

PROBLEMS OF UNDER TRAILS IN INDIA

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“To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible.”⁵⁷⁸

AIMS OF THE STUDY:

The main aim of the study is to know the problems of under trial prisoners in jail.

RESEARCH METHODOLOGY:

The research methodology employed for this article is doctrinal.

ABSTRACT:

The article deals with the objective and the main purpose of under trial confining of accused. This topic deals with the problems, bizarre conditions of under trial prisoners in prison. It provides more emphasis on the conditions in which they live. It gives the interpretation of the judgements and also various views which the Supreme Court and Law Commission have given in light of the problem of the under trial prisoners. Critical analysis of the problem is done with the help of judgements and reports of law commission and suggestions for development of their conditions are specified in this article.

INTRODUCTION:

Any person has freedom to life, and this freedom cannot be curtailed by any person, unless and until specified by law. Another provision of law is “any person unless proven guilty is to be treated as an innocent”. But, the situation of under trails is peculiar and different. The situation of under trials is they are detained in jails for long times, without being proven as guilty. But, another aspect of preventing the person (accused) from escaping the process of law is also not to be over looked. Many people treat this as hypocrisy, which indeed is not. Considering both the aspects, any situation cannot be neglected. Therefore, a balance is required, and certain suggestive measures are given by experts in legal field. This article mentions about the problems

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⁵⁷⁸ Hussainara Khaton v. State of Bihar, 1979 AIR 1369, 1979 SCR (3) 532

of under trials who are languishing in the prisons for years together, and solutions for effective tackling of the problem.

WHO ARE UNDER TRIALS?

Basically, two contravening principles are encountered by many great jurists of the time in the case of a person who is charged of a crime but is not convicted of the crime. The first and foremost principle is the “presumption of innocence” and a person unless proved of the offence is to be treated as an innocent in the eyes of law⁵⁷⁹ and the second issue is – it is primarily the duty of state and courts established to see that justice is done to people or the victims. So, for achieving of the justice, the process of investigation and examination of witnesses and production of accused in court of justice is to be done without any lapses.⁵⁸⁰

In these two contravening provisions, which is of the high probability and balance is the main question of law and is incapable of resolution in a simple manner, now rather than considering this issue it would be better if we fall back into the provisions of Criminal Procedural Code (Cr. P. C.) and deal with some basics of the code.

After the criminal law is set into motion, by the registration of an FIR, the arrest of the offender is the next step and his confinement is the next issue, whether dealt by court or police is concerned matter, which involves in giving bail to the accused.

“Bail” is not specifically defined in the code, but the offences are classified into Bailable and non- bailable offences. In Bailable offences bail can be claimed as a matter of right, whereas in the case of non- bailable offences it cannot be claimed as a matter of right, it depends on the discretion of the court as per the provisions of Cr. P. C.

So, when a person is arrested with or without a warrant he can be termed as an under trial prisoner, and he has various rights, of course.

HISTORY OF UNDER TRIALS IN INDIA:

Pre- Independence time:

In India the problem of under trials was reported and was studied in the year of 1919-1920 by Indian Jails Committee⁵⁸¹, and this committee made several recommendations like separate jails

⁵⁷⁹ 72nd law commission report 1.9 para

⁵⁸⁰ Madhurima on Undertrial prisoners and the criminal justice system, para 14

⁵⁸¹ British Institute on Human Rights, Detention: Minimum Standards of treatment (1975), page xv

should be setup for various categories of prisoners and minimum area of 75 yards should be provided etc. It also suggested that short-term imprisonment should be replaced by fine, probation or warning or other substitutes.

With the efforts of this committee a change was brought in Cr. P. C. and Sc. 562 was brought which brought suspension of sentences in several cases, further in 1935 with the promulgation of Government of India Act, 1935 prison became a transferred subject under the autonomous provinces and various reform committees were made in Mysore, Uttar Pradesh etc. to improve the prison administration for both under trials and normal prisoners.

Post –Independence developments:

After independence, the constitution of India included “Prisons, reformatories, Borstal Institutions and other institutions like of a like nature and persons detained there in, etc. into State list in the seventh schedule. More Jail Reforms were brought during the years of 1950 to 1975 like East Punjab Jail Reforms Committee, 1948-1949, the Madras Jail Reforms Committee, 1950-1951, Orissa 1952-1955 etc.

In the fifties, Government of India, invited technical assistance from the United Nations, and Dr. W.G. Reckless spent some time in India, in 1951-1952 and has suggested some ways to reduce the number of under trial prisoners, the periods of remand in the jails, establishment of Correctional Administration in centre etc.⁵⁸²

PROBLEMS OF UNDER TRIALS IN INDIA:

Despite the relatively low number of persons in prison as compared to many other countries in the world, there are some very common problems across prisons in India, and the situation is likely to be the same or worse in many developing countries.⁵⁸³ The main problems which are usually encountered in prisons by the under trials are described below:

1. **Overcrowding:** The Law Enforcement Assistance Administration National Jail Census of 1970 revealed that 52% of the jail inmates were awaiting trial (Law Commission of India 1979). This number itself shows that there is huge overcrowding in the prisons.

Obviously, if prison overcrowding has to be brought down, the under-trial population has to be reduced drastically. This, of course, cannot happen without the courts and the police working in

⁵⁸² Working Group on Prisons, Report (1972-1973), para 1.3.1. to 1.3.4.

⁵⁸³ Prisons in India: An overview of reforms and current situation, pg 8

tandem. The three wings of the criminal justice system would have to act in harmony. Of course, the Fast Track courts have bought a slight change in the position of under trials, but their position is not better than the past which is the serious truth of the present times. The answer to this problem would lie in the increase in the number of courts, to decrease the work pressure on the judges, and the main of all the answers is the ending of “adjournment culture”.

2. Corruption and extortion in prisons: Extortion by prison staff, and its less aggressive corollary, guard corruption, is common in prisons around the world. The prison guards are usually given extremely low salary, so this point would act as an aggravating factor which encourages the prison guards to take corruption which leads to the bias in the situation of the under trials in India and most of the developing nations across the world. This problem is so severe that some of the under trials get special foods, cellular phones, special comforts etc. as in exchange to the bribing of the guards. An unpublished PhD dissertation from Punjab University on “The Functioning of Punjab Prisons: An appraisal in the context of correctional objectives” cites several instances of corruption in prison. Another article suggested that food services are the most common sources of corruption in the Punjab jails. Ninety five percent of prisoners felt dissatisfied and disgusted with the food served.



The LAW BRIGADE

Tihar courts trouble again

The high-security Tihar Jail is back in the news. The Delhi High Court has directed the Registrar-General to visit the jail and the Rohini district prison after inmates alleged serious violation of their fundamental and human rights by the authorities.

At a 'mahapanchayat' organised by the inmates to voice their concerns, they alleged that incidents of violence among prisoners like stabbing and blade attacks are on the rise. The security personnel, they said, have done nothing to contain the situation. Overcrowding is a big problem in the jail that has around 13,000 inmates against the combined capacity of 6,200.

The Hindustan Times June 27, 2006

An article about overcrowding of under trials in Tihar Jail.⁵⁸⁴

3. Prison violence: Prisons are often dangerous places to those people who live in. An example can be taken in the case when a three day riot and standoff in the Chhapra District prison in Bihar towards the end of March 2002 6 prisoners died in the shootout that occurred when commandos of the Bihar Military Police were called in to quell the riots.⁵⁸⁵ Usually the weak and new prisoners are taken and are subjected to the various difficulties in the prison, usually they are made to clean the toilets and are made to sleep near the unclean toilets without any blankets. They are usually beaten badly by the co-prisoners if they don't do the works specified to them. Another example of prison violence which shook the entire world in terror is the incident which took place in Brazil i.e. on 2nd October 1992, at least 111 people were killed

⁵⁸⁴ <http://www.hindustantimes.com/Overcrowding-corruption-crumble-UP-jails/Article1-565439.aspx> last seen on 11-2-2015.

⁵⁸⁵ Access to Justice for Undertrial Prisoners: Problems and Solutions, by Shree Kumar

and 35 wounded by military police who were called in the House of Detention after a scuffle broke out between two gangs of prisoners allegedly over payment for marijuana.

4. **Homosexual Abuse:** Prisons are the places where same sex people are lodged. Being removed from their natural partners, forces the prisoners to look for alternative ways to satisfy their sexual urge. This often finds vent in homosexual abuses where the young and feeble are targeted. Resistance from the side of prisoners leads to aggravated violence on them. At times, prisoners are subjected to massive homosexual gang-rapes. Apart from causing severe physical injuries like the rupture of anus and spreading sexually transmitted diseases including HIV/AIDS, it also induces severe trauma in prisoners forcing some of them to commit suicide. If they do not, they carry a lot of anger and frustration in themselves which they take out on the next innocent prisoner who gets admitted.

5. **Health problems:** Most of the prisons face problems of overcrowding and shortage of adequate space to lodge prisoners in safe and healthy conditions. Most of the prisoners found in prisons come from socio-economically disadvantaged sections of the society where disease, malnutrition and absence of medical services are prevalent. When such people are cramped in with each other in unhealthy conditions, infectious and communicable diseases spread easily. A sample study conducted by the National Human Rights Commission of India in early 1998 revealed that 76% of deaths in Indian prisons were due to the scourge of Tuberculosis.

6. **Mentally ill prisoners:** Though miniscule, mentally ill prisoners constitute another percentage of population, which is largely ignored and forgotten by both the outside world and those inside.⁵⁸⁶ But given the nature of the illness and prevailing social attitudes, they form the most hapless victims of human rights violations. Even for a normal person, prolonged incarceration might lead to a mental breakdown, the atmosphere being such. Many, on the verge of such collapse, do attempt suicide. "...I gravely doubt whether an average man can serve more than ten continuous years in prison without deterioration."⁵⁸⁷

An example of the mentally ill prisoners is Mr. Ajay Ghose, who spent almost 37 years of his life in the prison as an under trial. He was accused of murder of his brother, in 1962. He was termed as a lunatic. After his mother's death in 1968 nobody came to see him. He was just simply forgotten by the whole world. He cannot be leaved until and unless he was tried and he cannot be tried because he was a lunatic. Finally, this matter was taken in front of Chief Justice of India,

⁵⁸⁶ Mentally ill prisoners constituted 0.1% of the total prison population for the year ending in 2000. Source: *Prison Statistics 2000* at page 21.

⁵⁸⁷ Quoted in *Preface of Report of the All India Committee on Jail Reforms* Vol. I [1980-83], Ministry of Home Affairs, Government of India at page vi. This reported shall hereafter be referred to as the Mulla Committee report after the name of its Chairperson – Mr. Justice A.N. Mulla.

and then he was ordered to be shifted from the prison to Christian Missionaries in 1999. This case was a case in which the problem of under trials that are mentally ill is well exposed to the outer world. Thus, many lives have become as a sacrifice to our Indian Judiciary.⁵⁸⁸

CASES - SUGGESTIONS:

Mr. Justice Brennan says that- “Nothing rankles more in the human heart than a brooding sense of injustice”.⁵⁸⁹

“Humane considerations and constitutional requirements are not, in this day, to be measured by dollar considerations....”⁵⁹⁰

Suggestions for maintaining under trials as mentioned in *Hussainara Khaton v. State of Bihar*⁵⁹¹:

1. In jail a broad division into two categories of minor offences and major offences should be made.
2. The under-trial prisoners who were directed to be released by court on their personal bond are to be periodically produced before the Magistrates in compliance with requirement of the proviso to section 167(2).
3. Under-trial prisoners who have been in jail for a period of over six to seven years the requirement of the proviso to section 167(2) was complied with in their case.
4. The cases in which period of imprisonment has over lapsed they should be immediately released. For people who are charged with offences which are bailable but who are still in jail because no application for bail has been made on their behalf or being too poor they are unable to furnish bail. Or in the case when who are produced before the Magistrates are unaware of their right to obtain release on bail and on account of their poverty, they are unable to engage a lawyer who would apprise them of their right to apply for bail and help them to secure release on bail by making a proper application to the Magistrate in that behalf it is the duty of the government to provide a lawyer for the accused.
5. *Maneka Gandhi v. Union of India*⁵⁹² that when Article 21 provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law, it

⁵⁸⁸ Access to Justice for Undertrial Prisoners: Problems and Solutions, by Shree Kumar, in Pg. 2

⁵⁸⁹ By Justice Brennan cited in *Hussainara Khaton v. State of Bihar*, 1979 AIR 1369, 1979 SCR (3) 532

⁵⁹⁰ By Justice Blackmun cited in *Hussainara Khaton v. State of Bihar*, 1979 AIR 1369, 1979 SCR (3) 532

⁵⁹¹ *Hussainara Khaton v. State of Bihar*, 1979 AIR 1369, 1979 SCR (3) 532

⁵⁹² 1978 AIR 597

is not enough that there should be some semblance of procedure provided by law, but the procedure under which a person may be deprived of his life or liberty should be reasonable, fair and just.

6. Therefore, accused when he has to go through the trial without legal assistance, cannot possibly be regarded as “reasonable fair and just”. The court should consider the probable sentence that will follow if a conviction is obtained. The more serious the likely consequence, the greater is the probability that a lawyer should be appointed.

7. The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial.

“What faith would these people have in our system of administration of justice? They have always come across “law for the poor” rather than “law of the poor”. The law is regarded by them as something mysterious and forbidding-always taking something away from them and not as a positive and constructive social device for changing the socio economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker sections of the community. It is, therefore, necessary that we should inject equal justice into legality and that can be done only by dynamic and activist scheme of legal services.” This is the anguish expressed by Supreme Court about the methods employed by prison authorities and State towards under trials.

Sunil Batra v. Delhi Administration⁵⁹³:

1. Lawyers and Judges are to be nominated to visit the prisons
2. Lawyers nominated by the District Magistrate, Sessions Judge, High Court or the Supreme Court should be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. The lawyers so designated shall be bound to make periodical visits and record and report to the concerned courts, results which have relevance to legal grievances.
3. Grievance Deposit Boxes shall be maintained by or under the orders of the District Magistrate and the Sessions Judge which will be opened as frequently as is deemed fit and

⁵⁹³ 1980 AIR 1579, 1980 SCR (2) 557

suitable action taken on complaints made. Access to such boxes should be afforded to all prisoners.

4. District Magistrates and Sessions Judges should, personally or through surrogates, visit prisons in their jurisdiction and afford effective opportunity for ventilating legal grievances, should make expeditious enquiries there into and take suitable remedial action. In appropriate cases reports should be made to the High Court to initiate, a Habeas Corpus.

5. No solitary or punitive cell, no hard labour or dietary change as painful additive, no other punishment or denial of privileges and amenities, no transfer to other prisons with penal consequences, should be imposed without judicial permission of the Sessions Judge and where such intimation, an account of emergency is difficult such information shall be given within two days of the action.

6. Court can also issue writs in the cases where they find the aspects suspicious in any matter.

7. If the prisoner breaks down because of mental torture, psychic pressure or physical infliction beyond the licit limits of lawful imprisonment the Prison Administration shall be liable for the excess of torture. On the contrary, if an influential convict is able to buy advantages and liberties to avoid or water down the deprivation implied in the sentence the Prison Establishment should be called to order for such things and they would be punished.

8. Prisoners' Handbook is to be made in the regional language and provide them freely to inmates.

9. Prisoners should be allowed to meet their family members.

10. When offences are alleged to have taken place within the prison, there should be no tinge or trace of departmental collusion or league between the police and the prison staff.

THE EMPIRICALS:

With an insight of many judgements which are treated as landmarks in the judicial history, the question which would further arise in our mind is- "Have these judgements transformed and translated into tangible results?"

Firstly, the report produced by Mulla Committee in 1983 is important in this regard:

Of course, the opening sentence mentions that the position of under trials is peculiar. It also mentions that "*They have been hauled up for suspected violation of law, yet they are innocent, till approved guilty. They, therefore, cannot be put on the same footing as convicts. Further, if*

they are allowed to mix up with hardened and habitual offenders, it would not be good for them and not good for society”.

The recommendations made by the Mulla Committee are:

1. The under trials should be put in separate barracks and it is essential to contain “criminal contagion”. But this is only done in states of Manipur and Goa.
2. They should have full access to all the legal material and sometimes Jail Superintendents also need to be more cautious. (A little praise was done in this respect mentioning that Jail Superintendents bought the cases on their behalf).
3. It is mentioned that some states and UT put them in categorization of A, B, C class prisoners. They stated that this categorization needs to be put an end to. Originality is this is persistent in 15 states
4. Under trials are entitled to receive food; clothing and sometimes medicine from outside the jail for those not having such arrangement receive food, clothing, Medicare, etc., from jail authorities at par with convicts.
5. They should be provided with educational and vocational facilities.
6. Police investigation of the cases of under trials within the specified time
7. District level Review Committee to appraise under trials cases and recommend their release on bail.
8. Proper transportation facilities to the under trials from the court. The statistics provided in this respect are too much of unconditional sickness to the Home Department. It mentions that only 16 states have proper transporting facilities. On the other side, states like Himachal Pradesh and North Eastern states have no facilities only.
9. It also mentions that Habitual offenders should not be lodged in the sub-jails, but the statistics show that it is done only in Central Jails of 17 states and UTs; in District Jails of 11 states and UTs and in Sub-Jails of five states and UTs.
10. Fetters and handcuffs should not be imposed under trial prisoners except when they have a persistent tendency to violence or escape, but we can observe that this is done in 19 states and UTs only in respect of violent and escapist prisoners. On the other hand, in Jammu & Kashmir, this is a standard practice.
11. Under trial prisoners who volunteer to work should be encouraged to take up work programmes. A little less than a half of the states and UTs offer these programmes to under trial inmates in their Central Jails. This proportion slides down to one-third in District Jails and one-

fourth in Sub-Jails. Are the under trial prisoners, who participate in vocational training and work programmes, offered wages? Yes, they are offered wages in a large number of states and UTs.

11. The District Magistrate should constitute a committee to review the position of under trial prisoners in each sub-jail under his jurisdiction. The Inspector General of Prisons should review the situation of under trials in sub-jails with state Home Secretary once in every three months.

After considering the recommendations we get a feel that the condition from the time have changed and a report was produced by National Human Rights Commission (NHRC) in the year 2011 under the leadership of Chairperson NHRC, Justice Shri KG Balakrishnan. Now we would briefly discuss the points specified about the present condition of under trials.

Report by NHRC Delhi:

Director (SR), MHA Dr. (Smt) Praveen Kumari Singh stated that prisons should be a place for reformation and rehabilitation of the offender. She said that the rate of imprisonment was very low in India as compared to other developed countries. The main reason for overcrowding in jails, she added, was due to the large presence of under-trial prisoners which constituted about 67% of the total prison population. However, she highlighted that over-crowding in prisons has come down considerably. She attributed this development to the initiatives and measures taken by the Government of India and the State Government. She further stated that about 18 exclusive women prisons existed in India and female prisoners constituted about 4.1% of total prison population. She highlighted the following measures and interventions by the Government of India: -

1. Amendment in Cr.PC for mandatory release of under-trial prisoners in case of inordinate delay in trial.
2. Setting up of fast track courts for quick disposal of cases
3. Introduction of scheme of plea bargaining
4. Holding of jail courts (Lok Adalats)
5. Rs.1800 crores provided to States under the scheme of modernization of prisons to construct new jails, repair, renovation and construction of additional barracks, construction of staff quarters and improvement of water and sanitation facilities; construction of new jails and barracks under this scheme;

6. Holding of prison courts for speedy disposal of cases of under trials involved in petty offences
 Setting up of the *National Mission for Justice Delivery and Legal Reforms* to reduce number of under trial cases and ease congestion in jails.

- The statistic highlights during the period of detention for the year 2000⁵⁹⁴ –

Percentage of the total under trial population

Upto 3 months total 78,316 which is 40.4%

Upto 6 months total 43,799 which is 22.6%

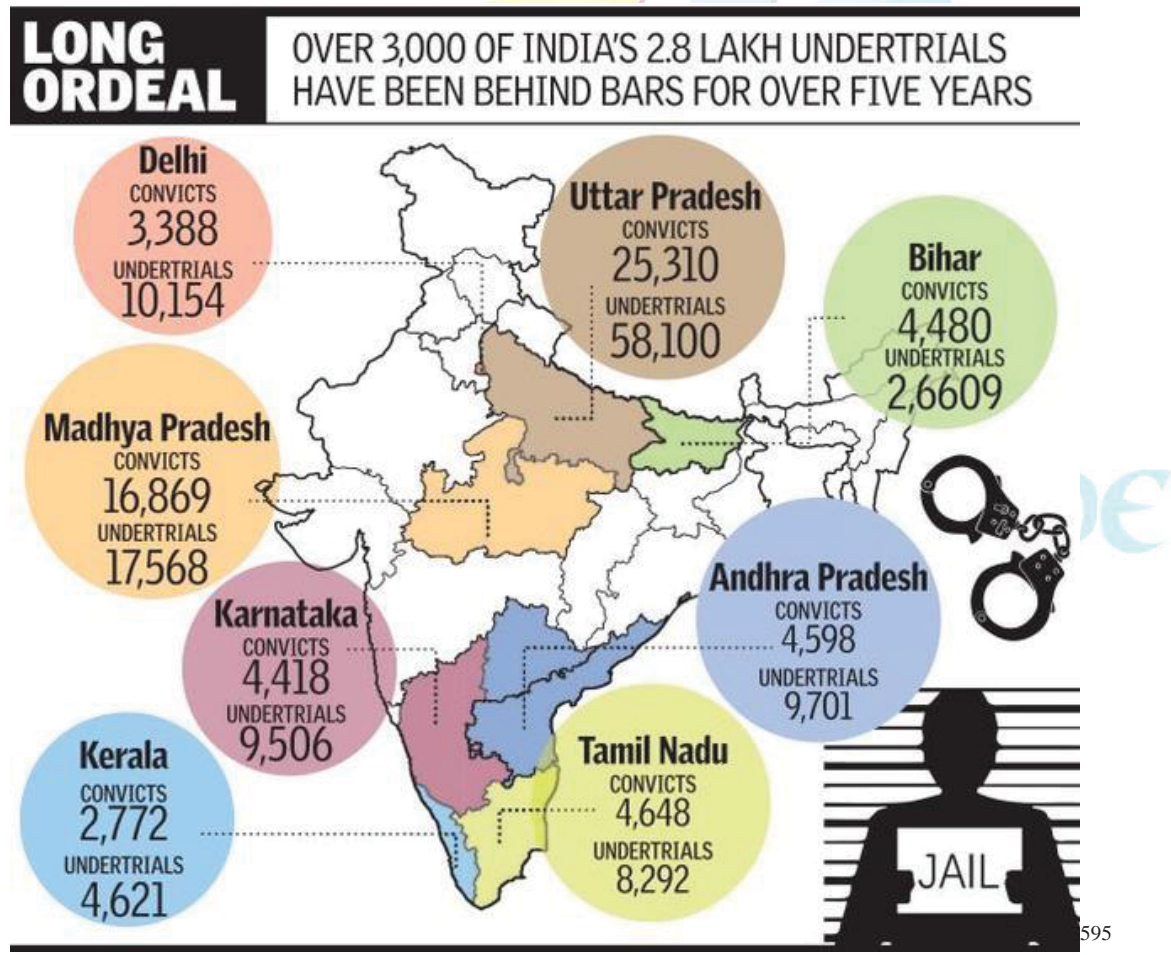
Upto 1 year total 34,419 which is 17.8%

Upto 2 years total 22,488 which is 11.6%

Upto 3 years total 9,629 which is 5.0%

Upto 5 years total 4152 which is 2.1%

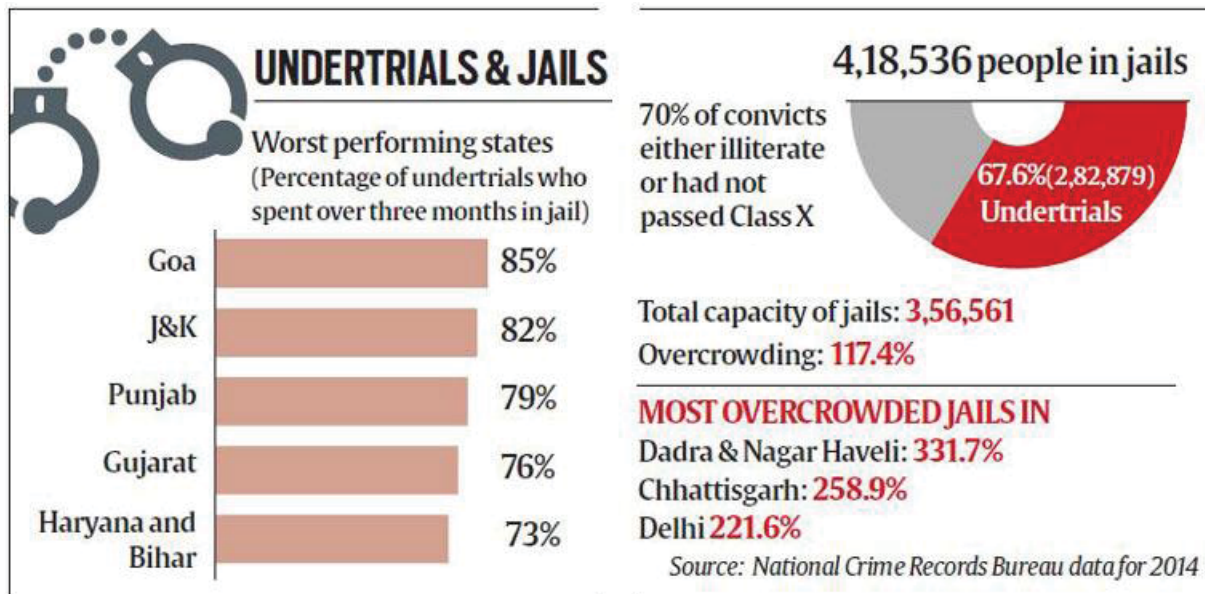
Above 5 years total 824 which is 0.4%



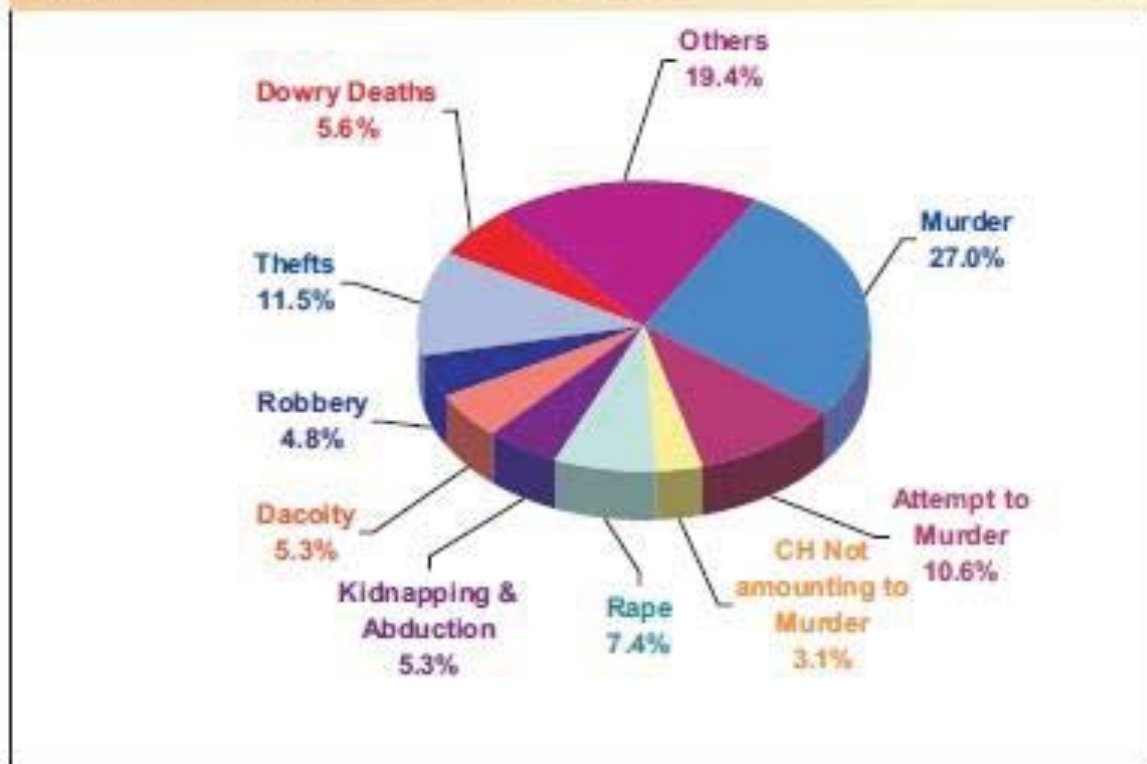
⁵⁹⁴ *Period of Detention of Undertrials in Prison Statistics 2000* at page 28.

⁵⁹⁵ https://www.google.co.in/search?q=under+trial+prisoners+in+india+2014+statistics&newwindow=1&client=opera&source=lnms&tbn=isch&sa=X&ved=0ahUKEwiehOXcxo3KAhWEJI4KHSz_DXIQAUICCgC&biw=1366&bih=659#imgrc=iI2AHBUk0-7PWM%3A last seen on 03-01-2016

CURRENT EMPIRICS IN 2013 & 2014:

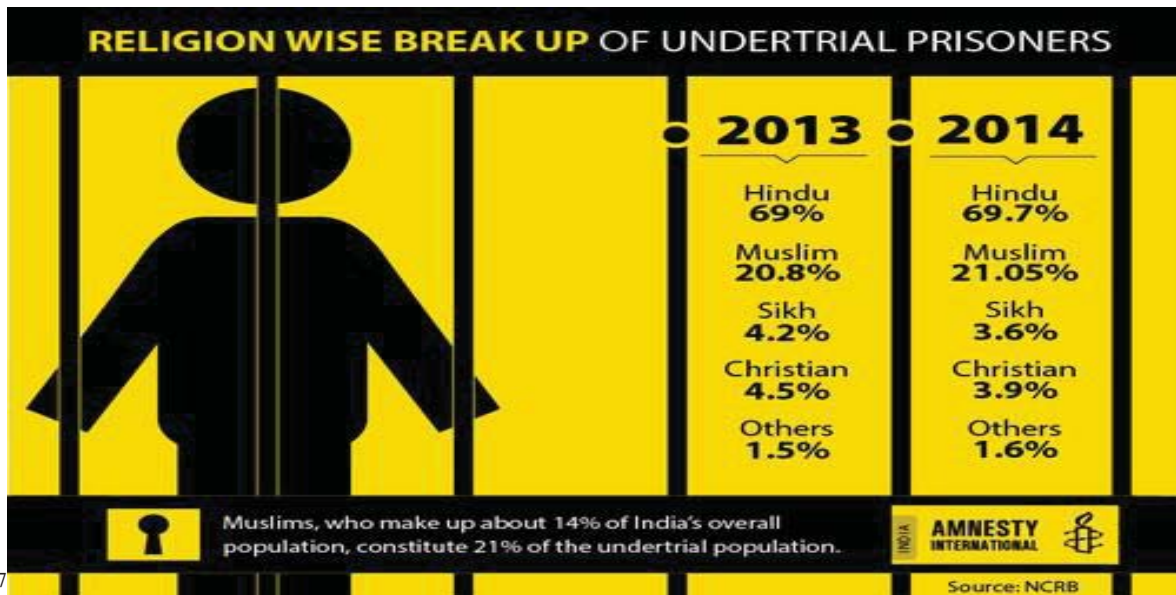


Distribution of undertrial prisoners under various IPC Crimes at the end of 2012 Chart 4.3



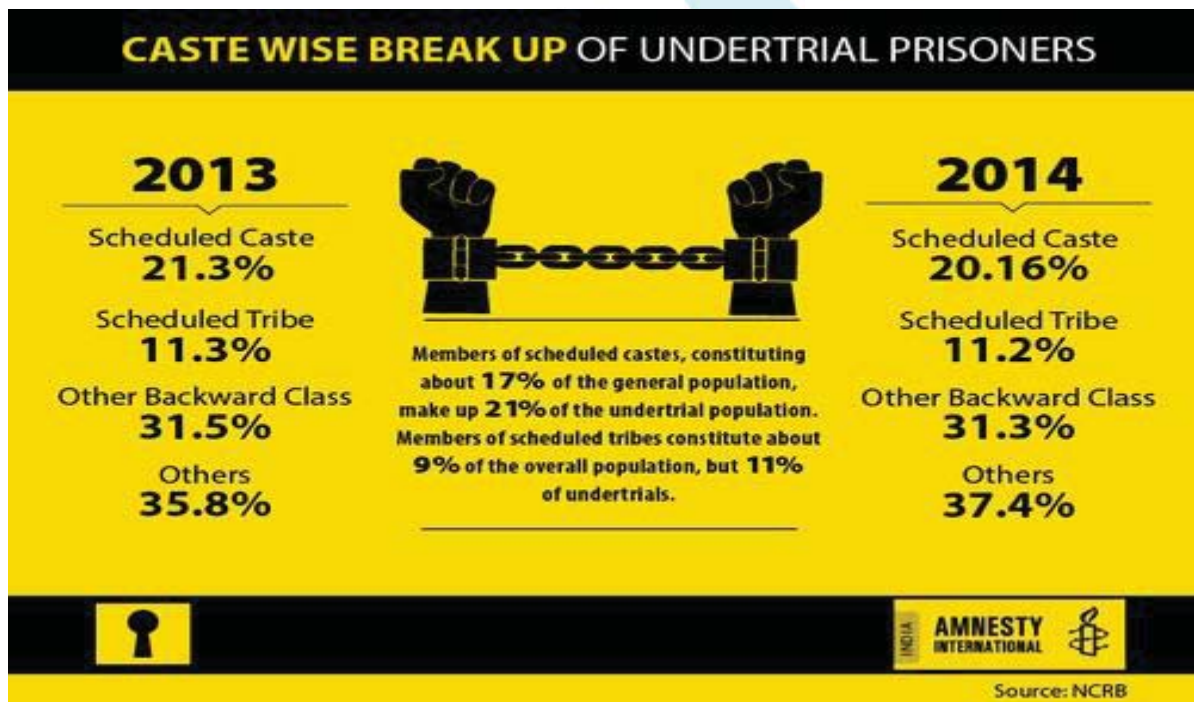
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⁵⁹⁶ <http://indianexpress.com/article/india/india-news-india/almost-68-inmates-undertrials-70-of-convicts-illiterate/> last seen on 03-01-2016



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⁵⁹⁷https://www.google.co.in/search?q=under+trial+prisoners+in+india+2014+statistics&newwindow=1&client=opera&source=lnms&tbm=isch&sa=X&ved=0ahUKEwiehOXcxo3KAhWEJI4KHSz_DXIQAUICCgC&biw=1366&bih=659#imgrc=QdILxsYwGajUhm%3A last seen on 03-01-2016.

⁵⁹⁸https://www.google.co.in/search?q=under+trial+prisoners+in+india+2014+statistics&newwindow=1&client=opera&source=lnms&tbm=isch&sa=X&ved=0ahUKEwiehOXcxo3KAhWEJI4KHSz_DXIQAUICCgC&biw=1366&bih=659#imgrc=pp5kbHRd4b1WEM%3A last seen on 03-01-2016

⁵⁹⁹https://www.google.co.in/search?q=under+trial+prisoners+in+india+2014+statistics&newwindow=1&client=opera&source=lnms&tbm=isch&sa=X&ved=0ahUKEwiehOXcxo3KAhWEJI4KHSz_DXIQAUICCgC&biw=1366&bih=659#imgrc=dd6HrW8EPcOhtM%3A last seen on 03-01-2016

SUGGESTIONS:

Provisions of Section 167 of the CrPC with regard to the time limit for police investigation in case of accused under trial prisoners should be strictly followed both by the police and the 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.
- All under trial prisoners 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.
- A District level Review Committee consisting of the following should be constituted to review the cases of under trial prisoners –

1. District Judge [who is also the ex-officio chairperson of the – Chairman District Legal Services Authority]
2. District Magistrate – Member
3. District Superintendent of Police – Member
4. Public Prosecutor – Member
5. Prison Superintendent – Member Secretary⁶⁰⁰

It should be statutory committee and should visit all Central and District prisons in the district at least once a month and meet every under trial prisoner present on the day. It should, thereafter, hold a meeting to review the cases of all under trial prisoners in the prisons under its jurisdiction and see that no such prisoner is un-necessarily detained in the prison. Alternatively, prison superintendents/ jailors in-charge of the prison should send an updated list of all such prisoners to the committee on a regular basis.

- A State level Review Committee should also be constituted with the following composition –
1. A Judge of the High Court [who may also be the Chairman of the State – Chairman Legal Services Authority]
 2. Home Secretary/ Secretary dealing with prisons in the Secretariat – Member
 3. Inspector General of Police – Member

⁶⁰⁰ These include the Mulla Committee in its Chapter on *Undertrial and other Unconvicted Prisoners* at page 170

4. Director of Prosecution – Member

5. Inspector General of Prisons – Member Secretary

This should also be a statutory committee and should meet at least once every three months to review the position of under trial prisoners in the State as a whole. It should also sort out problems of coordination among the various departments resulting in delay in trials.

- The District Magistrate should constitute a committee consisting of representatives from the local police, judiciary, prosecution, district administration and the prison department at a fairly high level, to visit the Sub jails under their jurisdiction at least once every month and review delay in cases of prisoners if any and adopt suitable measures.
- Preventive sections of the CrPC, especially Section 109, should be reviewed and amended suitably to restrict their use only in very genuine cases. The cases of prisoners being tried under Section 109 should be heard with due promptness and concluded within 5 months.
- Police functions should be separated into investigation and law and order duties and sufficient strength be provided to complete investigations on time and avoid inordinate delays.
- The criminal courts should exercise their available powers under Sections 309, 311 and 258 of the CrPC to effectuate the right to speedy trial. In appropriate cases jurisdiction of the High Court under Section 482 of the CrPC and Articles 226 and 227 of the Constitution of India can be invoked seeking appropriate relief or suitable directions to deal with and prevent delay in cases.
- With under trial prisoners, adjournments should not be granted unless absolutely necessary.
- Utilise the existing provision in CrPC for Honorary Judicial Magistrates and use it imaginatively. Request experienced criminal lawyers to work as part-time judges on a particular stipulated number of days on the pattern of “Recorders” and “Assistant Recorders” in the United Kingdom. This should be in synchronization with the scheme of Fast Track Courts that are running for some time now.⁶⁰¹

CONCLUSION:

When a study is made on the Under Trials one thing would be very clearly evident from the name itself, they are the people who are suffering and languishing in the prisons.

The conclusion to this problem is so simple; it is start treating them as people. Do not prejudge the issue and treat them as the people who have done a crime and they need to mug up in jails

⁶⁰¹ Law Commission of India inter alia through its 77th [Delay and Arrears in Trial Courts], 78th [Congestion of Under trial prisoners in jails]

for long periods of time. This attitude change is to be bought in our Legislature. On one side, they propose about the speedy trials on the other side they confine people in jails, this double standardness is to be omitted as soon as possible.

It has to create a new legislature or at least follow the recommendations of various law commission reports and follow the minimum pre-requisites in the cases of under trial prisoners.

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