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**UNDERTRAIL PRISONERS IN INDIA: DELAYED JUSTICE AND
PROLONGED INCARCERATION.**

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Abstract

This research paper raised the problem of economic discrimination rooted in the Indian judicial system, which results in the majority of undertrials being imprisoned due to their failure to pay the bail amount. The paper questions the judiciary's failure to implement Section 436A of the Cr.P.C. and the implementation of right to equality and free legal aid services in India. The paper also talks about the legal belief of 'innocent unless proven guilty', which seems to be denied to the undertrials. With the help of statistics, it shows how the bail system is biased towards the rich and the idea of justice remains unfair, because the poor are not represented properly. The paper talks about legal aid, police cruelty and torture, and the undignified quality of life of undertrials, including the failure to realize the difference between undertrials and convicted criminals. The paper also explores the possible solutions and recommendations to address the issue of undertrial prisoners in India, such as speedy trials, effective legal aid, bail reforms, prison reforms, and alternative modes of dispute resolution.

Table of Contents

Introduction	3
Hypothesis	4
Literature review	4
Who are undertrials?	5
Current statistical data of under-trials	5
Root Cause of Slow Trails in India.....	6
Rights of Under-trial Prisoners	6
Challenges faced by undertrial prisoners.....	7
IMPORTANT CASE LAWS	8
SUGGESTIONS	9
CONCLUSION	10
REFERENCE	11

Introduction

Undertrial prisoners come under the category of jail inmates that have been found responsible for the factors behind overcrowding in prisons. These voiceless people remain in prison due to pending trials, which may or may not lead to conviction. The purpose of keeping undertrials in custody is to ensure a fair trial so that they cannot be in a position to influence the witnesses. Long detention of the undertrials amounts to a violation of human rights; further, this unnecessary detention of the undertrials causes a number of problems for the people and their relatives who are suffering due to slow justice delivery.

The reliability of the judiciary depends upon the delivery of justice to the common people in a speedy, fair, and economic manner. The Supreme Court and the High Courts have only appellate jurisdiction in criminal cases. Due to this, the burden of new cases hits the doors of trial and district courts, and the basic flaw of our criminal justice system, including the judiciary, seems to be that it is severely loaded against the poor. The judiciary in India at present is overloaded due to work pressure. The massive backlog of cases in Indian courts is raising either due to the high rate of arrival of new cases or due to the high rate of pendency of old cases in courts. The reasons for this overburden in the judiciary are the huge number of criminal and civil cases. Pendency, insufficient appointment of judges, insufficient selection of government counsels, inadequate legislation, indiscriminate closure of courts, passing of unnecessary adjournments, and additional burden on courts due to election petitions are also increasing the pendency of cases in courts. In recent times, there has been a considerable change in the social view towards prisoners; prisons are no longer considered places for punishment only but also reformatories. The main problem of the research is that undertrials are suffering in jails in large numbers.

Undertrials are those prisoners who are under judicial remand and whose trials are being awaited, i.e., they are under judicial custody and supposed to remain in jail until and unless their sentences have been passed by the court. In some cases, they have to spend life in prison for a longer period than the period of imprisonment that would be awarded to them if they were

convicted. Delay in the trial of cases is the dynamic human rights issue of undertrials. The purpose of keeping undertrials in custody is to ensure a fair trial so that they cannot be in a position to influence the witnesses. The aim of the research is to analyze the

Criminal Administration of Justice's handling of undertrial prisoners and their rights to a speedy and unbiased trial.

Hypothesis

Due to a lack of resources like proper implementation of free legal aid and speedy trial, the judiciary is becoming incapable of delivering justice and getting biased towards the rich, which is affecting the rights of the undertrial, who are living unnecessarily in jail and eagerly waiting for their trial and justice.

Literature review

According to CRPC Section 436A if there is pendency in an investigations and the finality does not seem to exist and if the prisoner serves the half period of punishment mentioned for the alleged crime in the jail than in such a case the undertrial prisoner will be released on a mandatory basis by issuance of a bail bond with the sureties but this rule is applicable only in cases where offences are bailable in nature and death is not the punishment for the offence.

Schedule 7 of Indian Constitution states that prisons, prisoners, public order and police comes under the list II (State list) addressing the issues of under-trial prisoners is the responsibility of respective State Governments in whose jurisdiction the arrest is made.

According to Senior Advocate Colin Gonslaves if the order of apex court is being spontaneously followed by the police authorities then the undertrial prisoners would be surely reduced." the Supreme court initiates for a process for the sake of reduction of undertrial prisoners in India. It says that arrest should be made only in case of the offences

undergoing the punishment which includes imprisonment of less than 7 years and which includes the devastated degree of committed crime. But no arrest are being prevented and the arrest of the person is continued on petty charges”

Nicolette Parsi’s (Veldkamp 1981) which throw a light on the ill treatment faced by the undertrial prisoners in prison. the condition of the prisoner is so

deprived in nature because they are experiencing 'imprisonment with no punishment' this book gives a deep analysis about the negative atmosphere of the undertrial prisoners in country.

Administration of criminal justice 1974 by H.S Sandhu gives a detailed summary about the short duration of detentions and its impact on the jailbirds in the district jail. Study reveals it all about the basic importance of treatment programme inside the jail and how it impacts the behaviour of the prisoners. Due to the lack of the implementation of the welfare programmes, the hatred of the prisoners towards the police authorities, court in which their trial is going on and wardens.

Who are undertrials?

Undertrials are the prisoners who are spending their lives behind the bars in the name of ongoing police investigation and waiting for their court trial. Notwithstanding being innocent until proven guilty, under-trial prisoners regularly face numerous challenges regarding their living conditions, rights and well-being. This comprehensive research aims to explore the rights of undertrial prisoners, their living conditions, laws and provisions, recommendations for improvement, and important case are lasted to this issue.

Current statistical data of under-trails

- According to the prisoner statistic report of India (2021) three out of five under-trial prisoners surviving behind the bars in India belongs to Dalit, OBC and Adivasi community.
- According to national Crime Records Bureau [NCRB] out of total 5,54,034

prisoners 4,27,165 are under trail which is 76% of the total and there is approx.. 14.9 % increment in under-trail compare to 2020.

- The Percentage of under-trail in District Jails is 51.4%, Central Jails (36.2%) and (10.4%) in Sub-Jails. And the reason of prolonged detention in prisons are delay in judgment , unnecessary adjournment , backlogs in cases , biasness towards rich.

Root Cause of Slow Trails in India

If there is a proper law prescribed for the procedure of the trial and bail under Crpc section 436A then why the undertrials faces such problems?

One of the primary reason for long pre-trial detention is working process in Bail system. Though the term “Bail” has not been defined in Cr.p.c. it has classified offences as bailable and non-bailable offence. Though availing of bail is a matter of right in case of Bailable offence, most people are unable to avail it due to the onerous financial conditions; poverty appears to be the main reason for incarceration. A majority of undertrials [70.6%] are illiterate or semi– literate. Majority of undertrial belongs to socio-economically marginal groups .It is said that Decisions about custody or release should not be influenced to the detriment of person accused of an offence by factors such as gender, race, financial conditions or social status.

The underprivileged people generally find it difficult to secure bail even without sureties because the amount fixed by the court is so excessive in amount. That is why in many cases the poor are unable to satisfy the police or the court about their solvency for the amount of the bail and where the bail is with sureties as is in most cases, it becomes an impossible task for the poor and underprivileged people to find persons sufficiently solvent to stand as sureties.

Because of all this minor loopholes they have to remain in jail until the time their case come up for trial before the court leading to grave consequences such as:

- In spite of the fact that assumed innocent, they are exposed to mental and actual hardships of jail life,
- Pre-trial detention disrupts their family’s life and in most cases is economically tragic for the family.
- It prevents them and their mental condition from contributing to the preparation of their defense.

Rights of Under-trial Prisoners

There are so many rights prescribed for the prisoners and under-trials but not a single one implemented successfully or properly in an effective manner.

Innocent until proven guilty - a legal maxim which says no one is guilty for any act or offence until or unless they prove guilty by the court of law. But in a

county like India, the idea of this maxim failed to make place due to the outside media trail and society pressure.

Right to legal representation - They have the right to legal representatives and should be delivered with suitable resources for a fair trial and unbiased hearing.

Protection from cruelty and inhuman treatment - Under-trial prisoners should be protected from any form of physical or mental abuse and torture which is common in police custody.

Right to a speedy trial - They have the right to a speedy trial within a reasonable time structure and without unnecessary delay provided under the CRPC SECTION 309(1)

Right to life – prisoners whether sentenced or under-trial, does not cease to be human beings and during his spending in jail, he enjoys all his fundamental rights provided and guaranteed by constitution of India including right to life and personal liberty. [(2000) 5 SCC 712]

Challenges faced by undertrial prisoners

Prolonged Detention- One of the key challenge for undertrial prisoners is prolonged detention. Due to delays in the judicial procedure, inadequate legal aid, and the backlog of cases, undertrial prisoners often spend extended periods in detention, sometimes even exceeding the maximum sentence period they would have received if found guilty. This can lead to major psychological, emotional, and social consequences.

Overcrowding- Indian prisons often suffer from overpopulation in jail, including areas labeled for undertrial prisoners. Overcrowding contributes to poor living conditions, lack of privacy, compromised sanitation, and increased risk of illnesses and diseases. It hampers the well-being and rehabilitation projections of undertrial prisoners.

Access to Legal Representation- Many undertrial prisoners, particularly from the economically weak backgrounds, face challenges in accessing legal representation. Inadequate legal aid services and limited financial resources make it difficult for

undertrials to appoint legal counsel. This imbalance of power hampers their ability to present a strong defense and may lead to unjust outcomes.

Discrimination in Bail System- The bail system in India frequently poses challenges for undertrial prisoners. Some prisoners or individuals face problems in secure bail due to financial limitations, lack of social support, or restrictive bail conditions. This results in prolonged pretrial detention, disproportionately affecting those who are socio-economically underprivileged.

Limited Rehabilitation Programs- Undertrial prisoners face a lack of rehabilitation programs aimed at their restoration into society. Inadequate efforts are made to provide education, occupational training, and counseling services that can support their rehabilitation and reduce the likelihood of reoffending.

Vulnerable Population- Certain groups, such as women, juveniles, and individuals from marginalized communities, face specific challenges within the undertrial prisoner population. They may face gender based violence, racist discrimination, lack of specialized facilities.

IMPORTANT CASE LAWS

Hussainara Khatoon v. Home Secretary, State of Bihar -In this landmark case, the Supreme Court of India held that the right to a speedy trial is a fundamental right comes under right to life and personal liberty (under Article 21 of the Indian Constitution). The court highlighted the need to provide legal aid and expedite trials to prevent undertrial prisoners from languishing in prisons for prolonged periods.

Supreme Court Legal Aid Committee v. Union of India -The Supreme Court directed the establishment of legal aid committees at the national, state and district levels to ensure effective legal representation for undertrial prisoners who cannot afford their own legal representatives and court related charges. This case emphasized the importance of providing free legal aid to indigent and needy prisoners.

Sunil Batra v. Delhi Administration -The Supreme Court held that undertrial prisoners have a right to reasonable services for communication with their family, friends, and lawyers. The court recognized the need of protection of rights and dignity of prisoners

during their detention.

Ramlila Maidan Incident -In this case the Supreme Court held that undertrial prisoners have the right to participate in political rallies, subject to reasonable

limitations imposed by law. The court emphasized that undertrial prisoners should not be deprived of their right to freedom of expression and assembly.

D.K. Basu v. State of West Bengal -This case emphasized the issue of custodial violence and the significance of protecting the rights of prisoners and undertrail. The court issued guiding principle to prevent torture, inhuman treatment, and custodial deaths emphasizing the need for proper safeguards during arrest, detention and interrogation.

SUGGESTIONS

Prison Infrastructure and Overcrowding-

Construct new prison facilities and expand existing ones to address the issue of overcrowding, Improve living conditions by providing sufficient space, ventilation, sanitation facilities, and access to clean water. Implement effective population management strategies to ensure a balance between the capacity of prisons and the number of inmates.

Healthcare Services-

Increase in the number of medical staff and provide suitable training to ensure quality healthcare services for prisoners. Enhance access to essential medicines, medical equipment, and mental health support within jails. , Establish partnerships with external healthcare providers and organizations to supplement in house medical services.

Rehabilitation programs-

Develop and implement comprehensive reintegration programs that address the specific needs of different categories of prisoners, including education, counseling, and addiction treatment. Promote partnerships with industries and businesses to create employment opportunities for released prisoners. Facilitate access to social support networks, housing assistance, and healthcare services during the rehabilitation process.

Legal Aid services-

To make legal aid services strong by increasing the number of legal representatives, legal aid clinics, and support staff. Improve awareness among prisoners about their legal rights and the availability of legal aid services through education and outreach programs. Ensure punctual and effective legal representation for underprivileged prisoners to ensure a fair trial.

Alternative Measures to Incarceration-

Explore and promote alternatives to incarceration for non-violent offenders, such as community service, probation, diversion programs, and restorative justice practices. Implement risk based assessments and individualized sentencing to determine the most appropriate form of punishment or rehabilitation for each offender.

CONCLUSION

In conclusion, the research article on undertrial prisoners in India sheds light on the rights, conditions, challenges, and legal framework surrounding this vulnerable population. It emphasizes the importance of understanding their problems and conditions and the importance of upholding their rights within the criminal justice system.

The article explores the current state of undertrial prisoners in India, highlighting the alarming statistics and the challenges they face, such as overcrowding, substandard living conditions, limited access to legal representation, and delays in the trial process. It underscores the need for reforms and growth in areas such as healthcare, reformative programs, and easy accessibility to legal aid.

Furthermore, the article emphasizes the role of forensic science in the pursuit of justice for undertrial prisoners. It highlights how forensic science can aid in establishing guilt or innocence, providing expert testimony, and contributing to the rehabilitation and reintegration of prisoners.

The article also discusses the significance of international standards and obligations, as well as the importance of advocacy and awareness for protecting the human rights of undertrial prisoners. Finally, the article concludes by highlighting the need for efforts and initiatives to improve the conditions and treatment of prisoners in Indian jails. It emphasizes the importance of bail reforms, strengthening legal aid services, and implementing prison reforms and infrastructure development. The establishment of a n Innocence Project like organization is suggested as a means to rectify wrongful convictions and ensure justice for the innocent.

Overall, the article serves as a comprehensive resource that raises awareness about the

rights and conditions of undertrial prisoners in India. It emphasizes the need for systemic reforms, improved access to justice, and a greater focus on rehabilitation and reintegration. By addressing these challenges and

upholding the rights of undertrial prisoners, India can strive towards a more just, humane, and equitable criminal justice system.

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