

Human Rights of Under-trials in India

JuhiSaxena¹&KritiParashar²

Abstract

Liberty constitutes the core of all Human Rights. Article 3-11 of the Universal Declaration of Human Rights, 1948 identifies this by mentioning of the guarantee to liberty and life, no inhuman or cruel treatment, no arbitrary arrest, effective remedy in courts, presumption of innocence, etc. India being a signatory UDHR has to ensure these rights. Indian Constitution identifies these through A. 21 and 39A which guarantee opportunities for securing justice. However, the statistics in the country point to the contrary. Sixty-seven per cent of the people in Indian jails are under-trials — people not convicted of any crime and currently on trial in a court of law. Around 43 percent of prisoners in India who were yet to be proven guilty had spent over 6 months in jail in 2015. A large proportion of these (61% of litigants surveyed in Daksh's 2015 Access to Justice Survey) remain incarcerated only because they cannot afford bail. In 2015, a total of 1,584 prisoners died in jails. 1,469 of these were natural deaths and the remaining 115 were attributed to unnatural causes. This is contrast to the Indian legal system which identifies of Human rights of under-trials in Indian legal system through the restrictions on Police Officers in our Criminal Procedure Code. Statutes such as the Prisoners Act, 1984 and the Model Manual Prison India include provisions for the supply of clothing and food to prisoners, but more importantly detail restrictions on the powers of the jailers and superintendents. This paper tries to analyse the existing legal framework in criminal justice system to find out the loopholes which lead to Human Right Violations. It tries to make an attempt to bridge the gap between the practicalities of Human Rights of under-trials and the ideal set by the international and national legal framework.

¹Assistant Professor, Amity University, Lucknow.

²Assistant Professor, Amity University, Lucknow.

Introduction

Under-trial prisoners are those persons who are facing trials in the competent courts. They are technically under judicial custody but for all practical purposes are kept in the same prison especially in India. In many countries there are separate institutions for under-trials. However, the same is not the case in India. Sixty-seven per cent of the people in Indian jails are under-trials — people not convicted of any crime and currently on trial in a court of law. A fourth of all the under trials have been under detention for more than a year. The ratio is highest in Jammu and Kashmir. Seventy per cent of the convicts are illiterate or have studied only below class tenth. The Prison Statistics India, 2015 provide that 36,406 Under-trial prisoners are illiterate and 57,610 are educated below class X. To expect prisoners with such educational profiles to fight for their human rights as under-trials, even before they are convicted for a crime, is rather unrealistic. The composition of prisoners in India with 70 percent of Under-trial population is cause of concern because it necessitates custody of very high number of persons who ultimately get acquitted. The purpose of keeping under-trials in the custody is to ensure fair trail so that they cannot be in a position to influence or induce the witnesses.

In this case if the Human rights are violated, it becomes the prerogative of the state to provide the positive guarantee of rights to Under-trial prisoners and implement it accordingly.

Research Questions

1. What are these Human Rights that India offers to the Under-trial prisoners?
2. What is the status of their implementation?
3. What is the scope for reform is discussed in this paper.

Human Rights of Prisoners in UDHR

Article 3-11 of the Universal Declaration of Human Rights, 1948 identifies rights of under-trials by mentioning of the guarantee to liberty and life, no inhuman or cruel treatment, no arbitrary arrest, effective remedy in courts, presumption of innocence, etc. India being a signatory UDHR has to ensure these rights. Other identified rights through international level are discussed as follows:

Right to be treated as a Separate Class

Standard Minimum Rules giving special status to the under-trials rule that unconvicted prisoners are presumed to be innocent and shall be treated as such. Rule 85-92 of the Standard Minimum Rules provide that:

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1. “Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.
2. An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable. If he wears prison dress, it shall be different from that supplied to convicted prisoners. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.
3. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.
4. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.”
5. Body of Principles has also laid stress on the treatment of under-trials and says that a detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Prisoners Act, 1984 and the Model Manual Prison India:

Under-trials in the Indian Prisons are kept in the same jail where the convicted prisoners are kept. However, it has been made compulsory for the prison officers to provide separate accommodation for the under-trials. The Model Prison Manual advocates that no convicted prisoner shall be kept in the same area in which under-trial prisoners are kept, or be allowed to have contact with under-trial prisoners. No convicted prisoner shall be allowed to enter the under-trial yard or block. Under-trials in the Indian jails are kept in the same prison and they are treated as convicts in practice which amounts to a gross violation of human rights.

Prisons Act, of 1894

This is the first legislation regarding prison regulation in India. This Act mainly focus on reformation of prisoners in connection with the rights of prisoners. Following Sections of the Prisons Act, 1894 are related with the reformation of prisoners:-

1. Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison,
2. Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and Under-trial prisoners,
3. Provisions relating to treatment of under-trials, civil prisoners, parole and temporary release of prisoners.

Right not be subject to Unnecessary Detention

Body of Principles(UNO, 1988) emphasises on the right of a person detained on a criminal charge to complete trial within a reasonable time or to be released on bail pending trial. *Standard Minimum Rules* provides that “An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.” Thus, the only restrictions to be applied on an under-trial are the ones necessary for the interest of administration of justice.

Right to Compensation for Illegal Detention

Article 14 (6) of ICCPR, 1966 provides that:

When a person by a final decision has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 21 and 39A

The Supreme Court of India in its landmark judgment in:

*‘Hussainara Khatoon v. State of Bihar’*³ explicitly held speedy trial as part of Article 21 of the Constitution of India guaranteeing right to life and liberty. The Supreme Court in this case, came out with a suggestion that where the court is satisfied after taking into account on the

³1980 (1) SCC 98.

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basis of information placed before it that the accused has his roots in the community and is not likely to abscond, it can safely release the accused on personal bond. In order to determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into consideration the following factors regarding the accused person:

1. Length of his residence in the community;
2. His employment details and financial condition;
3. His family relationship and background;
4. His reputation, character and past antecedents;
5. His prior criminal record, if any;
6. The identity of responsible members of the community who would vouch for his reliability;
7. The nature of offence and possibility of his conviction etc;
8. Any other factor indicating the ties of the accused with the community or bearing on the risk of wilful failure of the accused to appear before the Court when required.

The Court held that there are four major grounds when the accused may be denied bail. They are;

1. where the offence is grave;
2. where the accused is likely to interfere with it emphasised that speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice to witnesses;
3. if he is likely to repeat the offence; and
4. he is likely to abscond.

In *Common Cause v. Union of India & Others*,⁴ the Supreme Court gave guidelines on under-trial detention. The court ordered the release of under-trial prisoner on bail in cases involving offences under the IPC or any other law in force at the time if the offences are punishable with imprisonment not exceeding

- i. Three years with or without fine and if trials for such offences have been pending for one year or more and the accused concerned have been in jail for a period of six months or more.
- ii. Five years, with or without fine, and if the trials for such offences have been pending for two years or more and the accused concerned have been in jail for a period of six months or more.

⁴1996 (4) SCC 33.

iii. Seven years, with or without fine, and if the trials for such offences have been pending for two years or more and the accused concerned have not been released on bail but have been in jail for a period of one year or more.

Similar guidelines were given by the Supreme Court in the case of *Raj Deo Sharma v. State of Bihar*.⁵ It is evident from above verdicts and other facts that though Indian legal system does not have any special legislation for trial in a timeframe, yet various rulings and judgements of Supreme Court of India have tried to give it a legal shape. Other Human Rights identified for prisoners in India which equally, if not more are applicable on under-trials in India are:

1. Right to Medical Health (under A. 21)
2. Right to Speedy Trial (under A. 21)
3. Right to Legal Aid (A.39A)
4. Protection against instruments of restraint like handcuffing (Sunil Gupta case⁶)
5. Protection against custodial torture and Maltreatment in prisons (Sheela Basre v. State of Maharashtra⁷)
6. Right to reasonable wages for work
7. Right to interaction with society (Prabha Dutt v. Union of India⁸)
8. Right to socialise (Francis Coralie v. Delhi Administration⁹)
9. Right to work and reading material (Mohammad Giasuddin v. State of AP¹⁰)

The Supreme Court held that a person cannot be illegally detained in prison without any justification. If any person is detained illegally, he shall be entitled for compensation.¹¹ In *Sepoy Bhuvneshwar Singh v. Union of India*,¹² the apex court has held that the payment of compensation in such cases is to be understood in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protracting the fundamental rights of citizens. The compensation is in the nature of the 'exemplary damages' awarded against the wrong-doer for the breach of its public law duty.

Right against Prolonged Detention

⁵1998 Indlaw SC 1131.

⁶AIR 1990 SC 478.

⁷AIR 1983 SC 378.

⁸AIR 1982 SC 6.

⁹AIR 1981 SC 746.

¹⁰AIR 1977 SC 1926.

¹¹*Veena Sethi's case*, AIR 1983 SC 339

¹²1993 Cn LJ 3454 (SC)

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It takes average 34 hearings and 2.6 years period to decide a case after framing the charges when accused in custody. In murder and other heinous cases, it takes 39 hearings and 3 years period to complete the trial. It means that an under-trials inmate has to wait for average 2.6 years to get the final verdict after framing of charges. Besides this, an under-trials has to remain in judicial remand for additional 90 days. The major grounds for these delays are relating to our procedural law and its implementation. Non-service of summons of witnesses and Non-appearance of Witnesses, Non-appearance of Police witnesses on the pretext of VIP duty, transfer to other places, Delay tactics by advocates and the accused and Lack of coordination between various organs of Criminal Justice Administration.

Criminal Procedure Code and Indian Penal Code

An under-trial prisoner's right against unnecessary detention and the procedure to secure his/her release is given under the Cr.P.C. Sections 436 to 450 of the Code are related with bail and Bond. The Code of Criminal Procedure (Amendment) Bill 2006 amends the existing provisions for arrest, i.e. section 41 (and also inserts section 41A into the Cr.P.C). Section 41 limits the indiscriminate powers of arrest of police officers. A person cannot be arrested merely because there is a complaint against her/him. It must be a "credible" complaint/information and the police officer must "have reason to believe" that "such person has committed the said offence". The officer must record her/his reasons for arresting in writing. In cases, where the specified conditions are not met, the police officer may, instead of arresting a person, issue to her/him a notice of appearance. This provision, if properly implemented, will lead to a vast reduction in the number of persons – accused for offences punishable up to 7 years – who would have otherwise ended up being detained in prison during the period of investigation, inquiry or trial of their offence.

Section 436A has been inserted in the Code of Criminal Procedure by Criminal Law (Amendment) Act, 2005, which has given some relief to the under-trials and which is required to be implemented in letter and spirit. This section is reproduced as under:

Section 436A, Maximum period for which an under-trial prisoner can be detained.-

Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

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Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that, no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.”

It is evident that nobody can be detained in remand more than the maximum period of imprisonment provided for the offence. A person detained in custody can apply for bail pending trial if he or she has already undergone half of the maximum prescribed imprisonment for that offence.

Summons

Section 61 of the Code of Criminal Procedure of India poses compulsion on the officer authorised to ensure summons to visit personally to the place of residence of the persons upon whom summons are to be served. However, procedure as laid down in section 69 of the Code can be adopted in such cases where witnesses belong to farther places and summons can be served by registered post addressed to the witness at the place where he ordinarily resides. Rules can be amended to authorise the services of summons through telephone and E-mail in the modern era of information technology. Even examination of witnesses can be conducted through Video-conferencing in such cases and the witnesses will find it easy and will not evade from appearance. It will also be beneficial for Police officers who are transferred to other places.

Appearance of Police witnesses

On many occasions formal witnesses like Police Officers do not appear in the courts on the pretext of VIP duty, law and order arrangements and citing other reasons. In the Indian system of Policing, Investigation and Law and Order are dealt with by the same agency and it is difficult for the officers responsible for the maintenance of law and order to investigate the cases and pursue the same in the courts. Non-appearance of police witnesses in the courts delays the trial as cases are constituted by the police officers. The Supreme Court of India has given verdict in *Prakash Singh & Others v. Union of India and Others*¹³ to ensure separation of investigation from law and order. Expressing concern on the present system, the Supreme Court has reiterated that “More than 25 years back i.e. in August 1979, the Police

¹³Writ Petition (civil) 310 of 1996, Date of Judgment: 22 September 2006.

Commission Report recommended that the investigation task should be beyond any kind of intervention by the executive or non-executive. For separation of investigation work from law and order, even the Law Commission of India in its 154th Report had recommended such separation to ensure speedier investigation, better expertise and improved rapport with the people without any watertight compartmentalization in view of both functions being closely interrelated at the ground level.”

Right against Adjourments

The Indian Code of Criminal Procedure 1973 while giving the courts power to postpone or adjourn proceedings lays stress upon trial within a reasonable timeframe. Section 309 of the Code says that “in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, 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”.

Right to Bail

The Hon’ble Supreme Court held that “refusal to grant bail” in a murder case without reasonable ground would amount to deprivation of personal liberty under Article 21. The Supreme Court has held that:¹⁴

Deprivation of personal liberty must be founded on the most serious consideration relevant to the welfare objectives of the society specified in the Constitution. In the circumstances of the case, the court held that subject to certain safeguards, the appellants were entitled to be released on bail.

Right to Set Off of Period of Detention Undergone

Section 428 of the Code, states for set-off of the period of detention of an accused as an under-trial prisoner against the term of imprisonment imposed on him on his conviction. It only provides for a ‘set-off, but does not equate an ‘under-trial detention or the detention with imprisonment on conviction’. The provision as to set-off expresses a legislative policy; this does not mean that it does away with the difference in the two kinds of detention and puts things on the same footing for all purposes. The two requisites postulated in section 428 are:

1. During the stage of investigation, enquiry or trial of a particular case, the prisoner should have been in jail at least for a certain period; and
2. He should have been sentenced to a term of imprisonment in that case.

Right against Solitary Confinement

¹⁴Babu Singh v. State of UP, AIR 1978 SC 527.

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Sections 73 and 74 of the Indian Penal Code don't leave any room for doubt that solitary confinement is by itself a substantive punishment, which can be imposed only by a court of law. It cannot be left to the whim and caprice of prison authorities. The limits of solitary confinement that can be imposed under court's order is strictly prescribed and that provides internal evidence of its abnormal effect on the subject.

Under-trial Review Committee

The Under Trial Review Committee in every district should meet every quarter and the first such meeting should take place on or before 31st March, 2016. The Secretary of the District Legal Services Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of Under-trial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them. The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. so that under-trial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society.

Although UTRC was a remarkable step towards human rights of Under-trial prisoners, it has not received the expected results. Recently, the SC has remarked at 600% overcrowding in jails and said that: "This is extremely unfortunate and clearly suggests the complete lack of commitment of the State Governments and the Union Territories to the human rights of prisoners and also indicates the failure of the Under Trial Review Committees to take their responsibilities seriously,"

Conclusion

Mr. Justice *Marshall* also expressed himself clearly and explicitly in the same terms: "*I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate and I fully support the court's holding that the interest of inmate.*"¹⁵ 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

¹⁵Francis Corahe Mullin v. The Administrator, UT Delhi, AIR 1981 SC 746.

important, the burden of his detention frequently falls heavily on the innocent members of his family.¹⁶

Even though the provisions to avoid unnecessary detention of prisoners have been in existence for years, they are not implemented, resulting in a large number of under-trial population within prisons. The reasons for non-implementation are known. Most prisoners who are unable to use the provisions under section 167 or 437(6) are not only unaware of their right to seek release but also too poor to furnish surety. It is imperative that the legislature amends these sections on the lines of section 436 so that poor people may be released on furnishing personal bonds in such cases where either the police have not been able to make out any case against them or the trial is not concluded within the stipulated time. In the absence of a legislative change, the judiciary must take a proactive role and release such people on personal bonds.

In so far as the non-implementation of the liberalized provisions under section 436 or the bail provisions under section 436 A is concerned, the primary reason is the lack of awareness amongst the under-trial prisoners. The law does not mandate the State Legal Services Authority, jail superintendent or the trial court to inform the accused about this law. Almost 3 years have passed since section 436A was introduced, but it is yet to have the impact that it sought to achieve. At the time of enactment, news reports stated that the introduction of this provision would impact as many as 50,000 under-trial prisoners across India. However, there has been no substantial change in the number of under-trial prisoners who languish in prisons bearing the physical and mental costs for an offence they might not have even committed.

The importance of bail provisions and their underutilization has been reiterated on many occasions. No person should be made to suffer the deprivations of incarceration before s/he has been proven guilty in the eyes of law. By depriving them of their right to liberty through unnecessary detention, the existing system “punishes” the accused in violation of the basic principle of criminal jurisprudence that every person shall be presumed innocent till proven guilty. To ensure justice for under-trial prisoners, it is essential to effectively implement the existing provisions of the Cr.P.C. All the agencies of the criminal justice system including the police, the judiciary, the prosecution, the defence lawyers and the prison department must adopt a concerted and a well-coordinated approach to ameliorate the plight of the ‘forgotten souls’ i.e. under-trial prisoners, who languish in prisons unnecessarily.

¹⁶Moti Ram and Ors.v. State of Madhya Pradesh AIR 1978 SC 1594.

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