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With this thought, we hereby present to you

BAIL OF UNDER TRIAL PRISONERS ABOVE 7 YEARS

AUTHORED BY - RADHIKA SINGHAL
& PARTH AGARWAL



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Bail of Under-trial prisoners above 7 years

-Radhika Singhal¹ & Parth Agarwal²

Abstract

This paper scrutinizes the process for bail of under-trial prisoners in India who have been charged under cognizable and non-bailable offences which are penalised and sentenced for more than 7 years. This paper also throws light upon the strict interpretation of bail conditions under The Narcotic Drugs and Psychotropic Substances Act, 1985 read with provisions of The Code of Criminal Procedure, 1973 for under-trial prisoners and how the apex court analyses the need to enlarging on bail or fasten trials for such prisoners in lieu of their mental health and societal reputation. Additionally, how it directly harms the mental and physical health of an under-trial prisoner and how much is it important for them. The recent judgments and precedents support the granting of bail on the basis of undue delay for a prolonged period of time. The apex court said that a plain and liberal interpretation of Section 37 of The Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 437 of Crpc would effectively exclude the grant of bail altogether. A NALSA report found out that around 5,000 prisoners are undertrial in the prisoner who was granted bail but very poor to comply with the bail conditions. The paper also follows the unjust imprisonment which puts the inmates at the risk of prisonization and "radical transformation" by which a prisoner eventually loses his identity in search of justice and bail. The authors have opted for doctrinal research and show reliable primary and secondary sources to impart the ordeals faced by these prisoners even after being enlarged on bail.

Subject Area:

Criminal Law, Narcotics Drugs and Psychotropic Substances

Keywords: Undue delay, bail, prisonisation, radical transformation, cognizable offences, non-bailable offences

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Introduction

one of the most commonly debated subjects in judicial reform is the chronic slowness in Indian courts. on this front, there have been significant efforts to improve the performance of judicial institutions. However, due to a lack of data-driven research, judicial policy-making is still based on outmoded or erroneous approaches and estimates. This significantly impedes the judiciary's ability to improve its performance and react to the changing needs of the litigating public. The most commonly discussed topics in judicial reform are the delays in justice delivery, the resulting pendency, and the growing backlog in courts. Though the problem of delay and its increasingly terrifying dimensions is well acknowledged, there has been little data-driven research that has measured or diagnosed the reasons for this delay. Several reports have been commissioned on the issue of large arrears and excessive delays in High Courts. The Law Commission of India alone has dealt with arrears in at least fourteen reports since 1958, and while it has made significant contributions to the literature on delay, it too has been limited by the data High Courts have provided it.³ The difficulty lies in ascertaining the 'normal time' a case type should take, beyond which a 'pending' case becomes 'delayed.' This immensely affects the mental state of inmates while suffering imprisonment without being held convicted. Some offences are so trivial in nature that they had to spend eight to ten years just for the order of acquittal by a court of law. Some prisoners are also detained on the basis of doubt and without any evidence but they still serve detention in the jail. In *Shaheen Welfare Association v. Union of India*⁴ Again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on:

"a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of

³ The earliest Law Commission report to mention arrears was issued in 1958. Since then, it has issued three reports specifically on arrears in the judiciary, two of which focus on addressing arrears as part of larger judicial reforms, and at least eight others which in part aim to reduce arrears, through alternative dispute resolution, oral argument rules, commercial division of courts, and so on. [<http://lawcommissionofindia.nic.in>] accessed on 21 May 2023

⁴ *Shaheen Welfare Association v. Union of India*, (1996) 2 SCC 616

such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods."

Every citizen of our country has the right to a speedy trial and the right to live with freedom and dignity under Article 21 of the Constitution of India. But such prisoners are nearly deprived of their rights in the interest of societal protection. But they are entitled to fasten trials and speedy and expeditious disposal of cases to live life with dignity and respect. Undue delay in the orders of the court regarding their acquittal and conviction plays a huge impact on their mental health conditions. Some of them reach such an age wherein they could not have the confidence to face society and live afterwards. The inmates are expected to get enlarged on bail on the basis of undue delay which has been accepted and forwarded by several judicial decisions by the Supreme Court of India. In this research paper, the authors will exclusively cover the scope of the strict interpretation of bail conditions under *The Narcotic Drugs and Psychotropic Substances Act, 1985* read with provisions of *The Code of Criminal Procedure, 1973*.

Undue Delay and slow trials of court

The Indian constitution's preamble prioritises justice—social, economic, and political—above all other fundamental foundations. Delay of justice is not only the deferral of an action over time but rather an action in a process with irrevocable long-term implications. With the passage of time, this process gradually and discreetly undermines justice. Trials associated with special laws with rigorous bail provisions must be concluded quickly, the Supreme Court said in a recent decision and directed courts to be mindful of the fact that incarceration has negative effects on undertrials and that if the trial is not concluded on time, the injustice inflicted on the individual is immeasurable. The difficulty lies in ascertaining the 'normal time' a case type should take, beyond which a 'pending' case becomes 'delayed.' Developing such standards requires large-scale quantitative research across courts, combined with surveys of legal practitioners and litigants, and studies of procedures across case types, of a kind that has not been undertaken before. Some government reports have attempted to set such standards, although these are far from being treated as conclusive. According to the facts as of 15 September 2021, there were around 4.5 crore pending cases across all courts in India, primarily in district and subordinate courts. In 2019, there were 3.3 crore pending cases, indicating that India has gained 23 cases every minute over the last two years. As of August 2, 2022, the

Supreme Court of India has 71411 pending cases, of which 56365 were civil cases and 15,076 were criminal cases. This is causing major complications. In its 14th (1958) and 79th (1979) Reports, for instance, the Law Commission laid down time frames within which different case types should be disposed of. In 2003, the Malimath Committee suggested that cases pending for more than two years should be considered delayed. More recently, the Jagannadha Rao Committee devised model case management rules endorsed by the Supreme Court, also containing timelines for different case types, the upper limit of which is two years. Drawing from these reports, the present report treated two years as the benchmark over which a case is presumed to be delayed⁵.

Effect on prisoners

Criminal delay harms both the victim's rights (creating future disincentives to file or prosecute cases) and the accused's rights (who may be in prison or have restricted his freedom and freedom of movement, or at the very least live in fear of a prospective conviction). In a criminal trial, there are two types of delays that must be addressed. The first, as stated above, is concerned with the time required to complete a trial and issue a verdict. The second factor, also related to pendency, is the effect of delay on under-testing. Criminal law is still based on the presumption of innocence, which means that a person is presumed innocent until proven guilty. It is important to emphasise that delays in administering justice affect not only the rights of the accused but also the rights of the victims. Long trials may cause evidence, particularly eyewitness testimony, to be overlooked or lost, reducing the likelihood of conviction. Because victims have a very limited role in the prosecution of a criminal case and hence no control over its progress, delays in the completion of the trial hinder victims from actively filing or pursuing the case. In Hussainaira Khatoon's case, it was held that a law which detains a large number of prisoners behind bars for a prolonged period of time contradicts the provision of "just, reasonable and fair" restrictions as embodied in Article 21. It called for a need to change the approach of pre-trial detention and ensure just, reasonable and fair procedure. The Supreme Court has observed that the danger of unjust imprisonment is that inmates are at risk of suffering

⁵ Krishnaswamy, Sudhir, Sindhu K Sivakumar, and Shishir Bail. "Legal and judicial reform in India: a call for systemic and empirical approaches." *Journal Of National Law University Delhi* 2.1 (2014): 1-25 [https://vidhilegalpolicy.in/wp-content/uploads/2017/03/InefficiencyandJudicialDelay_Vidhi.pdf]. Accessed On 21 May 2023

from "prisonisation". It pointed out that incarceration has other deleterious effects as well, especially for an accused from weaker economic strata.

Prisonisation

Unlike the free community, the prison community's social system is primarily focused on organising a barrier against official authority while sustaining inmate unity. Individual prisoners are helped by inmate culture to bear the rigour of prison rules and to compromise with current conditions. Solidarity is frequently found to be quite important in a prisoner culture. Furthermore, the staff-inmate interaction has a significant impact on inmate behaviour. When inmates initially arrive at the jail, they are seen as outsiders by the other inmates. As new convicts become incorporated into the inmate culture, their segregation from free society and restriction of key rights gradually leads to a sense of transformation. This is known as incarceration. The impact of incarceration is determined by convicts' personality as well as the extent and type of relationships they maintain with those outside the jail. In the case of female criminals, incarceration causes significantly more unpleasant reactions. Women detainees face severe psychological deprivations in addition to social deprivation. Doubt and distrust characterise attitudes towards co-inmates. It has been proposed that the agony of incarceration could be alleviated by increasing social engagement among the women convicts themselves. The Supreme Court of India has observed that the danger of unjust imprisonment is that inmates are at risk of suffering from "prisonisation". the prisoner loses his identity, he is known by a number, loses personal possessions, has no personal relationships and also psychological problems result from loss of freedom, status, possessions, dignity, and autonomy of personal life. This negative effect of imprisonment could be mitigated if information and communication technology were used inside prisons in the various areas where it can have an impact, as

- (1) access to information and culture,
- (2) basic and advanced training,
- (3) employment,
- (4) communication with the outside world,
- (5) treatment, or
- (6) leisure and entertainment.

The value that new technologies would provide to these regions in prison represents a means for prisons to be humanised in the twenty-first century.

-radical transformation

In India, the drastic alteration of an undertrial accused can have a variety of aspects and repercussions. While there is a general understanding of the possibilities, it's vital to remember that each case and every scenario is unique. Let's look at some of the possible outcomes of a dramatic transformation:

Legal and Judicial Process: The undertrial accused's legal path may undergo a shift. Obtaining competent legal representation, guaranteeing a fair trial, providing a solid defence, and contesting any procedural or substantive anomalies might all fall under this category. A successful reform in this area might result in a fair and reasonable outcome for the accused.

Personal Development and Rehabilitation: A dramatic transformation may entail considerable changes in the accused's attitude, behaviour, and personal circumstances. They may actively engage in self-reflection, seek therapy or counselling, and take part in educational or vocational programmes geared towards personal development and recovery. Such modifications can have a beneficial influence on their life trajectory and help to reduce the chance of recidivism.

Social Support and Reintegration: Transformation can be aided by the assistance of family, friends, and the community. These support systems may be quite beneficial in assisting the accused in rebuilding their lives following their court ordeal. Furthermore, several organisations and programmes focus on giving resources, training, and opportunity for persons to reintegrate into society, therefore assisting in their transformation.⁶

Empathy and Restorative Justice: Fostering empathy and understanding between the accused and the impacted parties can be part of a transformational process. Restorative justice practises seek to foster discussion and reconciliation, allowing all parties to heal and reestablish trust. This

⁶ Swati Mishra, "Right to speedy trial : an inalienable right under Article 21 Of the Indian COnstitutiOn" [<https://blog.ipleaders.in/right-speedy-trial-inalienable-right-article-21-indian-cOnstitutiOn/>] accessed On 29th May, 2023

transformational strategy might include encouraging the accused to accept responsibility for their acts, make apologies, and actively contribute to the benefit of society.

Speedy trial and Article 21

Judicial system not only limits its ambit to the conviction and acquittal of an accused during the proceedings but it also guarantees a fair and speedy trial. Article 21 and Speedy trial are basically affiliated to each other. This article assures protection of life and personal liberty to a person. Furthermore, Speedy trial has been considered as an essential of personal liberty in various cases and how Article 21 and Speedy trial are related to each other has been explained. As per Article 21 of the Indian constitution which is one of the fundamental rights, "No one should be deprived of his life or personal liberty unless in accordance with the legal procedure." This article protects an individual's life and personal liberty and is generally defined to embrace a variety of characteristics, including the right to a fair and timely trial.

Speedy trial is also a part of fundamental rights enshrined in Article 21 of the Constitution. It signifies the importance of rights of an individual accused of a crime and provides for a trial without any undue delay. The goal of this privilege is to protect the accused from extended pretrial imprisonment and to achieve prompt justice.⁷ It is important to note that the concept of a speedy trial is subject to reasonable limitations, such as the complexity of the case, the need for thorough investigation, the availability of witnesses, and the court's workload. The Supreme Court of India has set rules and principles to reconcile the right to a rapid trial with other factors.

Bail conditions for cognizable and non-bailable offences

Cognizable offenses are significant crimes for which the police have the ability to arrest and investigate without a warrant. Bailable or non-bailable offenses may exist in various countries. If a cognizable offense is bailable, the accused may be released on bail under specific conditions.

⁷ Chhavi Agarwal, "Right to speedy trial-problems and solutions" <https://www.legalserviceindia.com/article/l297-Right-TO-Speedy-Trial.html> accessed On 29th May 2023

The provision for providing bail for non-bailable offences is outlined in Section 437 of the Criminal Procedure Code. The following are the bail provisions for a non-bailable offence:

Bail for non-bailable offences is entirely at the discretion of the court or the relevant police officer.

When a person suspected of a non-bailable offence is arrested or held without a warrant, the police officer in charge of the relevant police station may issue bail. This power, however, is not without limitations.

When a person accused of committing a non-bailable offence appears or is brought before a judicial judge, the judicial magistrate has discretion in granting him bail.

Though this discretionary power is limited, the police officer or court magistrate may give bail to the accused if she is a woman, a person under the age of 16, or a person who is sick or infirm. In the case of **Mara Manohar v. State of Andhra Pradesh (2022)**, it was held that once there has been considerable progress in the investigation of a case, a bail with conditions may be granted

Conclusion

Bail process is a undue long process which lacks judicial reforms and needs a data driven approach of speedy trial and ensure that an accused who's imprisoned based on allegations does not loses his identity in search of justice and due to this tiring procedure. Strict bail provisions and trial process under NDPS Act.1985 also needs to have a fasttrack solution in lieu of the mental health of accused. There a negative impact on an accused when he's being imprisoned without being convicted and sometimes this process of acquittal from court is tiring that he ends up spending more than 8-10 years behind bars. SC has also considered this issue in few recent judgements determining the personal rights of a person and the impact on him and his family.

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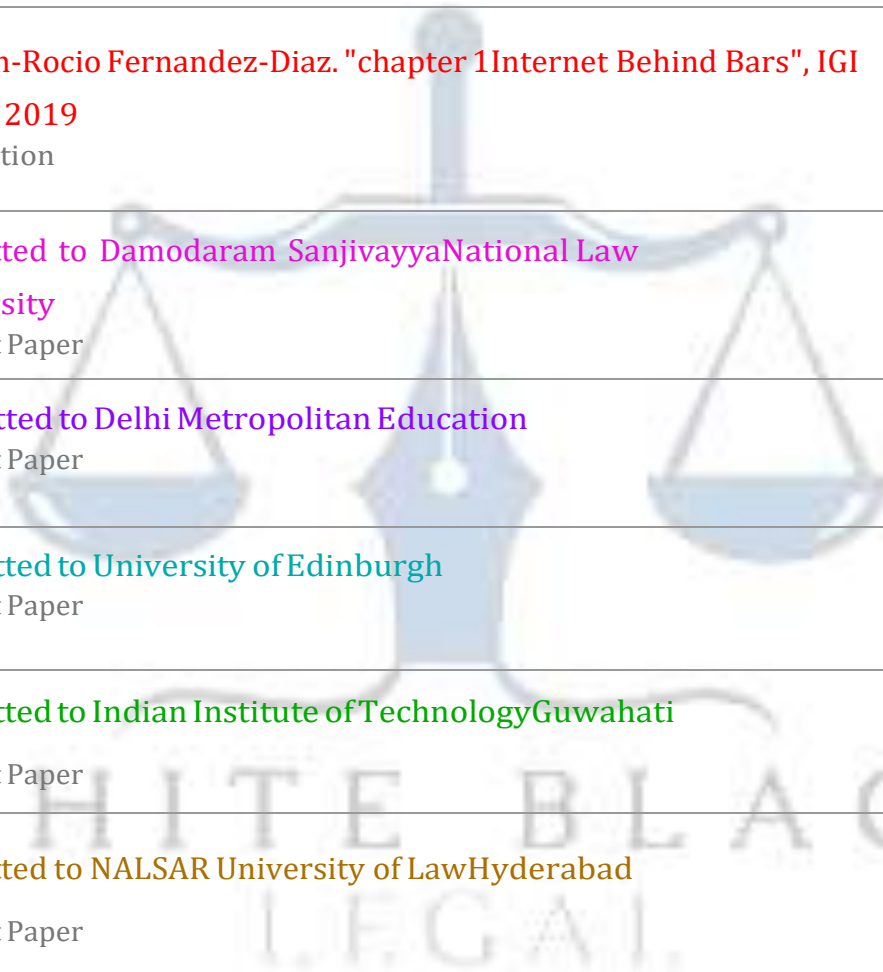
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