in order to improve conditions of women prisoners and also provide protection to the arrested persons, especially to women confined in police lock ups.

The Supreme Court in *M.H. Hoskot vs. State of Maharashtra*²¹ and *Hussainara Khatoon vs. State of Bihar*²² held that, a procedure which does not avail legal services accessible to an accused person who is too poor to afford a lawyer and will have to go through the trial without legal assistance cannot be regarded as just, and fair under Article 21 of the Constitution of India. It also said that legal services should be made available to a prisoner who is seeing his liberation through the court process.

The court also directed that the undertrial prisoners shall be provided with a lawyer for the purpose of making a bail application and opposing remand on its next remand date by the State Government on its own cost.

In *Khatri & Others vs. State of Bihar*²³ a number of under-trial prisoners filed a writ in the Supreme Court complaining that after their arrest, they were blinded by police officials whilst under police custody. The Supreme Court also found during the proceedings of the case that no legal representation was provided to the blinded prisoners because none of them asked for it. The judicial magistrates also did not enquire from the blinded prisoners produced before them whether they wanted legal representation at state cost.²⁴

Supreme Court reiterated its stance in *Hussainara Khatoon's*²⁵ case, wherein it was held that

¹⁹ Priti Bharadwaj, Liberty at the cost of Innocence: A Report on Jail Adalats in India, available at: https://humanrightsinitiative.org/old/publications/prisons/liberty_at_the_cost_of_innocence.pdf (Visited on February 25, 2022).

²⁰ AIR 1983 SC 373.

²¹ AIR 1978 SC 1548.

²² AIR 1979 SC 1369.

²³ AIR 1981 SC 928.

²⁴ Dr. N. Bhagya Lakshmi, Detention of Under Trial Prisoners: A Bird's Eye View of the Judiciary, available at: <http://www.penacclaims.com/wp-content/uploads/2019/07/Dr-N.-Bhagya-Lakshmi.pdf> (Visited on February 25, 2022).

²⁵ *Supra* note 21.

the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and is implicit in Article 21 of the constitution. The Court further observed that legal aid would become merely a paper promise and would fail its purpose if it were left to a poor ignorant and illiterate accused to ask for free legal services. The magistrate or the session's judge, before whom the accused appears, is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the state.²⁶

VI. CONCLUSION

In India, the population in the prisons has increased abundantly over the past few decades. This increase in population can be directly correlated with an increase in crime and an increase in the overall population. Hence the concern for the safety, security, hygiene, and so on of the undertrial prisoners has become a challenge for the authorities. There are thousands of cases where individuals accused of bailable offences are detained, where bail is a matter of right. No person should be deprived of their personal liberty before the s/he has been proven guilty in the eyes of law. It is essential to effectively implement the existing provisions of the Cr.P.C., to ensure justice for undertrial prisoners. All the agencies of the criminal justice system should adopt a concerted and a well-coordinated approach to improve the plight of the 'forgotten souls' i.e., the undertrial prisoners, who are confined in prisons unnecessarily.

²⁶ *Supra note 23.*