

# Right to Speedy Trial

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After the death of Stan Swamy, questions about the conditions of jails and treatment of the incarcerated have been raised anew. Despite the promise of Article 21, that no person shall be denied life or liberty except by the due process of law, the NCRB data reveals that the number of those dying in prison as they await their trials is only going up.

**In news:** Speedy trial a fundamental right: HC

**Placing it in syllabus:** Law & Policy

## Dimensions

- Explanation of the issue and the Ruling
- Provisions of Constitution on Speedy Trial
- Important Judicial Rulings
- Problem of Undertrials in India
- Suggestions

## Content:

### Explanation of the issue and the Ruling:

- The Bombay High Court said “speedy trial is a fundamental right”, highlighting the issue of people languishing in prisons waiting for the trial to begin.
- A Division Bench of Justices S.S. Shinde and N.J. Jamadar made the comment with respect to those accused in the **Bhima Koregaon caste violence case**.
- The court was hearing a petition, filed through senior advocate Mihir Desai, seeking a judicial probe into the death of tribal rights activist Stan Swamy
- For how many years will people languish in jail without trial, Bombay HC asked.

**Who are Under-trials?**

- Under-trials are **people who have been detained for alleged crimes but remain in custody as they await trial** – a process that can sometimes take years.
- The **78th Report of Law Commission** also includes a **person who is in judicial custody on remand during investigation** in the definition of an 'under-trial'.

Under trials **lose four of their fundamental rights: the right to liberty, freedom of movement, freedom of occupation, and freedom of dignity.** And the **legal right to vote** as well.

### **Provisions of Constitution on Speedy Trial:**

- The philosophy of the Right to Speedy trial has grown in age.
- Right to Speedy Trial is a concept which **deals with disposal of cases as soon as possible** so as to **make the Judiciary more efficient and trustworthy.**
- The main aim of the Right to Speedy trial is to **inculcate Justice in the society.** It is human life that necessitates human rights.
- Being in a civilized society organized with law and a system as such, it is essential to **ensure for every citizen a reasonably dignified life.**
- Speedy justice is a **component of social justice** since the **community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time** and the innocent being absolved from the inordinate ordeal of criminal proceedings.
- The right to a speedy trial is **first mentioned in** that landmark document of English law, ***the Magna Carta.***

### **Article 21:**

- The right to a speedy trial is a **fundamental right inherent under Article 21** of the constitution which provides for the **right to life and personal liberties.**
- Article 21 declares that "no person shall be deprived of

his life or personal liberty except according to the procedure laid by law.”

### **Article 32:**

- Indian Constitution provides that whenever there is a **violation of fundamental rights**, a person can move to the Supreme Court under **Article 32** and to the High Court under Article 226 of the Constitution.

### **Important Judicial Rulings:**

#### ***Hussainara Khatoon v. Home Secretary, State of Bihar:***

- In 1979 *Hussainara Khatoon v. Home Secretary, State of Bihar*, a petition was filed for a writ of Habeas Corpus, on behalf of a large number of men and women including children who were languishing behind bars for years awaiting trial and that the offences, even if proved, would not warrant punishment for more than a few months.
- The Apex Court, in this case, held that the **“right to a speedy trial” is a fundamental right** implicit in the right of life and personal liberty **provided under Article 21** of the Indian Constitution.
- In its decision, the court **mandated greater access to bail, more humane living standards and a significant reduction in time from arrest to trial.**
- The court **observed that no procedure which does not ensure reasonable quick trial can be regarded as reasonable, fair and just.**

#### ***Abdul Rehman Antuley v. R S Nayak, 1992***

- In this case, the Supreme Court held that the **Right to a speedy trial under Article 21 is available at all stages** namely, the stage of investigation, inquiry, trial, appeal, revision and retrial.
- The Court **laid down detailed guidelines for the speedy trial of an accused** in a criminal trial but refused to

set a time limit for the conclusion of the trial.

- The Court held that the nature of the offence and the circumstances may be such that quashing of proceedings may not be in the interest of justice.
- In such a case it may make an order that the trial may be concluded within a fixed time and reduce the sentence.

### 1. **Ramachandra Rao v. State of Karnataka**

- In this case, the Apex Court **laid down certain factors to identify** whether an accused has been **deprived of his Right to Speedy Trial**.
- They are: **length of delay, the justification for the delay, the accused assertion of his Right to Speedy Trial, and prejudice caused to the accused** by such delay.
- If nothing is shown and there are no circumstances to raise a presumption that the accused had been prejudiced there will be no justification to quash the conviction on the ground of delayed trial only.

## **Problem of Under-trials in India:**

Amnesty International India's report **Justice Undertrial: A Study of Pre-trial Detention in India** analysed data available with the National Crime Records Bureau and records collected by the human rights organization.

**According to the report, the problems of undertrials in India are:**

### **High Undertrial Population:**

- India has one of the highest undertrial populations in the world. As of 2019, 69% of prisoners in India's prisons were 'undertrials'
- In other words, there are twice as many undertrials in India's prisons as there are convicts.

- Despite executive guidelines, legal reforms, and Supreme Court judgments, the proportion of undertrials in the prison population has stubbornly remained high over the last decade.

### ***Overcrowded Prisons:***

- Most **prisons in India are overcrowded**, partly as a result of excessive undertrial detention.
- The average occupancy rate in Indian prisons is 114%, and is as high as 233.9% in states such as Chhattisgarh
- India's undertrial population has a **disproportionate number of Muslims, Dalits and Adivasis**. About 53% of undertrials are from these communities, which make up 39% share of the population of India.

### ***Overuse of Undertrial Detention:***

- Undertrial detention may be warranted if there is an assessed risk that an arrested person may, for example, intimidate a witness or tamper with evidence
- In India, undertrial detention is more often the rule than the exception.
- Few prisons appear to know how to accurately determine which undertrials are eligible for release under section 436A.

**Section 436A of the CrPC** provides that where an undertrial has been detained for a period equal to half of the maximum sentence specified for the offence for which they are charged, they are eligible for release on personal bond, with or without sureties.

### ***Non-availability of Undertrial Safeguards:***

- Safeguards under law to protect undertrials are regularly ignored across the country
- A shortage of police escorts leads to thousands of undertrials not being produced in court for their hearings, effectively prolonging their detentions.
- Home Ministry guidelines are virtually ignored by many

prisons.

- Thousands of undertrials are not being produced in court for their hearings, in violation of their fair trial right to be tried without undue delay, potentially contributing to prolonged and excessive undertrial detention.

### **Poor / Insufficient Legal Aid:**

- Article 39A of the Constitution of India states that free legal aid must be provided to ensure that access to justice is not denied because of economic or other disabilities.
- The Supreme Court of India has stated that the right to free legal aid is part of the right to life and personal liberty under Article 21 of the Constitution.
- However, Legal aid lawyers do not visit prisons regularly.
- Despite this elaborate structure for the provision of legal aid, few people accused of criminal offences are represented by legal aid lawyers.
- Legal aid is not always provided at the time of arrest, or when the accused person is brought before a magistrate.
- The frequency of visits by lawyers is low in many states – in most states, legal aid lawyers visit prisons less than once a month.

### **The State of Prison in India:**

- **NCRB 2019 data** says that there are 1350 functional jails in India, with a total capacity of approx. 4 Lakh prisoners but actual strength exceeds 4.78 lakh.

In that 4.3% are women and **69.05% (approx. 3.3 lakh) were under trial** and only 30.11% are convicted for the crime.

## Suggestions:

- A **combination of structural and implementation-related issues within the criminal justice** system have contributed to the stubborn persistence of excessive undertrial detention in India.
- Tackling this issue **requires a holistic approach and concerted efforts from both the central government and state governments.**

Following are some of the major recommendations given till date:

- **Standardize the remuneration paid to legal aid lawyers across India**, and ensure that lawyers are paid competitive salaries in a timely manner.
- **Set up a computerized database and tracking system for prisoners** in all prisons, which will regularly alert prison authorities on undertrials eligible for release which will be maintained and updated at the state-level.
- **Appoint more legal aid lawyers** according to the needs of the state.
- **Strengthen the monitoring of legal aid lawyers' effectiveness** to ensure accountability and quality representation. Ensure that legal aid lawyers at the state, district and taluk levels are required to submit regular reports on the status of their cases, and hold lawyers failing to do so accountable.
- **Undertake regular awareness programs in prisons** to ensure that all undertrials are informed about their legal rights, including access to legal aid, procedural safeguards and bail.
- **Ensure that legal aid is provided at the time of arrest.**
- Create a **separate reserve of police personnel dedicated to providing escorts** for undertrials to be taken to court.
- Ensure that **alternatives to undertrial detention are**

**used as early as possible**, and that undertrial detention is used only as a last resort, and shall not last any longer than necessary.

- Ensure that district and central prisons maintain updated lists of undertrials and the details of the cases against them, which are sent to district prosecution officers, the

**Mould your thought:** In light of various judicial pronouncements, discuss the constitutional provisions of Right to Speedy Trial. How can the problems of undertrials in this regard be remedied?

***Approach to the answer:***

- Introduction
- Discuss the meaning of Speedy trial
- Discuss Constitutional provisions of Art 21 and Art 32
- Mention important Supreme Court cases related to them
- Briefly mention reasons for the delay in speedy justice for undertrials
- Suggest measures to improve the situation
- Conclusion