

# SC rulings on Interim Bail and Bail Orders

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In the backdrop of the COVID-19 pandemic, the Supreme Court has made concerted moves to decongest prisons. The court turned a humanitarian eye to the over four lakh prison population trapped inside overcrowded jails as a surging second wave led to huge loss of lives. It also launched a new scheme called 'FASTER' by which the Supreme Court would instantly, directly, securely and electronically transmit bail and other orders to jail authorities, district courts and High Courts.

**In news:** SC announces 'FASTER' scheme

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

**Dimensions**

- Problems with prisons in India
- SC ruling on the above issue
- Problems with Bail Orders
- SC ruling and its importance
- Suggestions for a holistic prison reforms

## Content:

### Problems with prisons in India:

The 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 from the country's 500-odd district and central jails through Right to Information petitions.

### The issues involved in undertrials are:

- **Mostly Marginalized communities** form the bulk of the

undertrial population

- **Rarely produced in court**-Records show that in states such as Rajasthan Uttar Pradesh and Karnataka under-trials are routinely not produced in court.
- **Inadequate legal aid**-According to the report at least 23 prisons reported having no legal aid lawyers. Haryana has the highest number of legal aid lawyers in the country but the number of prison visits by each lawyer per month is strikingly low. This shows that legal aid is not efficiently provided in most of the country's prisons.
- **Poorly paid**-The paucity of legal aid lawyers is hardly surprising given the poor remuneration they receive for filing bail applications.
- **Wrongly released**-If undertrials are held for a period equal to half their potential sentence then under Section 436A of the Code of Criminal Procedure they are eligible for release on a personal bond. After release they are required to appear at all future court dates. However the report states that a large number of undertrials have been incorrectly released under the law.
- **The Right to Speedy Trial** – as recognised by the Supreme Court in Hussainara Khatoon vs. Home Secretary Bihar is violated due to protracted delays. This delay is due to all kinds of reasons such as – Systemic delays; Grossly inadequate number of judges and prosecutors.; Absence or belated service of summons on witnesses; Presiding judges proceeding on leave etc.
- **Right to bail is denied even in genuine cases:** Some of the judges even at the High Court level do not follow the guidelines laid down by the Supreme Court on bail and grant of the same is dependent upon the attitude of each judge.
- The issue further gets compounded with **the dilapidated state of prisons.**

The '**Prison Statistics India 2015**' report was released by the National Crime Records Bureau (NCRB) Here are five things the data tells us about the state of Indian prisons.

- **The problem of overcrowding:** The report calls overcrowding to be "one of the biggest problems faced by prison inmates." It results in poor hygiene and lack of sleep among other problems. Dadra & Nagar Haveli is reported to have the most overcrowded prisons followed by Chhattisgarh Delhi and Meghalaya.
- **Two-thirds of the prisoners are undertrials:** Sixty-seven per cent of the people in Indian jails are undertrials – people not convicted of any crime and currently on trial in a court of law. Among the larger States Bihar had the highest proportion of undertrials followed by Jammu & Kashmir, Odisha Jharkhand and Delhi.

## **SC ruling on the above issue:**

- The **Supreme Court of India has been actively responding to human right violations in Indian jails** .
- It has in the process recognized a number of rights of prisoners by interpreting Articles 21, 14, 19, 22, 32, 37 and 39A of the Constitution in a positive and humane way.
- Given the Supreme Courts' overarching authority these newly recognized rights are also binding on the State under Article 141 of the Constitution of India.
- Article 141 provides that the Law declared by the Supreme Court shall be binding on all courts within the territory of India.

## **Cases where undertrials rights were strengthened:**

- **The Charles Sobharaj case**-it was stated that the Court would intervene even in prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of a prisoner. In that case

the complaint was against incarcerator torture.

- ***In the Sunil Batra case*** – it dealt with the question whether prisoners are entitled to all constitutional rights apart from fundamental rights. In that case this Court was called upon to decide as to when solitary confinement could be imposed on a prisoner.
- ***Kadra Pahadiya v. State of Bihar***– it prohibited putting of undertrials in leg-irons.

## **Problems with Bail Orders:**

- Based on a *suo motu* case, '***In Re: Delay in release of convicts after grant of bail***', registered on the initiative of the CJI to confront the problem that affects the liberty and dignity of prisoners.
- The only mode via which SC orders are sent to the concerned jail is by speed post.
- When judicial proceedings have moved almost entirely online, the bail orders are still being sent by post, causing delays
- The Chief Justice of India said "it is just too much" that people given bail by courts, even by the Supreme Court, have to wait for days before the prison authorities release them.
- The CJI lamented that the prison authorities insisted on receiving by hand the "authentic" hard copy of the bail order regardless of the fact that the personal liberty of people suffered.

## **SC ruling and its importance:**

- The Supreme Court announced in open court the rolling out of a new scheme called **Fast and Secure Transmission of Electronic Records (FASTER)**.
- Through this, the Supreme Court would instantly, directly, securely and electronically transmit bail and other orders to jail authorities, district courts and High Courts.

- The idea behind the scheme is to **transmit orders quickly and securely.**
- The Bench asked State governments to file their reports about the Internet connectivity in their jails to prevent technical glitches in future.
- The Secretary-General of the Supreme Court was directed to submit a comprehensive report formulating the FASTER scheme within two weeks.
- The CJI Bench ordered the NALSA and the State governments to submit a detailed report on the criteria/norms considered by the respective High Powered Committees for releasing prisoners on interim bail.
- It had ordered the police **to limit arrests during the pandemic to prevent overcrowding** in jails and urged **courts not to order detention in a mechanical manner** in cases involving the punishment of less or up to seven years' imprisonment.

## **Suggestions for a holistic prison reforms:**

Holistic prison reforms need the careful implementation of the recommendations and suggestions given by the various expert groups and institutions and start implementing them.

**Following are some of the major recommendations given till date –**

### ***Separation of Undertrials from Convicted Prisoners:***

- Undertrials should be lodged in separate institutions away from convicted prisoners.
- There should be proper and scientific classification even among undertrials to ensure that contamination of first time and petty offenders into full-fledged and hardcore criminals.
- Under no circumstance should they be put under the charge of convicted prisoners.
- Institutions meant for lodging undertrials should be as

close to the courts as possible.

### ***Establish Time Limits for Investigation and Processing:***

- Provisions of **Section 167 of the CrPC** with regard to the time limit for police investigation in case of accused undertrials should be strictly followed by both the police and courts.
- Automatic extension of remands has to stop which are also given merely for the sake of the convenience of the authorities.
- Mere convenience of the authorities cannot supersede the Constitutional guarantees under Article 21.

### ***Procedural Reforms:***

- All undertrials should be effectively produced before the presiding magistrates on the dates of hearing.
- The possibility of producing prisoners at various stages of investigation and trial in shifts should be explored.
- Video conferencing between jails and courts should be encouraged and tried in all states beginning with the big Central jails and then expanding to District and Sub jails.
- Police functions should be separated into investigation and law and order duties and sufficient strength be provided to complete investigations on time and avoid delays.

### ***Speedy trials:***

- Establishment and strengthening of fast track courts.
- The criminal courts should exercise their available powers under Sections 309, 311 and 258 of the CrPC to effectuate the right to speedy trial.
- With undertrials' adjournments should not be granted unless absolutely necessary.
- There should be an immediate increase in the number of judges and magistrates in some reasonable proportion to

the general population.

### ***Exploring Alternatives to Imprisonment:***

- Alternatives to imprisonment should be tried out and incorporated in the IPC.
- Remand orders should be self-limiting and indicate the date on which the undertrials would be automatically entitled to apply for bail.

### ***Deploying Seamless Technology:***

- Computerize the handling of criminal cases and with the help of the National Informatics Centre develop programmes that would help in managing pendency and delay of different types of cases.

**Mould your thought:** What are the problems plaguing prison in India? How can they be solved?

### ***Approach to the answer:***

- Introduction
- Discuss the problems of Undertrials and Prisoners in India
- Discuss Supreme Court observations on this matter
- Suggest measures for holistic prison reforms including FASTER
- Conclusion