

# Undertrials

November 12, 2018

## Manifest Pedagogy

Undertrials as a topic should be studied as a part of larger topic Criminal Justice System in India and reforms needed as it is in news frequently through issues like prison reforms, police reforms, need for reformatory justice system in India.

## In news

*The issue of under trials is lying with Supreme Court.*

## Placing it in syllabus

Paper 2: Indian Polity: Judiciary

## Static Dimensions

1. Issue of access to justice
2. Article 39A and concept of free legal aid
3. Issue of under trials as a historical problem and SC judgements on it.

## Current Dimensions

1. Issue of under trials in recent time their problems and measures needed.

## Content

### Who are they?

- Under-trials are people who have been detained for alleged crimes but remain in custody as they await trial – a process that can sometimes takes 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'.

### **Problems of under-trials in India:**

**Amnesty International India** published a damning **report** on the state of undertrials in the country.

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 Muslims Dalits Adivasis-** 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.
  - Remands being extended mechanically due to lack of time and patience with the presiding judge.  
Inadequacy of police personnel and vehicles which prevents the production of all prisoners on their due dates.
  - Many a times the escorting police personnel merely produces the remand papers in the courts instead of actually producing the prisoner in front of the magistrate.
- **Right to bail is denied** even in genuine cases.
- Some of the **judges even at the High Court level are not following the guidelines laid down by the Supreme Court** on bail and grant of the same is dependent upon the attitude of each judge.
- Large number of persons including **women and children are detained under Section 109 of the Criminal Procedure Code** provides for failure to furnish requisite security for keeping good behaviour. The police usually pick them up “because the number of cases had to be brought up to the specified figure”
- In the absence of a system that takes a proactive role in providing legal services to prisoners their right to effective Legal Aid is also violated due to **politicization of legal aid schemes** as many lawyers are hired on political consideration who get a fix salary without the pressure of disposing off cases at the

earliest.

- The issue further gets compounded with 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 as “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 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.
- **Foreign Convicts**-Over two thousand foreign convicts were lodged in various jails in India at the end of 2015. The highest numbers of foreign convicts were in jails of West Bengal followed by Andaman & Nicobar Island.
- **Prisoner Profile**-Seventy per cent of the convicts are illiterate or have studied only below class tenth.
- **Capital Punishment**– Over hundred people were awarded death penalty (101) in 2015. Forty-nine were commuted to life sentence.

## **Rights of under-trials**

**Basic rights of undertrials are below mentioned:**

- Right to be lodged appropriately based on Proper Classification
- Special Right of young prisoners to be segregated from adult prisoners

- Rights of women prisoners Right to healthy environment
- Right to bail
- Right to speedy trial
- Right to free legal services
- Right to basic needs such as food water and shelter
- Right to have interviews with one's Lawyer
- Right against being detained for more than the period of sentence imposed by the court
- Right to protection against being forced into sexual activities
- Right against arbitrary use of handcuffs and fetters
- Right against torture cruel and degrading punishment
- Right not to be punished with solitary confinement for a prison offence
- Right against arbitrary prison punishment
- Right to air grievances and to effective remedy
- Right to evoke the writ of habeas corpus against prison authorities for excesses
- Right to be compensated for violation of human rights
- Right to visits and access by family members of prisoners
- Right to write letters to family and friends and to receive letters magazines etc.
- Right to rehabilitation and reformative programs
- Right in the context of employment of prisoners and to prison wages
- Right to information about prison rules
- Right to emergency and reasonable health care.

**Hence, all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner. These include rights that are related to the protection of basic human dignity as well as those for the development of the prisoner into a better human being.**

Every convict and undertrial has been conferred with certain rights which have been enumerated in Part III of the

Constitution of India so that their life as a prisoner is dignified and comfortable because a prisoner remains a 'person' in prisoner.

### **Supreme Court Judgments:**

The **Supreme Court of India** has been active in responding to human right violations in Indian jails and 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** which 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 Supreme in ***Charles Sobharaj case***-it was stated that 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 ***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.

### **Measures needed to solve the problem of undertrials**

We need not look far. All that needs to be done is to compile 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 –

1. 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.
2. Establishment and strengthening of **fast track courts**.
3. Under no circumstance should they be put under the charge of convicted prisoners.
4. Institutions meant for **lodging** undertrials should be as **close to the courts** as possible.
5. 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 both the police and courts.
6. **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.
7. All undertrials should be effectively **produced before the presiding magistrates on the dates of hearing**.
8. The possibility of **producing prisoners** at various stages of investigation and **trial in shifts** should be explored.
9. **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.
10. **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.
11. The criminal courts should exercise their available powers under **Sections 309, 311 and 258 of the CrPC** to effectuate the right to speedy trial.
12. With undertrials' adjournments should not be granted unless absolutely necessary.
13. **Alternatives to imprisonment** should be tried out and

incorporated in the IPC.

14. Remand orders should be self-limiting and indicate the date on which the undertrials would be automatically entitled to apply for bail.
15. **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.
16. There should be an immediate **increase in the number of judges** and magistrates in some reasonable proportion to the general population.

## **Test yourself: Mould Your Thoughts**

Who are undertrials? What are problems faced by them? Also suggest measures to address them.