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# Undertrial Prisoners in India: Victims of Long Incarceration

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## ABSTRACT

*Prison has always been a place for the reformation of the convict. In short, the whole purpose of the prison system is to punish those who have committed a crime. It was never meant to be a place to keep the undertrial population, however, it can be seen that more than 70% of the prisoner population in India is undertrial prisoner population. The struggling fight of undertrial prisoners in India can be seen for years now. However, not much attention is given to the miserable state of undertrial prisoners in India. There are many reasons behind the increasing number of undertrials, but one of the main reasons behind it remains delay in conducting trials or providing justice to them. It can in a way be said that justice for undertrials comes only after they have paid the price of being punished and imprisoned, even without being declared as convicted. This injustice that the undertrial prisoners have to go through is a shame on the justice system of our country. Martin Luther King had stated, "Injustice anywhere is a threat to justice everywhere." It thus becomes extremely important that more focus is now laid on reducing the plight of undertrial prisoners in India.*

## I. INTRODUCTION

The sad reality of the prison system in India is that there is no difference made between those who are accused and those who are convicted. Both these prisoners are languishing in prisons and are almost treated the same. As a result of which the prisons in India are overflowing. Undertrial prisoners form the majority of the prison population in India. Undertrial prisoners are those prisoners who haven't been convicted but are detained in prisons during the period of investigation or trial for an offence he/she is accused to have committed. The count of undertrial prisoners has been on a rise despite various legislations being implemented to reduce the number of these prisoners. In the list of 217 countries, India is among the top 15 countries which have the highest undertrial prisoner population.<sup>2</sup> According to the Prisons Statistics Report, 2020, the number of undertrial prisoners has increased from 3,08,718 in 2017 to

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<sup>2</sup> ROY WALMSLEY, WORLD PRE-TRIAL/REMAND IMPRISONMENT LIST 01-02 (4<sup>th</sup> ed. 2020).

3,71,848 in 2020. The report indicates that 76.1% of the total prisoners in India were undertrial prisoners. From 2015 to 2020 undertrial inmates have increased by 31.8%.<sup>3</sup> The main reason behind these increasing numbers is a delay in conducting trials and thus delay in providing justice. Although the Supreme Court of India has held that Article 21 implicitly includes the right to a speedy trial as a fundamental right and that the requirement for a ‘just, fair, reasonable’ procedure under Article 21 of the constitution is to provide speedy trial,<sup>4</sup> the data regarding undertrials show that there were 7,128 undertrials who were incarcerated for over five years, 16,603 undertrial prisoners (4.5% of total Undertrials) who were confined for 3 to 5 years and 54,287 undertrial prisoners confined for 1 to 2 years.<sup>5</sup> This is a matter of grave concern as, despite the provisions and judicial decisions being in place, there is no significant decrease in the undertrial prisoner population. It’s a shame to see these undertrial prisoners being victims of physical and mental torture and to see a serious violation of their fundamental rights. Mr Justice Marshall had stated that “a prisoner does not shed his basic constitutional rights at the prison gate”<sup>6</sup> This statement is very crucial, as it is about time that more focus is laid on the violation of the rights of undertrial prisoners.

This article focuses on a brief discussion regarding the long incarceration of undertrials, the reasons behind it, and the effect of long incarceration on the mental health of the undertrials. The article also focuses on the judicial decisions and the amendments brought about in the legislation and their ineffective implementation.

## **II. LONG INCARCERATION OF UNDERTRIALS: POSSIBLY OWING TO ILLITERACY AND POVERTY**

Undertrial prisoners in India have been increasing for a really long period of time now. It was however noticed that pre-trial detention of a large number of accused is in reality unnecessary and can be prevented. Taking this into consideration and understanding the need to reduce the number of undertrials detained in prisons for bailable offences, the Union government had brought about amendments in the Criminal Procedure Code to incorporate legal provisions that would prevent unnecessary imprisonment. It was realized that a lot of undertrials languishing in prisons are victims of indiscriminate arrests. To solve this issue amendments were brought about in Section 41 of the CrPC to put an end to arbitrary arrests. The Apex Court had also

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<sup>3</sup> National Crime Records Bureau (Ministry of Home Affairs) Government of India, *Prison Statistics India 2020 (26<sup>th</sup> edition)*. Retrieved Mar. 4, 2022, from [ncrb.gov.in](https://ncrb.gov.in), [https://ncrb.gov.in/sites/default/files/PSI\\_2020\\_as\\_on\\_27-12-2021\\_0.pdf](https://ncrb.gov.in/sites/default/files/PSI_2020_as_on_27-12-2021_0.pdf).

<sup>4</sup> Hussainara Khatoon v. State of Bihar, (1980) 1 S.C.C. 98: (1979) 3 S.C.R. 532.

<sup>5</sup> Supra Note 2.

<sup>6</sup> Francis Corahe Mullin v. The Administrator, UT Delhi, A.I.R. 1981 S.C. 746.

held that “No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to reasonably justify the arrest apart from his power to do so”<sup>7</sup> The legislature in 2005 also amended the CrPC and introduced Section 436-A which lays down the right of an undertrial to apply for bail once s/he has served one-half of the maximum term of sentence s/he would have served had s/he been convicted.<sup>8</sup> Further, in the case of the right to bail in a bailable offence, Section 436 of the CrPC mandates the police or court to release an indigent person on a personal bond without asking for any surety.<sup>9</sup> However, only bringing about these amendments in the Criminal Procedure Code was not enough. What is of more importance is the proper implementation of these legal provisions. Despite these provisions being in place for a long time now, there is no significant decrease in the number of undertrial prisoners, which basically indicates that these provisions have not been successfully implemented. Many radical measures including bail provisions through personal bonds or surety have fallen flat as most of them are either unaware of the new measures or too poor to arrange for personal bonds or even sureties from someone to secure bails.<sup>10</sup> It has been observed that the majority of the undertrials who suffer from unnecessary detention are illiterate, poor, and belong to socio-economically backward sections of society. According to the reports of 2020, it is seen that out of 3,71,848 Undertrials lodged in various jails in the country, a total of 1,00,297 Undertrial prisoners were illiterate and 1,51,386 were educated below class 10<sup>th</sup> standard. This constitutes 67.7% (2,51,683 out of 3,71,848) of the total undertrial inmates.<sup>11</sup> Since they are illiterate, there is no awareness among them about their rights. Moreover, even if they are aware, they aren’t able to hire competent lawyers as they charge huge amounts of money. Article 22(1) of the Indian constitution provides that every person who is arrested has the right to consult and to be defended by, a legal practitioner of his choice.<sup>12</sup> To make sure that this article serves the purpose for which it was enacted, Article 39(a) gained importance because the state provides for free legal aid services to help the poor and needy but the quality of these services is mostly not that great. There are too many complaints against these lawyers about not giving their 100% to the case, irregular appearances in courts, lack of communication with their clients about the status of their cases, and the poor

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<sup>7</sup> Joginder Kumar v. State Of U.P, A.I.R. 1994 S.C. 1349.

<sup>8</sup> Code of Criminal Procedure (Amendment) Act 2005, No. 25, Acts of Parliament, 2005.

<sup>9</sup> Code of Criminal Procedure 1973, Proviso to Section 436.

<sup>10</sup> Sudhir Krishnaswamy & Shishir Bail, *Freeing the Undertrials*, The Hindu, 22 Sept., 2014.

<sup>11</sup> Supra Note 2.

<sup>12</sup> INDIA CONST. art. 22, cl. 1.

defence put up by them at the bail and trial stages.<sup>13</sup> This shows the poor quality of legal aid services in our country. Even Justice Uday U. Lalit, Supreme Court Judge and the Executive Chairman of the National Legal Services Authority, had stated that “Legal aid to the poor does not mean poor legal aid.”<sup>14</sup> Due to this lack of good quality legal aid services, people have lost confidence in the legal aid system because they do not get the proper legal representation or the quality of legal representation of their choice, which also violates their right to be defended by a legal practitioner of their choice. Apart from the fact that these poor and illiterate undertrials do not get good quality legal aid services, another reason why furnishing for bail gets delayed is the fact that the prisons in India are overcrowded and understaffed and this difference in ratio creates a lot of problems. Prisoners are not brought to court hearings at the right time because of a shortage of prison staff and escorts and this results in these prisoners being victims of delayed justice. This problem gets even worse in the case of female undertrials because of a huge shortage in the number of female escorts. Though video conferencing facilities were introduced years ago, however, they are limited to only a few prisons and courts.

However, the number of undertrials can be reduced by firstly, repairing the ailing legal aid system. Since legal aid services can be of huge help to poor undertrials, it requires strong backing from the Union government, and it also requires new and more competent lawyers. Honourable Supreme Court judge, Justice Uday Umesh Lalit, while emphasizing the need for improving the legal aid system called upon senior advocates to render pro bono legal aid to the poor and marginalised sections to ensure that they get quality access to justice.<sup>15</sup> It is important for the state to look into this because it is through these lawyers that the undertrial prisoners get to know about their rights and can get bail in bailable offences instead of languishing in prisons. Secondly, prison visitors can play a crucial role in making the prisoner aware of their legal rights and procedures and thus help in preventing long pre-trial detention. Apart from this, steps must also be taken to educate the prisoners about their rights by holding seminars or sessions within the prison premises. Thirdly, steps must be taken to reduce the delay caused in conducting trials. In fact, India can adopt the measures adopted by several countries such as Bolivia, Canada, Colombia, Haiti, Panama, Paraguay, and the United States to accelerate proceedings and correct the procedural delay. Some of these measures include (a) periodic review of the situation of persons held in pretrial detention; (b) measures to guarantee that

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<sup>13</sup> Vijay Raghavan, *Undertrial prisoners in India: long wait for justice*, LI No. 4 Economics and political weekly, 17-17 (2016).

<sup>14</sup> Kumar Buradikatti, *Legal aid to the poor does not mean poor legal aid: Justice Lalit*, The Hindu, Oct. 24, 2021.

<sup>15</sup> Press Trust of India, *Senior advocates must render pro bono legal aid to poor: SC Judge*, Hindustan times, Oct. 24, 2021.

hearings are held; and (c) holding hearings in prisons.<sup>16</sup> Since in India there is a shortage of prison staff who can take the prisoners to their court hearing on time, it results in delayed justice to avoid this, holding a hearing in prisons for the undertrial can help a lot. Thus, more focus and emphasis must be laid on improving and enhancing the facilities of video conferencing so that it is available in every prison in India and no undertrial prisoner is ever a victim of a long incarceration period just because there is a shortage of staff and escorts.

### III. LONG INCARCERATION AND PSYCHOLOGICAL IMPACT

William Edward Gladstone had stated that “Justice delayed is justice denied.” If there is a delay in providing justice, then the whole purpose of justice is killed. If an accused awaiting trial has already been in prison for years and is later proved innocent, then what was the point of justice as the harm is already done. When there was a need for justice, there was no justice. Delay in providing justice to an undertrial prisoner results in them being victims of a long incarceration period which in a way makes them victims of physical and mental torture owing to the prison environment. According, to the United Nations Standard and Norms, undertrial prisoners are deemed to be innocent in the eyes of law until they are proved to be guilty.<sup>17</sup> It is necessary to adhere to this statement. However, one of the major problems in India is that there is no difference made between the convicted and an undertrial prisoner, they are both nearly treated the same. Despite there being a provision in The Prisons Act, 1894 which provides that unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners<sup>18</sup>, yet the undertrials are housed along with the convicts due to lack of space within the detention facility and are therefore subject to live within the same environment. Since undertrial prisoners are not lodged in separate prisons from the convicts, there are cases where living with these convicts is torturous and has a very negative impact on the mental health of undertrials. In 2018 an incident came to light through a viral video where the convicts in Uttar Pradesh Hamirpur District Jail could be seen mercilessly whipping undertrials with leather belts and the jailor watches without intervening and it was seen that this is a routine affair in Uttar Pradesh jails where new undertrials are intimidated jointly by convicted prisoners and jail staff for extortion of money and distribution of work inside the jail.<sup>19</sup> This is just one of the instances in which undertrials were subject to torture which breaks their confidence and creates fear and frustration

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<sup>16</sup> INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, MEASURES TO REDUCE PE-TRIAL DETENTION 13-15 (2017).

<sup>17</sup> United Nations Standards and norms in Crime Prevention and Criminal Justice, Rule 111(2).

<sup>18</sup> The Prisons Act, 1894, No. 9, Acts of Parliament, 1894. Section 27(3).

<sup>19</sup> *Whipped like animals: convicts torture undertrials in UP jail, jailor approves*, Mirror Now Digital, June 11, 2018.

in their minds. Moreover, the environment of the prison is only such that, even if the accused is later proved to be innocent, he is subject to psychological anxiety and social stigma. Environmental factors in prison give rise to feelings of anger, frustration, and anxiety, which consequently result in the incidence of psychiatric morbidity among prisoners.<sup>20</sup> Key factors of the prison environment that influenced prisoners' mental health included isolation and lack of mental stimulation, lack of family contact, and comfort.<sup>21</sup> With the pandemic hitting us in 2020, the conditions for undertrials became even worse as their families couldn't visit them in prison, which in some way affected their mental health as they lost the comfort of meeting their relatives. Moreover, because of the pandemic, there was even more delay in conducting trials, which increased anxiety and frustration levels. The prisoners awaiting trial are subject to live within the four walls and have nothing to focus their minds on and no one to have a conversation with. They are all by themselves and their thoughts, which can often lead them to a state of mind which is very harmful. Since prisons in India are overcrowded the prisoners awaiting trial have to live in poorly maintained jails, with no proper food and no poor medical and sanitation facilities. The feeling of being alone and not having the comfort of family pushes them towards depression. The number of unnatural deaths in prisons has increased by 18.1% from 160 in 2019 to 189 in 2020.<sup>22</sup> The Supreme Court of India had stated that "The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."<sup>23</sup> Also, in cases where the accused is the only breadwinner of the family, the whole family loses their support and has to face serious circumstances. Moreover, an innocent undertrial prisoner not only suffers from lack of family comfort, mental illness, loss of income, and loss of liberty but also suffers from societal stigmas. They are faced with public humiliation. Even if they are later proved to be innocent by the court, they are subject to inhumane treatment by society. In short, even if they are declared innocent by the court, society still treats them as criminals. They have difficulty finding jobs and earning a living for themselves, which pushes them more towards depression. Hence, these prisoners who are victims of delayed justice, have to suffer not only inside the prison but also outside the prison. It makes them lose confidence in

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<sup>20</sup> Neelu Sharma, et al., *Psychiatric Morbidity in Under Trial Prisoners*, 4 ICHSR. 177, 177 (2014).

<sup>21</sup> Nurse J, et al., *Influence of environmental factors on mental health within prisons: Focus group study*, *BMJ* (Clinical research ed.), 327,7413 (2003): 480.

<sup>22</sup> *Supra* Note 2.

<sup>23</sup> *Moti Ram and Ors. V. State of Madhya Pradesh*, A.I.R. 1978 S.C. 1594.

themselves and might lead them towards psychiatric morbidity.

To prevent the mental and physical torture that the undertrials have to go through while awaiting justice firstly, steps should be taken to separate the undertrials from the convicted and there must be frequent checks to ensure that all prisons in India are following this rule laid by the Prison Act, 1894. Secondly, undertrials must also be provided with better facilities of food, clothing, sanitation and must be allowed more frequent meetings with relatives and lawyers. They must also be allowed to freely move around in an open space and must not be isolated in a small cell, as they shouldn't be punished before they are declared to be convicts. Thirdly, prison laws like the Prison Act must make torturous acts of prisoners towards other prisoners even more strict and should also lay down rules to punish the prison authorities under whose supervision such acts are taking place. There must also be frequent checks taking place in each prison to see how the prison authorities are treating the undertrial prisoners.

#### **IV. CONCLUSION**

The current picture of prisons in India shows that the prisons are overflowing with a majority of the prisoners being undertrials and most of them belonging to poor households. This needs to be changed because years have passed, but the number of undertrials keeps on increasing. It is high time that the provisions laid down by the Union government are implemented in the right way so that innocent undertrials do not have to go through physical and mental torture. Moreover, awareness should be created among the undertrials about their rights to seek bail. This will cut down on unnecessary detention of these undertrials and thus also help in solving the problem of overflowing prisons. The legal aid services should also be improved. Undertrials must be kept in separate prisons from the convicted and must be provided with better living facilities so that their mental health is not impacted negatively. These are some of the measures that are likely to have a positive impact on undertrial incarceration in India. It is high time now that steps are taken to bring about an end to delayed justice so as to bring an end to the suffering of the innocent undertrials because the court might provide them compensation but how can one compensate the years these poor undertrial prisoners have lost in prison; how can one compensate for the public humiliation they will continue to suffer even after they are proved innocent; and how can one compensate for the mental torture they had to go through.

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