

Where the convicts and suspects treated same

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Abstract:

Life in an Indian prison is often an oppressive affair. If you are poor, then it will be the worst. It will be intolerable because of the general living conditions such as hygiene sanitation and food and at the extreme the brutal violence that the inmate suffers at the hands of the police, jail wardens and also the fellow prisoners. The condition of the poor is worse as they have to languish in jails as under trials due to insufficient legal aid. The bad condition of the prisoners though is due to the lack of care by the government, these conditions create fear among the prisoners deterring them from repeating the mistake. How is it just if the same experience is meted out to an accused who has not yet been convicted? A person who been accused, if given judicial custody or police custody, are kept in the same prisons where other convicted persons are kept. Their safety is also very barely considered. In 2017 it has been found that almost 900 judicial custodial deaths been registered in India from January to August. In this paper, the authors have attempted to depict the conditions of an accused in judicial custody, laws regarding that custody, their aftermath if they were not convicted, and few suggestions for reforms of prisons for the accused persons.

KEYWORDS: prison and prisoners, conditions of poor, legal aid, judicial custody, police custody

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Introduction: -

India is a country of rich heritage and great economy but a great proportion of families are poor. These families often have to think about one square meal a day. It is the duty of the state to provide each and every citizen with food and shelter and to provide them with their basic requirements. When the state fails in this aspect, it is in this situation that they are forced to do an act of crime merely even for food. These acts should not be considered a crime but an act abetted by the government. These are the reasons that the number of poor people is suspected to be criminals by the police. It is not the wrong kind of principles of police, but their duty forces them to consider these principles. A police consider every suspect as a criminal until proved not guilty, whereas a court's opinion is that every suspect is innocent until proved guilty. And it is only when the police prove the court with evidence regarding a crime, the court can take actions. Until then they are considered innocent by the court but treated as criminals by the police. An accused person is kept in the jail along with the convicted persons until verdict passed in his case. A rich man may get a bail immediately or even before committing the crime as an anticipatory bail. But the condition of a poor is in a pity condition. They are kept in jail as under trials for years because they could not offer the required money. Is it just to do the same? Can the convicts and the accused persons be kept the same? Can a person be kept in jail for years as he is unable to provide for the bail amount? Can the accused person be treated the same as that of the convicted prisoners? But we should accept that it is mandatory to have some kind of measures that facilitate the accused persons in jail. Our law should be based more on the welfare of the poor. It is impossible to deliver complete justice by a human, but only on paper the Supreme Court provides complete justice. However, some measures to corroborate the actions of justice can be made by humans as a whole.

Methodology: -

The author(s) here used both primary and secondary sources of data for the research purposes of the paper. The primary sources count on the Doctrinaire method of research. The secondary source materials in the nature of books, periodical reports etc. There is also a theoretical approach involves in going through the number of books, journals, periodicals, newspaper articles, Judgements of the court of laws etc.

The entire study was conducted based on the documents and on an analytical basis. The study also obtained some source of information through internet also which are helpful for the completion of the project to a greater extent.

Objective: -

The main objectives of the paper are:

- To find out the number of persons wrongly accused at an average.
- To find out the sufferings undertaken by an accused person in the jail.
- To find out what are the aftermath effects on a person released from a judicial custody.
- To find out the sufferings of especially a poor person (a person considered eligible for legal aid).
- And to give a few suggestions.

Research issues: -

1. Is it just to treat the accused persons and the convicts the same way?

When a person is arrested and kept in judicial custody, at the last trial, he can be either convicted or can be released. But during those times in the judicial custody, he is kept in the prison along with the other criminals exercising their punishment. The treatment what the convicted criminals exercise will be experienced by the accused persons. There are various possibilities for an arrested person, he can either be an actual criminal, an innocent, a passer-by the way, one wrongly accused by the officer may even be arrested for the vengeance of the police officer. On account of these much possibilities, is it fair to treat them as convicts unless proved?

2. Is it fair for a prison to be different for the poor and the rich?

Prison though been held with both the rich and the poor persons, they are not treated the same. Their treatment depends on their capability to buy anything i.e. the purchasing power

“there was nothing which money could not buy within the prison campus”.³ In an account of these conditions what will be the condition of the poor.

Treatment: -

A person when arrested for the non-bailable offence he is at the discretion of the judge to be kept in jail for a period of 90 days.⁴ His tenure in judicial custody can also be increased according to the discretion of the judge in accordance with the criminal nature and a few other factors. A Report says that the maximum number of under-trials 99,398 (35.2%) out of 2, 82,076 were detained for up to 3 months at the end of 2015. A total of 3,599 under trials (1.3% of the total under trials) were detained in jail for more than 5 years at the end of the year 2015. Uttar Pradesh had the highest number of such undertrials (1,364) followed by West Bengal (294).⁵ An accused during those periods in jail is treated the same as that of the prisoners. They are even treated worse sometimes. A total of 1584 death in jail were reported (1469 - natural, and 115 - unnatural) during the year 2015.⁶ In an RTI filed it is found out that there were almost 900 judicial custody deaths in the recorded the calendar year of 2017.⁷ In which Maharashtra tops the table with 204 deaths followed by Punjab and Bihar with 76 and 64 deaths respectively. It is clearly evident from this that the accused are also treated the worst. It is in just to punish someone even before they are proved to be guilty. It constitutes a miscarriage of justice. Miscarriage of justice should be wrongful prosecution, incarceration, conviction, or all three. The international law standard as laid down in the ICCPR⁸, and included in the law of compensation for miscarriage of justice of many Western countries (including the federal and state laws in the United States, Canada, Germany and few more) recognises miscarriage of justice as resulting in ‘wrongful conviction’ by virtue of a final order, after all avenues of appeal have been exhausted and a new fact surfaces which then proves conclusively that the convicted persons were factually innocent, and only in such case

³Sunil Batrav. Delhi administration, 1980 S.C.R. (2) 557. (India)

⁴The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973, §. 436.

⁵Prison statistics India 2015, National Crime Records Bureau, Ministry of Home Affairs, Government of India, <http://ncrb.gov.in/statpublications/psi/Prison2015/Full/PSI-2015-%2018-11-2016.pdf>.

⁶ Ibid.

⁷RishirajBhagawati, Almost 900 judicial custody deaths recorded in 2017, reveals RTI: Maharashtra tops chart of deaths in police lock-ups, First Post Aug 23, 2017.

⁸International Covenant on Civil and Political Rights, General Assembly of the United Nations, 1966, Article 14(6).

does the claimant qualify for the relief of compensation.⁹ Though there can be a lot of death due to unnatural causes, the remaining deaths are not of the same reasons. A person who is unable either to get bail because of poverty or the ones who are accused of heinous crimes are kept in the judicial custody for a long time. It is not just to treat them like these. In an interview with Bikram Jeet Batra IPS, he gave a statistics that out of 700 death-sentenced cases nearly 100 are wrongly accused.¹⁰ In this sense, we can find that the number of the wrongly accused shall be more than the number. This also conveys that wrongful arrests may be more. Wrongful prosecution as noted above, are the cases of miscarriage of justice where procedural misconducts – police or prosecutorial, malicious or negligent – resulted in wrongful prosecution of an innocent person, who was ultimately accused, with a court making an observation or a recording a finding to that effect, the underlying sentiment being that person should not have been subjected to these proceedings in the first place.¹¹

Poverty acts as the main role:

According to the English proverb “Money makes many things” have connectivity in the jails also. In accordance with this proverb money plays a major role in jail too. In the famous Sunil Batra case,¹² Krishna Iyer.J., in this case, has deliberately mentioned about the conditions of the prisoners in the jail, in that he has also deliberately mentioned about the role of money in prisons. Giving a factual narrative, Shri Nayar wrote: one could get as much money as one wanted from outside – again at a price. There was a money order and a mail service that perhaps was more dependable what the postal department could offer.¹³ The rich or the powerful enjoy the most. A person convicted in any of the ways is a criminal, whatever he /she may be. There are a lot of confessions that the prisoners are not treated well. The poor are in the pity state they will not be able to do for their basic needs. Women are in a much commiseration state, for the natural cause they are not given an adequate number of pads in the prison.¹⁴ Even pregnant women were not spared they experience high harassment.¹⁵ If

⁹277th Law Commission of India Report, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, August 2018, <http://lawcommissionofindia.nic.in/reports/Report277.pdf>.

¹⁰Bikram Jeet Batra, *Innocent persons are sentenced to death' in India*, 25 August 2008, [www.infosud.org/innocent-persons-are-sentenced-to, 3390](http://www.infosud.org/innocent-persons-are-sentenced-to-3390).

¹¹*Supra* note 7.

¹²*Supra* note 1.

¹³*Ibid*.

¹⁴Even pregnant women were not spared from assault, Rediff.com, News, June 29, 2017, <https://m.rediff.com/news/special/even-pregnant-woman-were-no-spared-from-assault/20170629.htm>.

they need more they have to buy themselves. The condition of the poor people in our state is that due to the debt problems they commit suicide as a whole family. Most of the families live with single earnings of the father, who shall be a daily wage. When he been wrongly arrested his entire family suffers for those days, being illiterate, not knowing what to do, and even unable to hire an advocate because of insufficient money. In this condition, the entire family will be in the streets. The person wrongly accused will be convicted because of his inefficiency to prove him not guilty.

These conditions prove poor to be in the worst part even in the jails. Money plays a vital role. Our government leads in a way such that, the high industrialists are provided free from their thousand crores of debts, but at the same time a poor farmer is thrashed black and blue by the police because of his inability to pay the least debt of 2,500. The numbers of false accusations are also more in India. In a report, there were nearly 1, 00,000 cases booked under dowry, but only 20-30% were been convicted.¹⁶ And also many more things come in this chain. These give an average number of false persons been arrested.

Aftermath

It may be common and unaffected to go to a jail and return back for a regular offender but in the case of a common middle class Indian family, they live for prestige. They are the most about what the neighbours and the society speak about them. Most of them consider getting arrested in a jail is the biggest black mark to the family, the entire families' status is off if one in a family stepped the jails. Our society will never accept it back; he is considered to be a criminal. Due to this act, he loses his prestige, respect, may be sometimes even job. The psychological effect a common man gets inside the jail or even after the custody term is immense.

Conclusion and suggestions: -

Justice can't be delivered by an individual but can be delivered if cooperated by all. Unless all the legal pillars of the social work with thebest intent, justice can be delivered. Some of

¹⁵Ibid.

¹⁶Manoj R Nair, *Is the dowry law being misused? Statistics can be interpreted to say 'Yes' or 'No'*, Hindustan times, Aug 21, 2017.

the basic things to be done for the welfare of poor and for the betterment of an accused person are:

Team work:

A Judge can deliver only according to the shreds of evidence produced by the police officers. Unless correct and proper evidence is produced by police, judges can do nothing. There are even judges who because of giving wrong decision have committed suicide, where the wrong judgement is due to the insufficient evidence.¹⁷ Legislators should try to frame law with maximum divine precision, police should enforce it with common sense, without any attitude problem, and the judges should be the protector of justice. All of them should work for intellectual self-respect and for good conscience.

Awareness:

It is the duty of the government to make their subjects aware of the legal effects, consequences, procedures. NGO's should proceed with demonstrations, local teachings etc. The Government should take steps regarding these.

Separate building:

An accused should not be kept along with a convicted person; they should have separately cared. Separate buildings should be laid for the accused persons until their trial gets over, they should be cared better, treated better, the bitter of punishment even before been convicted should not be provided.

Separate funding:

A separate fund should be allotted like that of the fund for the prisons, for the development of place to keep the accused persons in judicial custody. It is because of the insufficient fund accusers are not been able to give proper care and treatment.

Legal aid:

The criteria for a person to get a legal aid should be amended. Nearly half of the undertrials who were unable to get out is due to their poverty. Legal aid is being provided only for the poor but the criteria been considered for a person to be poor is ultimately low, which should be rectified including much more.

¹⁷V.R. KRISHNA IYER, WANDERING IN MANY WORLDS, 93-94 (2d ed. 2010).

Proper inspection:

Improper inspection is the reason for the vast transfer of money within the jail premises. The Proper inspection should be made by the magistrates and periodical reports should be submitted. A due care should be taken to solve the difference between the rich and the poor.

Whatever may be the Steps taken, without each and every one working towards their conscience and for their intellectual self-respect, nothing may change. One before doing an act should think about the pity condition of the person's whom the act may affect. Once all act with a good conscience the care for poor and thrive towards justice will be the result.