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Deprivation of Freedom

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ABSTRACT

The article talks about the dire state of undertrial prisoners in India. Total prisoners in India is 4,88,511 and out of those 3,71,848 are under trial prisoners. The number of undertrials has gone up from 3,32,916 to 3,71,848, which is an increase of 11.7% during a single year. This article in-depth looks at the reasons why there has been an increase in the number of undertrials. The state of the undertrials in the world's largest democracy is dire and their future looks bleak. With long-going investigations and no sight of a trial culminating, the undertrial prisoners are left in a state of anxiousness. In the process of justice being served there lies somewhere injustice.

The article looks into the few recourses which can be taken by the justice delivery system to improve the state of the undertrials without hampering the process of justice. It also talks about the much-needed police reforms and judicial reforms. Moreover, it talks about the sections which the Indian legal system already has but due to callous authorities the afflicted are left in a state of helplessness. It focuses on the main reasons behind the increasing number of undertrials like the poor population who are ignorant of their right and callous authorities who don't make it a duty to make the accused aware of his right.

With few much-needed reforms and strict implementation, the problem of a growing number of undertrials can be and should be solved and the article focuses on that.

The main objective of the criminal justice system is to punish transgressors and criminals and to provide justice to the victims. But in between actualizing these two objectives there lies the bleak plight of the undertrials. The ordinary citizens of the country wait in disdain without any hope for their trial to conclude, and for the poor, the situation is even helpless as paying high bail sureties is something they can't afford, so being sequestered from their life becomes their fate. In the world's largest democracy, in the process of justice being served there lies somewhere injustice.

According to the prison statistics India report 2020² released by the National Crime Record Bureau the number of total prisoners in India is 4,88,511 and out of those 3,71,848 are under trial prisoners. The number of undertrials has gone up from 3,32,916 to 3,71,848, which is an increase of 11.7% during a single year.

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² National Crime Records bureau, Prison Statistics Report 2020, Executive Summary.

The Hon'ble supreme court of India in *K.A. v. Union of India*³ said when a quick trial appears unlikely and the accused has been incarcerated for a significant period of time, the courts are normally required to enlarge the accused on bail, regardless of any statutory restrictions on the right to bail.

The percentage of undertrials in prison in India is crossed by 75% which is significantly higher than the world average of 18-20%⁴.

For the criminal justice system to be impactful, justice needs to be delivered but whilst delivering justice keeping the accused incarcerated without any reasonable reason will not serve the purpose but rather will harm and disrupt the life of the undertrial prisoner and their family if they come out to be innocent. Moreover, keeping the accused in prison due to the inability of the system to give a speedy trial seems to defeat the purpose of a fair trial.

The psychological effects of being in prison are heavy as prison life is completely isolated and different from the outer world, it takes a heavy toll on mental health, and combined with the possibility of undertrial being innocent and wrongly accused makes it all the more important to look into the plight of undertrial prisoners.

There are actual people behind those more than 3,00,000 number of undertrials prisoners in India who have a life outside the prison and their life is disrupted at the cost of the long and tedious process of trials.

It can be argued that it is important to keep them in prison as keeping the transgressors in jail gives a sense of relief to the victim that the justice is being delivered and it can be understandable to keep them for a reasonable amount of time, but keeping them in prison indefinitely with no sight of the trial commencing or ending seems absurd, why should the accused pay for the inability of the system to give a speedy trial, isn't that the responsibility of the state and the justice system? And who will be responsible for the lost years of acquitted people and their disrupted lives and disturbed mental state and health? The authorities can't be excused. The price of delayed trials because of mismanaged justice delivery system and callous authorities is paid by the undertrials struggling to get a date for their hearing.

Recently Supreme Court took a positive step and gave two months to high courts and states to implement certain guidelines namely Draft Rules of Criminal Practise, 2020⁵ in order to

³ *K.A. v. Union of India*, (2021) 3 SCC 713(India).

⁴ Kanu Sarda, '*Majority prisoners in India are undertrials; accounts for 62 per cent of total prison population*', *The Indian Express*, February 6, 2022.

⁵ Draft Rules of Criminal Practise (2020), Ch.5 Miscellaneous.

streamline the deficiency and inadequacy during the criminal trials.

In the mentioned rules the Supreme Court made it mandatory for the application of bail to be disposed of within 3 to 7 days from the date of the first hearing, and if not the presiding officer must furnish the reasons in the order itself and the application also must be furnished to the accused on the pronouncement of the order itself.

The Supreme Court also gave a slew of directions for the commencement of expeditious trials, 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 unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded or Sessions cases may be given precedence over all other work and no other work should be taken up on sessions days until the sessions work for the day is completed.

But these directions might not be enough to ameliorate the conditions of the undertrials. The few main reasons behind a huge number of undertrials are the indiscriminate arrest by the police due to unreserved power given to them, the poor conditions of the undertrial prisoners who can't afford surety for bails due to destitution, and the long-pending trials without any hope of culmination.

Taking a reading at the wording of Section 41(1) (a) of CrPC⁶, which says 'who has been concerned in any cognizable offense, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned', shows that the use of words "reasonable complaint", "reasonable suspicion", gives an ample opportunity for them to be misused as they are ambiguous terms and can be loosely interpreted to harass people. Also, there are no authorities to inquire into the indiscriminate arrests of the police which either leads to the arrests going unnoticed or unpunished.

Although there have been procedural guidelines by the supreme court there is a valiant need for a statutory legal provision curbing the power of police or at least putting a check on them so that no indiscriminate arrest goes without redress.

Section 436⁷ of CrPC says that the person accused of a bailable offense can be released on a personal bond without asking for sureties for bail. It is perplexing to know the dire state of undertrials prisoners despite the presence of this section a lot of undertrials are in prisons for bailable offenses and the reason for this can be attributed to lack of information and inability

⁶ Code of Criminal Procedure, Section 41(1) (a).

⁷ Code of Criminal Procedure, Section 436.

to afford legal consultancy. No provision makes it mandatory for the jail authorities or the magistrate to inform the accused of this right.

This section can be amended by making it mandatory to inform the accused of this right to ensure that the indigent don't have to suffer because of the callous system and they can be released on personal bond without sureties.

Section 437(6)⁸ of the CrPC talks about the release of the prisoner in non-bailable offenses under cases triable by a magistrate if the trial is not culminated after a period of sixty days, after furnishing bail unless the magistrate states otherwise.

And, Section 167⁹ of the CrPC talks about the release of a prisoner in cases, where the investigation relates to an offense punishable with death, imprisonment for life, or imprisonment for a term of not less than ten years if the investigation is not concluded within ninety days, after furnishing bail.

These two sections can also be amended in lines of section 436 and the detainees can be released on personal bond after checking their background and if the magistrate deems it fit, keeping them in jail only because they are poor and can't afford high bail bonds is against natural justice and discriminatory. In a welfare state keeping in mind, the plight and inability of the poor should be the prime concern of the state. The detainees should not languish in the jails for the only reason that they are poor, the statutes can be amended to actualize the need of a country whose majority of the population is poor and can't afford high sureties.

It is time and time said by the experts that the Indian judicial system needs bigger strength and better working conditions to manage the workload of such a vast population. There is no need of going into the number of pending cases as it is highlighted time and time again. Along with judicial reforms, there is also a dire need for police reforms. The Indian police strength is 137 per lakh person which is significantly lower than the United Nations-sanctioned 222 per lakh persons¹⁰. For the trials to commence and culminate on time, you need a dedicated police force, blaming them for delayed trials and irregularities won't solve the problems as the police force is also overburdened. There is a need to revamp the Justice Delivery System if we have to achieve its main objectives.

⁸ Code of Criminal Procedure, Section 437(6).

⁹ Code of Criminal Procedure, Section 167.

¹⁰ Police Reforms in India, PRS Legislative Research, < [© 2022. International Journal of Law Management & Humanities](https://prsindia.org/policy/analytical-reports/police-reforms-india#:~:text=While%20the%20United%20Nations%20recommended,181%20police%20per%20lakh%20persons.&text=After%20adjusting%20for%20vacancies%2C%20the,137%20police%20per%20lakh%20persons.> accessed 14 May 2022.</p></div><div data-bbox=)

In the path of justice being served there lies a grey area where the state and police can sometimes cross the line in the name of investigation but that's where the most important aspect of a welfare state comes in, that we need to differentiate the crime from the criminal, there needs to be the actualization of the maxim "innocent until proven guilty" in practice. The law needs to reshape itself from time to time to fill in the loopholes and to be more inclusive and considerate towards not only the rich and powerful but towards the poor and the beleaguered. A welfare state should not be ignorant of the poor and helpless.
