

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is resting on the desk. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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DELAYED JUSTICE AND DENIED HUMAN RIGHTS: A LEGAL ANALYSIS OF UNDER-TRIAL PRISONERS IN INDIA

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CHAPTER I

INTRODUCTION

Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, colour, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty. Human rights are defined in several key documents, namely, the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social, and Cultural Rights. The Vienna Declaration, adopted at the World Conference on Human Rights in 1993, further expanded the meaning of human rights¹.

Unconvicted prisoners are known as under-trial prisoners. In layman's terms, it can be said that the person who is detained while there is an investigation, inquiry, or trial into the crime for which he was apprehended. To define the word, the two components can be drawn (i) Accused in Jail, (ii) the period between arrest and outcome of the case is essential to explain under-trial prisoners. Undertrial prisoners are typically those whose bail is denied by the court, or after granting the bail, that person failed to submit the bail bond and sureties. "According to 78th Report of the Law Commission of India, 1979 defines "under trial as a person who is in judicial custody or remand during investigation".

Prisoners are also human beings and have certain rights. They are a necessary component of the nation's criminal justice system, but they are currently facing unsatisfactory poor condition. Over the years, the prisons and the prisoners have not received enough attention and their condition is quite alarming in various jails. The most vulnerable population in these jails are the under-trial prisoners who are on trial in the court of law but face a drastic life in jail. Bad,

¹ Amrita Chakraborty, "Plight of Under Trial Prisoners: A study under human rights perspective", Vol. 7 Issue 7 Journal of Contemporary Issue of Law 38 (2021).

poor condition of sanitation facilities and their health, overcrowding of jails, discrimination among prisoners based on their financial status, crime, religion and many more, lack of hygienic food, etc are the most prominent problems of prisoners in India. The last few decades have brought increased attention to the need for prisons and prisoners reforms all over country. The disastrous circumstances in the jails, which violate the rights provide under Constitution of India, have been discussed by the Courts. Numerous commissions and expert organisations established by the Indian government have looked into the issue of prison administration. The presence of a high number of convicts awaiting trial and their extended stays show a slow rate of trials, which will cause our jails to become overcrowded. National Human Rights Commissions believe that police excessive and unlawful arrest. The primary causes of overcrowding in under trial detainees are judicial proceedings. The aim of the paper to study the Rights of under trial prisoners and their proper implementation with respect to data of NCRB report and various case laws.

Objectives of the Study

- To examine the scope and evolution of Article 21
- To analyse procedural due process in the Indian legal system
- To study the rights of undertrial prisoners under constitutional law
- To evaluate judicial interpretations relating to personal liberty

To assess the gap between legal provisions and actual practice

Hypothesis

In India, the number of undertrial prisoners is increasing day by day. The delay in the administration of justice is causing serious violations of the human rights of such undertrial prisoners. It is high time to consider the issue seriously.

Research Methodology

This research is going to be done by a doctrinal study. The primary data from the Constitution, Bare Acts, and judicial decisions

The secondary sources of data collection from books on the subject, articles from various national and international journals, judicial pronouncements, law journals, All India report cases, Supreme Court cases and reports of committees etc.

Scope and Limitations of the Study

The current paper is mainly restricted to the discussion of Article 21 of the Indian Constitution as it applies to the undertrial inmates in the Indian criminal justice system. It is devoted to the consideration of the way the right to life and personal liberty, the principles of procedural due process and human dignity are understood and applied to the detained people who are awaiting trial. The paper will examine the constitutional protections that can be enjoyed by the undertrial prisoners and assess how effectively they are applied. The research is restricted to the Indian legal system, the constitutional provisions, the statutory laws, and the judicial interpretations made by the Supreme Court and the High Courts. Although it may be possible to refer to international standards or comparative legal principles, such as the doctrine of due process in the United States, the main focus is on the Indian jurisprudence and its development

CHAPTER II

UNDER TRIAL PRISONERS AND THE HUMAN RIGHTS

UNDERTRIAL PRISONERS

Undertrial Prisoners are unconvicted prisoners. In layman's language when the accused is in jail during the period of investigation, inquiry or trial of the offence in which he was arrested can be known as under trial Prisoners. The two elements (i) Accused in Jail (ii) period from arrest to the period just before the outcome of the criminal case are essential to explain the term. Generally, under trial prisoners are those accused who are charged with non-bailable offence and their bail has been denied or the accused who are charged with bailable offence and their bail has been granted as a matter of their right provided by the law but fail to furnish the bail bond and sureties. It also includes the accused who has been granted bail in the non-bailable offence but they failed to fulfil the mandatory conditions stated in order by the courts of law².

The person against whom a criminal complaint or case is registered generally treated as an accused, but the guilt or innocence can only be decided by the competent court through the process of law. There is a famous dictum 'accused is presumed innocent until proven guilty'. A person does not lose all his basic human rights merely on the ground that he is a under trial prisoner or he is an accused of a crime. Under trial prisoners are persons who have not been convicted of the charges for which they have been detained, and are presumed innocent in

² Muskan Gupta, The state of Prisons and undertrial incarceration in India, available at: <https://blog.ipleaders.in/state-prisons-undertrial-incarceration-india>

law³. The majority of under-trial prisoners are from the poorer and less privileged elements of society, with no to very little education, since they are unaware of their rights and lack the resources to represent themselves in court.

An Undertrial Prisoner may be Warranted in Prison on the following grounds

- a) in case of a very grave offence;
- b) if the person arrested is likely to interfere with witnesses or impede the course of justice;
- c) if the person arrested is likely to commit the same or any other offence;
- d) if he may fail to appear for trial.

The criminal justice system in our country is based on two principles i.e. any person arrested is presumed to be innocent unless proven guilty and secondly the duty of the state and the court to see that justice is done to the people and the victim. To achieve these principles the process of investigation and trial should be completed without any delay. But they are not being achieved and undertrials keep on languishing in jail for years⁴.

PLIGHT AND PROBLEMS FACED BY UNDER TRIAL PRISONERS

The criminal justice delivery system in India saw more than 0.2 million undertrial prisoners being neglected in jail for many years, in many cases it exceeded the maximum sentence for the crime which they had committed. Lack of coordination between the Centre, Judiciary & State Governments & also because they did not have anyone to stand as guarantors nor assets to furnish as bail bonds, the poor continued to suffer in prisons. There have been cases where the amount of bail is disproportionately high⁵.

Challenges faced by undertrial prisoners:

- Detention in bailable cases owing to poverty: Many people are not granted bail in bailable offences primarily because they are unable to furnish surety. This is a serious concern considering bail is a matter of right in such cases and those people end up spending a long period of time in the prisons just because they are poor.
- Delay in investigation and trial in certain cases: Many prisoners languish in prisons primarily because the police do not finish investigation and does not file the

³Dr. N. Bhagya Lakshmi, Detention of Under Trial Prisoners: A Bird's Eye View of the Judiciary, available at: <http://www.penacclaims.com/wp-content/uploads/2019/07/Dr-N.-Bhagya-Lakshmi.pdf>

⁴ Akib Khan, The Human Right of Under trial Prisoners, available at: <https://www.legalserviceindia.com/legal/article-4537-the-human-right-of-under-trial-prisoners.html>

⁵ Ritwik Sneha & Rishab Garg, The Problems of Undertrials, available at: <http://www.legalservicesindia.com/article/1280/The-Problems-of-Undertrials.html> (

chargesheet on time. This is a very serious matter because due to delay in trials and police investigation such people remain in prisons for longer than necessary.

- Prolonged detention: A large number of undertrial prisoners are detained in prisons for long periods, which in some cases exceed the maximum sentence prescribed for the offence for which they are charged.
- Criminalizing effect of a Prison: With hardened criminals and in the absence of any scientific classification methods of separating them from others, there is a chance of first time and circumstantial offenders to turn into criminals⁶. The Model Prison Manual states that no convicted prisoner shall be kept in the same area in which undertrial prisoners are kept, or be allowed to have contact with undertrial prisoners⁷.
- Effect on families of Undertrial prisoners: Those imprisoned are unable to look after their families. In the absence of the main bread winner, the family is many a time forced into destitution with children going astray. This combined with the social stigmatization that they face, leads to circumstances propelling children towards delinquency and exploitation by others. It is an inexorable circle. The problems become acute when they belong to the socioeconomically marginalized and exploited sections of the society. The dominant class does not fail and loose time in taking advantage of this situation to exploit the remaining family members to the fullest possible extent. This can take the form of rape or forced prostitution of the prisoner's wife and or his daughters⁸.
- Overcrowding: Due to overcrowding in the prison and shortage of adequate space to lodge prisoners, most of the prisons face problems to keep them in safe and healthy conditions. Most of the prisoners including the undertrials come from socio-economic and disadvantaged sections of the society where disease, malnutrition and absence of medical services are common. When such people are cramped in with each other in unhealthy conditions, infectious and communicable diseases spread easily among them.⁹

⁶ P.N. Bhagwati, "Human Rights in the Criminal Justice System", Vol. 27 No. 1 Journal of the Indian Law Institute 1-22 (1985)

⁷ Model Prison Manual for the Superintendence and Management of Prisons in India, available at: <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>

⁸ Ritwik Sneha & Rishab Garg, The Problems of Undertrials, available at: <http://www.legalservicesindia.com/article/1280/The-Problems-of-Undertrials.html> (

⁹ Dr. T. Giri & T.S.R Praneetha, "Problems of Undertrials in India", Vol. 2 Issue 1 International Journal for Legal Development and Allied Issues 244 (201

- **Prison Violence and Mishandling by the Police:** Prisons are often a dangerous place for those they hold, specially the first-time offenders who are vulnerable to group violence and mishandling by the police. An example of worst form of Prison violence was witnessed in *Khatri vs. State of Bihar*¹⁰, where the police blinded 80 undertrial prisoners by puncturing their eyes by needles and pouring acid in them.
- **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.

HUMAN RIGHTS OF UNDERTRIAL PRISONERS

The main human rights issue of undertrials is delay in trial of cases. Right to speedy trial is a right to life and personal liberty of a prisoner guaranteed under Article 21 of the Constitution, which ensures just, fair and reasonable procedure. However, eighty present prisoners are undertrials, and some of them are not released even after granting bail as they are unable to furnish surety bonds due to lack of money or verification of addresses, as some prisoners don't have houses. "The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent. Everyone is presumed to be innocent until guilt is proved. So, the quality or innocence of the accused has to be determined as quickly as possible. It is, therefore, incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed. It is pertinent to mention that delay in trial by itself constitutes denial of justice which is said to be justice delayed is justice denied. It is absolutely necessary that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is absolutely

¹⁰ AIR 1981 SC 928.

necessary. The right to speedy trial has become a universally recognized human right.”¹¹

In recent years, the Supreme Court of India has been particularly attentive regarding violations of inmates' human rights. Article 21 of the Indian Constitution states that “no one shall be deprived of his life or personal liberty unless in accordance with the procedure established by law”. The right to life and personal liberty is the core of human rights in our country. The Indian judiciary has functioned as an institution for delivering efficient remedy for violations of human rights by its positive stance and activism. The courts have created and established a multitude of rights by giving “life and personal liberty” a liberal and comprehensive interpretation. The court defined the Fundamental Rights enshrined in Article 21 in a very specific and explicit way.

In A.K.Gopalan's case, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in Maneka Gandhi case and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that “the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation” and also opined that the procedures prescribed by law must be fair, just and reasonable¹².

The Supreme Court has ruled in the following cases: Maneka Gandhi, Sunil Batra (I), M.H.Hoskot, and Hussainara Khatoon, that the provisions of Part III should be given the broadest possible interpretation. It has been held that the right to legal aid, a speedy trial, the right to an interview with a friend, relative, or a lawyer, the right of prisoners in jail to be protected from degrading, inhuman, and barbarous treatment, the right to travel abroad, the right to live with human dignity, the right to a livelihood, and other rights that have not been specifically mentioned are Fundamental Rights under Article 21 of the Constitution. Thus, the Supreme Court of India has significantly broadened the scope of Article 21 and determined that its protection will be accessible for defending inmates' fundamental rights and enacting jail reforms. The Supreme Court of India has created Human Rights jurisprudence to preserve and protect the right to human dignity of prisoners. The Apex judiciary's concern can be seen in the many cardinal judicial rulings. The Supreme Court's decision in Sunil Batra was a

¹¹ DR. Anil Kumar Singh, “Undertrial Prisoners in India: Issues and Concerns”, Vol. 5 Issue 5 International Journal of Scientific Research 336 (2016).

¹² Nidhi Beniwal, Role of Judiciary in Protecting the Rights of Prisoners, available at: <http://www.legalserviceindia.com/article/1616/Role-of-Judiciary-in-Protecting-the-Rights-of-Prisoners.html>

watershed moment in the evolution of Indian jail jurisprudence.

CHAPTER III

INTERNATIONAL PERSPECTIVE IN PROTECTION OF THE RIGHTS OF UNDER TRIAL PRISONERS

There are various international instruments that encompass provisions for the rights and treatment of prisoners. These include the Universal Declaration of Human Rights, 1948; the International Covenant on Civil and Political Rights, 1966; the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the United Nations Basic Principles for the Treatment of Prisoners. These conventions articulate and emphasise the rights of prisoners guaranteed to them on account of their inherent dignity and value as human beings. Particularly, Article 5 of the Universal Declaration of Human Rights, 1948 (UDHR) states, ‘no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’. This provision protects every individual, including a prisoner from any form of brutal and harsh treatment. Further, Article 11 of UDHR, 1948 states, “Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence”. This provision is significant in the context of under-trial prisoners who ought to be presumed innocent until they are convicted by a court of law.

Article 9 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) states, ‘Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law’. This provision assumes importance in order to prevent illegal detention and further safeguard the life and liberty of an individual. Article 9(3) of ICCPR states that, ‘Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release’.

Article 10(1) of the International Covenant on Civil and Political Rights states, “All persons deprived of their liberty shall be treated with humanity and with respect for the intrinsic dignity of a human person”¹³ is the legally binding principle at the international level. “It means that the State party has a positive obligation towards those persons who are particularly vulnerable

¹³ International Covenant on Civil and Political Rights, 1966.

as a result of their status as persons deprived of their liberty. It is the responsibility of the State to treat those persons deprived of liberty who are especially vulnerable". The Committee believes that treating everyone who is deprived of their life with humanity and dignity is a basic, universally applicable principle, at the very least, is independent of a State party's access to resources. The UN guidelines pertaining to the care of prisoners must be followed by all States parties¹⁴. "The UN Committee mentioned the following factors in its general remarks as being pertinent when determining whether the detention conditions in any given nation are humane, as same as the Covenant. First, it discusses whether the Standard Minimum Rules for the Treatment of Prisoners and other UN standards are being followed. Second, information on the diet of inmates, both in terms of quantity and quality, conditions of prison, such as the typical number of prisoners per cell, and health treatment"¹⁵. "The Constitutional Court in the Government of the RSA and Others v Grootboom and Others¹⁶, that those "without access to food, clothing, or housing are denied these rights and that human dignity, freedom, and equality are the fundamental principles of our society. People can benefit from the other rights outlined in the Bill of Rights by being granted these socioeconomic rights.¹⁷ The UN Standard Minimum Guidelines for the Treatment of Prisoners are more relevant to this conversation that give detailing about what it is "generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions." It specifies in great depth, among other things, the kind of housing, food, instruction, and medical care that should be provided to prisoners. In its general remarks, the Human Rights Committee stressed that the primary goals of the prison system should be the reformation and social rehabilitation of the prisoner rather than merely seeking retribution. Unless otherwise agreed, all parties shall adhere with applicable UN standards for the treatment of prisoners". The UN Committee in its general comments listed the following criteria to help determine whether the detention conditions" in any particular nation adhere to the Human Rights Covenant:

1. Whether other UN guidelines, such as the Standard Minimum Rules for the Treatment of Prisoners, are being followed. What is generally regarded as good principles and practise in the treatment of prisoners and jail administration are outlined in a Standard Minimum Rule¹⁸, likewise-

¹⁴ "Enforcement Officials, 1979.

¹⁵ Paul R Williams, "Treatment of Detainees: Examination of Issues Relevant to Detention", United Nations

¹⁶ RSA and others v. Grootboom and others, 2001 (1) SA 4

¹⁷ "General Comments No. 21, UN Human Rights Committee on Civil and Political Rights, 1992.

¹⁸ United Nations Standard Minimum Rules for the Treatment of Prisoners, 1977.

- a) Every prisoner has intrinsic worth and dignity, so they should all be treated with respect.
 - b) Discrimination based on race, colour, sex, language, religion, political opinion, nationality, socioeconomic status, or any other factor is prohibited under all circumstances.
 - c) Typically, the goal of a prison term or other measure that denies someone their liberty is to protect the community from crime and lower recidivism. These goals can only be achieved by making sure that, to the greatest extent possible, these people are reintegrated into society after being freed.
2. “In its general remarks, the Human Rights Committee stressed that the goal of the prison system should primarily be the reformation and social rehabilitation of the prisoner, rather than merely seeking” retribution¹⁹. There is a body of principles given by Human Rights Library in which these principles are applied for the protection of all persons under any form of imprisonment or detention²⁰.

CHAPTER IV

CONSTITUTIONAL AND JUDICIAL ASPECTS IN THE PROTECTION OF RIGHTS AND ADMINISTRATION OF JUSTICE OF UNDER-TRIAL PRISONERS

The numerous human rights tenets outlined in the International Bill of Rights are listed in Parts III and IV of the Indian Constitution. The fundamental human rights of the nation's inmates are protected by the Indian Constitution²¹. Some of are:

- “It provides for that there is equality before the law and equal protection of laws²².
- It provides for the protection of certain freedoms²³.
- It constitution provides for the protection of rights in respect of the conviction of an accused of offences ²⁴.
- It states, “No person shall be deprived of his life or personal liberty except according to procedure established by law”²⁵.

¹⁹ Amar Pandey & Sonu Agarwal, Unending Trial: The Misery of under Trial Prisoners, 5 INT’L J.L. MGMT. & HUMAN, 434 (2022)

²⁰ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173 (1988).

²¹ 5 Vijay Raghavan, “Undertrial prisoners in India: long wait for justice”, 51 EPW, 17-19 (2016).

²² INDIA CONSTITUTION. Art. 14.

²³ INDIA CONSTITUTION. Art.19

²⁴ INDIA CONSTITUTION. Art.20

²⁵ INDIA CONSTITUTION. Art.21

- It provides for the rights of arrested and detained persons²⁶.”

Other than this, there are some rights given to the under-trial prisoners are:

1. “Right to Speedy Trial-

Right to speedy trial is a fundamental right of a prisoner implicit in Article 21 of the Constitution. It ensures a just, fair and reasonable procedure.

In the case of AR Antulay vs. RS Nayak²⁷, the Supreme Court with regard to a person convicted, provides comprehensive guidelines. And further, the court held that the right to a speedy trial comes under the ambit of Article 21. The court finally came to the conclusion in favour of natural interest that when the right to a speedy trial of convict person has been violated, then the charges shall be quashed. Another case of Hussainara Khaton v. Home Secretary, State of Bihar²⁸, it is a landmark case, the Supreme Court of India held that under trials have the right to a speedy trial, and that the state is responsible for ensuring that this right is upheld. The court also ordered the release of thousands of undertrials who had been held in custody for long periods without trial.

2. Rights against Inhuman Treatment of Prisoners-

Personal dignity are integral to human rights. According to Article 21, no one may be deprived of their life or personal freedom unless a legal process has been followed. Personal liberty is a sacred and prized privilege as a result, according to the Constitution. The right to exist with dignity has been included in the definition of “life” or “personal liberty”, so it would also include a guarantee against torture and assault by the State or its agents. “The Supreme Court of India has taken serious notice of the inhumane treatment of prisoners in a number of cases and has given the proper instructions to prison and police authorities in order to protect the rights of prisoners and people held by the police”. There is right against torture given under Article 14 and 19 by Supreme Court. The court observed that “the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14²⁹”.

3. No handcuffing-

Absent compelling reasons, handcuffing an individual who has been arrested or is being held pending prosecution is improper. “There is no justification for handcuffing the accused while

²⁶ INDIA CONSTITUTION. Art.22

²⁷ AR Antulay vs. RS Nayak, AIR 1988 SC 1531.

²⁸ Hussainara Khaton v. Home Secretary, State of Bihar, AIR 1979 SC 1369.

²⁹ D.K. Basu v. Union of India, 1977 (1) SCC 416.

transporting them from prison to court when it is discovered that they are intelligent individuals who give selflessly of their time to public causes, lack a tendency to flee, and were tried and found guilty of an offence that is subject to bail³⁰.”

4. Right to be informed and to meet Family members and friends-

“Article 21 provides right to life and personal liberty cannot be limited to just animal survival. More than just bodily survival is meant by it. A clear component of the Personal Liberty embodied in Article 21 is the right to interview one's relatives and friends. No person who is arrested shall be denied the right to consult with and be represented by counsel of his choosing, according to Article 22(1) of the Constitution”.

“These rights must be acknowledged and carefully protected because they are inalienable under Articles 21 and 22(1) of the Constitution. The following conditions must be met for these fundamental rights to be effectively enforced, according to the court”:

1. “A person who has been arrested and is being held in custody has the right, upon request, to have one friend, relative, or other person who is familiar to him or likely to be interested in his welfare informed, as far as is reasonably practical, of his arrest and the location of his detention”.
2. The police officer must explain this right to the arrested person when he is taken to the police station.
3. The person who received notice of the detention must be noted in the diary. These safeguards against abuse of authority must be strictly upheld as a result of Articles 21 and 22(1)³¹.

5. “Right to have an Interview with Lawyers-

“According to the court's ruling, the right to choose a lawyer belongs to the individual who was arrested from the moment of the arrest. The Supreme Court of India examined the extent of the prisoner's or detainee's right to have interviews with family members, friends, and attorneys in a number of cases”.

6“Right to Legal Aid-

“The judiciary has favoured poor prisoners because of their poverty and inability to hire the lawyer of their choosing, even though the Indian Constitution does not expressly guarantee the right to legal aid. Free legal aid was made one of the Guiding Principles of State Policy under Article 39A of the Constitution by the 42nd Amendment Act of 1976. The Constitution's

³⁰ Prem Shanker Shukla v. Delhi Administration, AIR 1980 SC 1535.

³¹ Ayushi Priyadarshini & Madhurika Durge, “Undertrial Prisoners in India”, 6 NLIU L. REV., 281 (2017).

most significant and straightforward article on free legal aid is this one. Although this Article is listed as one of the Directive Principles of State Policy in Part IV of the Constitution and is not subject to judicial enforcement, the principles outlined therein are crucial to the governance of the Country. The state is required by Article 37 of the Constitution to incorporate these ideas into its legislative decisions. While Article 38 places a duty on the state to advance the well-being of the people by effectively securing and guarding a social order in which social, economic, and political justice inform all facets of national life. In order to carry out the constitutional mandate of Article 39-A, the parliament passed the Legal Services Authorities Act, 1987, which guarantees legal aid. Various state governments also created legal aid and advice boards and developed programmes for free legal aid and incidental matters. Legal aid has a broader range under Indian Human Rights law, and it is available not only in criminal cases but also in civil, revenue and administrative cases³².

In the case of *Sheela Barse v. State of Maharashtra*³², In this case, the Supreme Court of India held that under trials have the right to legal aid, and that the state is responsible for providing free legal aid to those who cannot afford it.

7. Right to Medical Assistance-

The right to health is a crucial one. Every person has a right to the greatest level of physical and mental health that is reasonably achievable, according to the Indian Constitution. The Supreme Court in the land has ruled in a number of cases that the right to health treatment is an essential component of Article 21. The State is required by Article 21 of the Constitution to protect a person's life. In case of *State of Maharashtra v. Christian Community Welfare Council*³³, In this case, the Supreme Court of India held that under trials have the right to adequate medical facilities, and that the state is responsible for ensuring that these facilities are provided.

LEGISLATIVE FRAMEWORK

Prisons in India were regulated under the Prisons Act of 1894, which is a colonial era law. Despite the draconian provisions of the law, India was magnanimous in implementing human rights of prisoners. This can be attributed to the growing significance and articulation of human rights in the historic document of the Universal Declaration of Human Rights in 1948 (UDHR). India incorporated various principles enunciated in the UDHR in its Constitution

³² *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.

³³ *State of Maharashtra v. Christian Community Welfare Council*, AIR 2004 SC 7.

under the chapter of Fundamental Rights. These principles were further accentuated in the preamble to the Constitution, which seeks to affirm the dignity of an individual. The power to make laws on the subject of prisons and Prison management has been endowed upon the state governments. In addition, the Ministry of Home Affairs (MHA) formulates advisories and guidelines to be complied with by the States and Union Territories on matters pertaining to prison management. The MHA was instrumental in passing the Model Prisons and Correctional Services Act, 2023 with the objective of reforming and rehabilitating prisoners and amending the Prisons Act, 1894 with respect to management of prisons. Despite the existence of MPM, 2016 and the passage of the Model Prisons and Correctional Services Act, 2023, there is discrepancy and divergence in several aspects relating to prisoner's rights in various State Prison Manuals formulated by the state governments.

ROLE OF JUDICIARY ON THE RIGHTS OF UNDER TRIAL PRISONERS

The Hon'ble Apex Court has repeatedly broadened the scope of fundamental rights and protected prisoners on a number of crucial fronts³⁴, including the right to a fair trial, access to justice, the right to a speedy trial, and most importantly, the human rights front. These decisions have made sure that those prisoners, including those who are awaiting trial, are granted these rights as fundamental rights under Part III³⁵ of the Constitution of India. On violation of these fundamental rights, the victim can directly approach the Supreme Court³⁶ and High Court³⁷". Granting access to lawyers as well as the free legal services brought about by constitutional amendments and revisions to the Code of Criminal Procedure.

The Supreme Court judgment of Madhav Hatawaimarao v. State of Maharashtra³⁸ said that:

"Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence situation, the Court shall, if the circumstances of the case, the gravity of the sentence, and the end of justice so requires assign competent counsel of for the prisoner's defence, provided the party does not object to that lawyer".

The 1978 ruling served as a cornerstone in the provision of legal aid to the underprivileged that, at the time or now, are still ignorant of the rights that are available to them and who, as the majority of the nation battles poverty, lack the financial resources to access better legal

³⁴ A. Jeffry Andrew & M. Athma Rubavathi, Issues of the Under Trial Prisoners and their Legal Status, 3 Ind. Jou. of law & Leg. Re, (2021)

³⁵ INDIAN CONSTITUTION. Part III, art. 12-35.

³⁶ INDIAN CONSTITUTION Art 32

³⁷ INDIAN CONSTITUTION Art 226

³⁸ Madhav Hatawaimarao v. State of Maharashtra, AIR 1978 SC 1548.

services. There is an express provision in Constitution of India under Article 39-A³⁹ which provides for Equal Justice and free legal aid⁴⁰.

“The State must ensure that the functioning of the legal system promotes justice on the basis of equal opportunity, and must specifically provide free legal aid through appropriate legislation or programmes or in any other way to ensure that no citizen is denied the opportunity to obtain justice because of their financial situation or other disabilities⁴¹”.

The Supreme Court of India has been protecting the rights of under trials through case of Sunil Batra v. Delhi Administration⁴² where Justice Krishna Iyer said that: “We have the knowledge that a sizable portion of the inmates are awaiting trial; they must present their case in court and are presumed innocent until found guilty. They are rendered criminals by virtue of being detained at Tihar Jail, which violates Articles 19 and 21 is tests for justice and reasonableness. How cruel it would be to visit a hospital for a check-up and leave with a new illness after being housed with infectious patients”.

In R.D. Upadhyay v. State of AP⁴³, “The Supreme Court ruled that individuals charged with relatively minor offences, such as theft, cheating, etc., should be released from prison if they had been there for more than a year. It also ruled that undertrial murder suspects should be released on bail if their cases had been pending for two years or more. This ruling only applied to the cases that were open at the time it was issued”.

The Supreme Court in Bhim Singh v. Union of India⁴⁴, “The Court ordered the jurisdictional magistrate, chief judicial magistrate, and sessions judge to hold one sitting per week for two months in each jail or prison to identify cases eligible for bail under Section 436-A and to pass an appropriate order with respect to Section 436-A in the jail itself. This was done while acknowledging the issues with Section 436-A is implement. This was yet another one-off fix for a persistent issue in the system”. This decision results in the classification of prisoners inside the prison into various groups. The comparison of Justice Krishna Iyer to a hospital sums up the need for classification precisely. The similar situation arose in the case of Sanjay Suri v. Delhi Administration⁴⁵, the problem was that if the young prisoners weren’t kept apart from the more experienced ones, their possibilities of becoming spoiled would be higher.

The Supreme Court of India passed similar guidelines in this case of Balram Singh Yadav v.

³⁹ INDIAN CONSTITUTION. art.39-A

⁴⁰ INDIAN CONSTITUTION. art.39-A, inserted through 42nd Constitutional Amendment Act, 1976.

⁴¹ *Id*

⁴² Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

⁴³ R.D. Upadhyay v. State of AP, (1996) 3 SCC 422.

⁴⁴ Bhim Singh v. Union of India , (2015) 13 SCC 603.

⁴⁵ Sanjay Suri v. Delhi Administration, AIR 1988 SC 414.

State of UP⁴⁶, the court held that transfer of under-trial from one jail to another to avoid overcrowding is valid. In the case of Zoi Nath Sarmah v. State of Assam⁴⁷, “The superintendent's refusal to let the petitioners visit the prisoner was deemed illegal by the court. This Supreme Court decision was crucial in preventing the unwelcome restriction of administrative powers. The Supreme Court has occasionally intervened to protect those who are being tried from being deprived of their rights and from arbitrary government decisions. The Indian Union Government recently imposed a state of lockdown after COVID-19, a pandemic scenario, surfaced. The condition of jails was brought to the Supreme Court's attention”. The court ruled that the different state governments should use a mechanism like parole for those who are currently awaiting trial for offences carrying a sentence of less than 7 years⁴⁸. During these times, a lot of bail was also posted on personal bonds because posting surety would have been risky for the surety's own life and because people were afraid of pandemics and therefore hesitant to leave their homes.

K.Anbazhagan vs. Superintendent of Police⁴⁹, Article 21 of the Constitution requires a free and impartial trial as a precondition. Justice should not only be done, but also be seen to have been done, according to established legal principles. The criminal justice system would be in jeopardy, judicial fairness would be in jeopardy, and the rule of law would be in jeopardy if the criminal trial were not free, fair, and without prejudice.

Rajesh Ranjan Yadav @ Pappu Yadav vs. CBI⁵⁰, “While it is true that Article 21 is crucial because it protects the basic right to individual liberty, it is also necessary to strike a balance between that right and the interests of society. There can be fair limitations imposed on rights; none of them can be absolute. While it is true that the length of time an accused has spent in jail is one factor in determining whether or not to give bail, the court must also take other factors into account, such as the interest of society. As a result, the decision to give bail depends on the specifics of each case, and it cannot be said that just because a lengthy period of imprisonment has passed, bail must automatically be granted”.

In Sonadhar vs. The State of Chattisgarh⁵¹, the Supreme Court ordered the jail administration to provide information about undertrial prisoners who have been given bail but are still being held without charge. Therefore, the aforementioned information would assist the National

⁴⁶ Balram Singh Yadav v. State of UP, 1991 Cr.L.J. 903.

⁴⁷ Zoi Nath Sarmah v. State of Assam, 1992 Cr.L.J. 2072 .

⁴⁸ Hussainara Khatoon & Ors vs Home Secretary, State of Bihar, 1979 AIR 1369.

⁴⁹ K.Anbazhagan vs. Superintendent of Police AIR 2004 SC 525.

⁵⁰ Rajesh Ranjan Yadav @ Pappu Yadav vs. CBI AIR 2007 SC 451.

⁵¹ Sonadhar vs. The State of Chattisgarh, SLP (CrL.) No. 529/2021

Legal Services Authority of India (NALSA) in developing a plan to aid such prisoners. It is past time to change the law to eliminate monetary bail, which in a sense punishes destitution. According to the circumstances of each case, the courts should have the discretion to grant not financial bail based on the nature of the offense, the accused ability to pay, and other pertinent factors.

In Re: Policy Strategy for Grant of Bail, The assumption of innocence and the right to a speedy trial have both been upheld by the Supreme Court, who has also argued for the release of undertrial prisoners by allowing the liberty to be exchanged for an admission of guilt during the plea negotiation process.

CHAPTER V

CONCLUSION AND SUGGESTIONS

CONCLUSION

According to the present situation in Indian prisons, there are far too many inmates there, most of whom are awaiting trial and come from low-income families. Years have passed, but the number of under trials continues rising, so this needs to be changed. India's under trial inmates experience a variety of difficulties, such as overcrowding, insufficient legal counsel, lengthy court procedures, and subpar prison conditions. Nearly half of the prisoners in India's prisons are awaiting trial, which emphasises the severity of the problem, according to the National Crime Records Bureau's (NCRB) five-year study (2017–2021). Prisons should not be considered as institutions that instil fear among its inmates, but a place where the prisoners are given an opportunity for reformation and correction. The transformation of modern penology advocating reformation rather than retribution has changed the manner in which prisoners are viewed, focusing more on basic human rights of prisoners, spurring their rehabilitation and reintegration into society. It has also brought the issue of congestion in prisons due to the large number of undertrials to the forefront. State prison legislations that perpetuate caste-based prejudices by using terminologies that tend to lower the dignity of prisoners as human beings must be revised. The State should take steps to ensure adequate representation of prisoners belonging to marginalised groups by increasing the strength and representation of lawyers in the panel and revamping the legal aid institutions. District courts must be encouraged to use video conferencing and court technology to enable speedy trial. In India, 75 per cent of prison inmates are undertrials. They have not been convicted of the alleged crime that sent them to jail. We have 3.5 crore pending criminal cases arising from the 5,333 crimes identified in our

myriad laws. It is common knowledge that a well-functioning criminal justice system that caters to protecting the dignity of the prisons and prisoners is a sine qua non for the healthy functioning of a democracy. The Mandela Rules, encompassing prisoners' rights is not a legally enforceable document, but they constitute an array of binding norms followed by United Nations member states. They underline minimum standards to be observed by nations for treatment of prisoners across the globe. India has more or less made efforts to incorporate these norms into its domestic laws in order to protect human rights that are vulnerable behind bars. Under trial prisoners' basic rights, such as the right to a fair and speedy trial and the right to humane treatment, are violated by their prolonged detention. It also places a heavy strain on the Indian judicial system, causing delays and backlogs. A number of actions have been taken to resolve these problems, including the implementation of legal aid programs, the introduction of alternative conflict resolution mechanisms, and the use of technology in the justice system. But much more work needs to be done to make things better. Judicial reforms are required to speed up the trial process and ensure that prisoners are not imprisoned for protracted periods of time without a fair trial in order to decrease the number of prisoners in India who are awaiting prosecution. To decrease the probability of recidivism, there should also be a stronger emphasis on rehabilitation and reintegrating released prisoners into society. To ensure that prisoners' basic rights are protected and justice is served promptly and effectively, the problem of under trial prisoners in India needs urgent attention and a concerted effort from all stakeholders.

SUGGESTIONS

There are some suggestions with respect to under-trial prisoners to improve their condition in India-

1. **Legal Aid:** Under trials should have access to legal aid to ensure that they are able to understand and navigate the legal system. The government should take steps to ensure that all undertrials have access to legal representation, irrespective of their economic status.
2. **Speedy Trials:** Undertrials in India often spend years in jail without a trial, which violates their fundamental rights. The government should take steps to expedite trials and ensure that undertrials are not held in jail for an indefinite period. This could include increasing the number of judges, courtrooms and infrastructure to improve the efficiency of the judicial system.

3. **Alternatives to Incarceration:** Incarceration is not the only form of punishment available. The government should consider alternative forms of punishment, such as community service or house arrest for non-violent offenders. This would not only reduce overcrowding in jails but also prevent the spread of diseases and other health hazards that arise from living in overcrowded conditions.
4. **Living Conditions:** The living conditions in Indian jails are often inhumane, and undertrials are particularly vulnerable to abuse and neglect. The government should take steps to improve the living conditions in jails and ensure that undertrials are treated with dignity and respect. This could include providing adequate medical care, clean water, proper sanitation facilities, and nutritious food.
5. **Monitoring and Oversight:** There is a need for greater monitoring and oversight of the Indian justice system to ensure that undertrials are not subject to abuse, neglect, or mistreatment. The government should set up an independent body to monitor and oversee the functioning of the justice system, with a particular focus on the treatment of undertrials.
6. **Technology-Driven Solutions:** Technology can be leveraged to speed up the judicial process, reduce manual intervention, and eliminate corrupt practices. The government should explore technology-driven solutions to address issues related to the condition of undertrials in India. This could include introducing e-filing, video conferencing for hearings, and using artificial intelligence to help judges manage their workload.
7. **Reforms in Bail System:** The current bail system in India has been criticised for being stringent and often denying bail to undertrials. The government should consider introducing reforms in the bail system, such as introducing personal recognisance bonds or allowing under trials to provide surety through property or assets.
8. **Reintegration:** The government should provide opportunities for reintegration into society for those who have served their sentence. This could include vocational training, education programs, and job placement services. Reintegration would help reduce recidivism and provide undertrials with a second chance to build a better life for themselves.