RIGHTS OF AN UNDER-TRIAL PRISONERS IN INDIA

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ABSTRACT

An under-trial prisoner is a one who face trails in the competent court. These prisoners to speak technically, are the ones who face trials and during the thus are kept in the prison. The purpose for this concept of imprisonment or confining a person within a prison was not to punish, but was a means of keeping the accused of a crime detained until the actual punishment could be carried out. London is considered to be the birth place of prisons where Bentham was against the concept of death penalty and thus, prisons were created to hold prisoners as a part of punishment. The concept has since then changed a lot. Prisons, are now also being used as to hold accused. The Supreme Court has lamented on this issue in *Re Inhuman Conditions*[1]. Due to the heavy burden on the courts and the procedural laws, the Judge in a case takes a lot of time to deliver the judgement. This in turn makes the accused suffer in prison. In actual 67.2% of prisoners in Indian jails are under-trials[2] who may or may not be punished. Thousands of them are arrested on suspicion of committing petty crimes and are languishing in jails for a much longer than the actual punishment for the crime if committed. This, raises a very serious problem in the process of the administration of justice, and hence is a serious issue under the Criminal Law System.

[1] 2016 SCCOnLine SC 121.
[2] Prison Statistics Report, 2015, NCRB, Available at http://ncrb.nic.in/StatPublications/PSI/Prison2015/PrisonStat2015.htm.

INTRODUCTION

Under trial prisoners[3] constitute a significant majority of the prison population today. These persons who are kept as prisoners in the prisons are innocent under the eyes of law because they have yet not found to be guilty of any offence. In a system where individual liberty and fundamental rights are so deeply rooted and provided to the citizens, it's a matter of disgrace that we may call our system just and fair. For these persons are treated in the same manner as other convicts in the prison. In other words, we deprive these people who are innocent under the eyes of law, ironically through law, of their basic right of liberty. The penal laws of our country also seem to be of only a little relief for persons facing trial imprisoned.

The jail committee was constituted in India during the reign of Lord Macaulay in 1835 which was to loom basically behind the prison's discipline. The said committee submitted its report in 1838. It was recommended by the committee that increase in rigorous imprisonment must be given rejecting all humanitarian needs. In response to this, a second commission of inquiry into jail management and discipline which again made similar recommendations as the earlier report.

JUDICIAL PRONOUNCEMENTS

However, the committee suggested a change and recommended for improvement of diet, clothing, bedding and medical care. The prison law enactment was first proposed in 1877 when it was proposed that a prison law should be made. In 1888, on the advise of the fourth Jail Commission, a consolidated prison bill was formulated. Since, 1894 the Prisons Act, 1894 has hardly gone into any changes. However, a major change was brought in the prison rules in 1919-20, when for the first time 'reformation and rehabilitation' of offenders were identified. The Government of india Act, 1935 resulted in the transfer of the subject of jails from the centre list to the control of the provincial government.

[3] Denotes an un-convicted prisoner.

Hate the sin, not the sinner

The understanding of the Criminal Jurisprudence and its process shall be read and understood in parallel with the rights and protection given to the accused person not only while he is being tried but also after the process of trial is over. These are to help establish any miscarriage of justice.

The right of the accused which includes right to be produced before the magistrate within 24hours of the arrest(S.76 CrPC), the right to bail((Schedule 1, CrPC), reasonable right to be released on bond (S.440 (i) CrPC), Right to have counsel and legal aid(Article 22(3) and S.303 & 304 CrPC), The principle of legality (Article 20), Principle of presumption of innocence until proven guilty as per Section 101 of the Indian Evidence Act, 1872, right to speedy investigation and trial, the establishment of various tribunals, the well-defined powers and the functions of the courts have drastically helped in reducing the burden that the courts had to face and these steps have proved to be beneficial and the aim and objectives to have been fulfilled.

Though not much have been done by the legislature as it should have been the situation, the judiciary has come forward for the rescue of these under trial prisoners who suffer behind the bars even before being proved guilty. The judiciary playing a very active role have ruled out certain guidelines that ought to be followed while dealing with under trial prisoners. In the matter of *Moti Ram*[4], *Hussainara*[5], *Sunil Batra*[6], *Sheela Barse*[7], *Charles Shobaraj*, *Nilabati Behra*[8], *D.K.Basu* which completely highlights the problems that are faced by the under trial and become prey to injustice easily.

When in 1979, thousand prisoners were held under trial, granting release of all the persons held in the prison, the Supreme Court released all the accused under trial who had been kept behind the prison for a period which extended beyond their total duration of the punishment which they may would have received if proven guilty. Highlighting the importance of the freedom of Article 21, the Court held such detention to be completely illegal.

[4] Moti Ram v. State of U.P. AIR 1978 SC 1594
[5] Hussainara Khatoon v. State of Bihar 1980 SCC 88
[6] Sunil Batra v. Delhi Administration AIR 1980 SC 1579
[7] Sheela Barse v. State of Maharashtra AIR 1983 SC 378
[8] Nilabati Behara v. State of Orrisa (1993) 2 SCC 746

The suspects and convicts can in no manner be placed on a similar ground. There Court in Ramamurthy v. State of Karnataka have identified nine major problems and laid down problems which needed immediate attention. These were as follows:

1. Overcrowding of Jail
2. Lenghty Trial and delay in appeal
3. 3rd degree torture and ill treatment
4. Neglecting the health issues and hygiene
5. Insubstantial food and adequate clothing
6. Prison Vices
7. Communication blockage
8. Streaming of jail visits
9. Administration of open air prisons

Thus, the judiciary has been playing a major role in proving justice to the numerous number of under trial prisoners

GROSS VIOLATION OF HUMAN RIGHTS

The ideology propounded by the universal declaration of Human rights adopted by the United Nations in 1948, serves a springboard for a global action to uphold human rights in different spheres. The ideology propounded by the UDHR has been well concretised in the covenants on civil and political rights and on economic, social and cultural rights. Human Rights are universal. This means that human rights are so important that the international community has deemed that everyone has their, regardless of where they live, or their economic, social or

political situation. The criminal law in India is contained in a number of sources. Significantly, the human rights embodied in the United Nations Instruments are wholly in tune with the spirit behind the Fundamental Rights and Directive Principle of state policy which is part of chapter III and chapter IV of the Constitution of India respectively. Article 21, the most important fundamental rights of all in the Indian Constitution has been interpreted in such a way to uphold the basic human rights of an individual.

Indian Criminal Justice System: "Hail Bail No Jail"

Like the Indian feared the British, poor feared the criminal justice system. The reason behind this is the criminal justice system itself. One must remember the two cardinal principles that play a very important role in administering justice under the Indian legal system. They are:

a.) Justice delayed is Justice denied.

b.) Justice must not be done; it must be seen to be done.

And Indian Criminal Justice system and prison administration failed on both the aspects. There was a time when the principle "Hail bail no jail" guided the prison administration of this country but today the scenario is altogether different. As a result, the prisons are over populated in this country. Overcrowding to this extent is per se cruel and inhuman and violating the basic human rights which one holds with him. The original principle was based on the fact that to put a person behind the bars, it must be backed by some strong reasons either; the prisoner will abscond or otherwise there may be interference with the administration of Justice. The rationale behind this is subverted under the Indian criminal justice system in the 21st century. The over whelming majority of the prison population are undertrials. Most of the individual that are part of prison administration in this country are poor particularly, dalits and Muslims. They will stay there for many years waiting for their trial to begin. Many of the persons languishing in the jail are for the bailable offences. Even, thousands of accused persons languish in jail despite being granted bail because either they are incapable of paying the surety amount or no one is there who look for them.

INCARCERATION DOESN'T SPELL FAREWELL TO FUNDAMENTAL RIGHTS

The very concept of human rights arises from the inherent dignity of an individual and invokes all the inalienable rights and freedoms that he/she is entitled to being a member of the society but once he/she is incarcerated, they are being regulated by the state and they are treated as if they have given permission in writing for human rights abuses on them.

Almost all the Fundamental rights have been given not only to citizen but to a person. Person is a wider connotation which includes citizen as well. Therefore, it must be kept in mind that

fundamental rights of undertrial prisoners can be restricted or curtailed by the state but that cannot be denied or taken away in full. The three important postulates that prison administration need to fix in their mind vis-a-vis prisoner are:

1. The restriction imposed by the law is not in the nature to reduce them to non-person and violate the basic rights of them.

2.An incarcerated individual is entitled to enjoy all human rights within the limitation of imprisonment

3.An offender is sent to prison as punishment and not for punishment i.e the prison administration has no authority to aggravate his-/her suffering incidental to confinement.

A CONSTITUTIONAL ISSUE THAT NEEDS ATTENTION

It is very strange that prisoner can contest election and represent the constituency while being in prison but cannot vote in the election. Why undertrial prisoner is not allowed to vote when an undertrial who gets bail from the Court can vote? Why this double standard? Actually, many committees presented their concern over the issue but the fact remains the same till now. The reports of all these committees are gathering dust while the prisoners continue to remain lowest on society's list of priorities. We feel proud of the fact that India is the largest democratic country in the world but such a discrimination reflects that neither government nor society are bothered even for ensuring basic right to an individual which is in otherwise democratic country.

JUDICIAL ACTIVISM

Era From 1951 To 1975 and Afterwards:

The judiciary played a very important role when it comes to interpret the Fundamental Rights and protect the basic human rights of prisoners including undertrial. In recent years, the advocacy for the protection of human rights of person in prison custody has stirred the court to intervene in all such cases where the prison management is likely to exercise its power arbitrarily or indiscriminately.

Article 21 of the Indian constitution has been interpreted by the Court in the widest sense possible. From the Gopalan case in 1951 till 1975 before the time Maenka Gandhi judgment came, the law is state can curtail the life and personal liberty of an individual and an action by the state which takes away Article 21 need not to pass test of arbitrariness under Article 14 of the Indian Constitution but the Maenka Gandhi judgment changed the trend. Not only it has to pass the test of Article 14 and Article 19 but at the same time, the procedure that has been followed for the state action to take away the personal liberty of an individual that procedure must be just, fair and reasonable. This change has brought a tremendous change in the Indian legal system and ensures the protection of basic human rights of any individual who can be the victim of state action at any point of time.

PROBLEMS AFFECTING THE INDIAN PRISON SYSTEM

The Supreme Court in Rama Murthy v. State of Karnataka observed that there were nine major problems affecting the Prison system in India which require immediate attention. These include: Overcrowding, delay in trial, torture and ill treatment, neglect of health hygiene, insubstantial food and adequate clothing, prison vices, deficiency in communication, streamlining of jail visits and management of open air prisons.

The solution to problem of overcrowding does not lie in the opening of bigger prisons but changing the attitude and mindset of the administrators that people living behind the bars are also human beings. This attitudinal change in the prison administration will solve most of the problems raised above.

SPEEDY TRIAL

The right to speedy criminal trial is one of the most valuable fundamental rights guaranteed to a citizen under the Constitution, which is integral part of right to life and liberty guaranteed under Article 21.

In Kartar Singh vs. State of Punjab, it was observed: -

The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted.

In Abdul Rahman Antulay vs. R.S.Nayak , the Constitution Bench laid down the following propositions intended to serve as guidelines:-

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court

is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(4) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(5) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell in the following words:

'... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.'

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(6) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

(7) Ultimately, the court has to balance and weigh the several relevant factors — 'balancing test' or 'balancing process' — and determine in each case whether the right to speedy trial has been denied in a given case.

(8) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.

(9) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit in effectuates the guarantee of right to speedy trial.

An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

DIRECTIVES TO PRISON ADMINISTRATION: STRENGTHENING THE IDEOLOGY OF UDHR

The Supreme Court, the top most court in the country, has issued a several guidelines to provide safeguard to prisoners through various judgements. Accordingly, the Court has held that the prisoners must be allowed to read and write, exercise and recreation, meditation and chant,

creative comforts like protection from extreme cold and heat, the minimum joy or self-expression to acquire skills and techniques. The young inmates must be separated and free from exploitation by the adult. Subject to discipline and security, prisoners must be given their right to meet his fellowmen/fellow women, interviews, visits and confidential communication with lawyers nominated by the competent authorities.

SUGGESTIONS & CONCLUSIONS

"Expand your vision, and see that inside every culprit is a victim crying for help. If you heal the victim, you will eliminate crime from the planet,"

- - Shri Shri Ravi Shankar

If we go by the philosophy that culprits are victims of their own circumstances, then the best way of reducing re-offending is by ensuring that the prisoners are able to get back to the wider community as useful and law abiding citizen. This is possible if they have a job and a home to go back to. For this, there needs to be behavioural change in the prison administration. Once, this change is administered in the society, issues that are raised in the paper will automatically solved.

As the paper concerned the issue that many undertrial prisoners in this country has been in the jail for more than the years that is prescribed by the IPC for offence committed. Fast tracking of few categories of criminal cases without the creation of additional courts and infrastructure creates more burdens on the category of cases left out from fast tracking. Therefore, for good governance it is necessary that courts are strengthened and criminal justice system is fast tracked.

It is high time that central government takes positive steps in consultation with the state government in fast tracking all type of criminal cases so that the criminal justice system is delivered timely and expeditiously and basic human rights of an under-trial prisoner is protected because as we know- "Justice delayed is Justice denied".