

HUMAN RIGHTS OF PRE-TRIAL DETENU

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ABSTRACT

Pre-trial detention is the topic of “People arrested and detained in a pre-trial detention facility under suspicion that they have committed a criminal offence are often held for weeks, months or even years before a court passes judgment on their case”. These persons find themselves under enormous psychological pressure and might lose their job and be severed from family and community. This study explicates the current international legal bases in the area of pre-trial detention and alternative measures to such detention. Minimum standards pertaining to pre-trial detention on international and Indian level are examined and analyzed. Selected case law of the Indian courts are also mentioned which serves the purpose of interpreting the wording on “HUMAN RIGHTS”.

Key words-: Pre-Trial Detention – Human Right, Consequence of Injustice,

INTRODUCTION

In the criminal justice system, the time between the arrest and case disposition is known as pre-trial stage. Thousands and thousands of the accused person are listless in prison for days, months and years either due to not able to apply for bail or due to indiscriminate refusal of bail by the court of law or not able to furnish security and sureties.

The average rate of pre-trial detention in India is 20 per 100,000 of the general population, which is less than half the global average. However as of 2013, the number of pre-trial detainees as proportion of all prisoners is 67.6%- over twice the global average

PROBLEM FACED BY DETAINEES

It is alarming to take note of that larger part of the detainees are under trials not convicts. The detainees are in prison for more than the most extreme time frame endorsed by the code of criminal procedure, 1973 and the other procedure that are specified for special laws.

Where every single day of detention unstrengthens the mindset of the accused, that the accused was separated from the family and if he is the only one who was the bread winner for the family then in such condition the entire family is deprived of their daily bread. In certain cases if the said accused is employed he loses his job because of the tag that attach with his or her personality that he or she was a in detention

The code of criminal procedure provides that the police custody of the accused only for twenty-four hours and further detention is by judiciary, the justice system should ensure that the accused should be trailed for the offence they are alleged.

REASONS OF THE PROBLEM

The following are the reasons for the pre-trial detention are as mentioned below-

- i. The demand of heavy securities and sureties should be considered as the main reason because despite of having the right of bail the prisoners not able to release on bail because of the heavy securities and sureties
- ii. The corruption in the judicial system is also the reason behind the problem. The said authorities misused their power, the rich people discharged easily while the poor are not.
- iii. The Friday remand because of the Saturday and Sunday being holidays the bail can only be granted on Monday due to which it take time to obtain bail.
- iv. Poverty, the poor are unable to heir a lawyer who can obtain bail for them

This article tries to comprehend the reasons for such high extent of pre-trial detention

Protection of Rights under UDHR

The minor perusing of the following articles would influence one to comprehend that pre-trial detention is the infringement of human rights. Which are as follow:-

- i. Article1 All human beings are born free and have dignity and rights
- ii. Article3 Right to life, liberty and security
- iii. Article4 Slavery in any form prohibited
- iv. Article10 Fair, impartial and public trial
- v. Article11 Presumed innocent until proved guilty

Protection of Rights under THE CONSTITUTION OF INDIA

Following are the provisions which are provided under the constitution of India

- i. Article 14 Equality before law
- ii. Article 20 Protection in respect of conviction for offence
- iii. Article 21 Protection of life and personal liberty
- iv. Article 22 Protection against arrest and detention in certain cases

Protection of Rights under Statutory Law

The code of criminal procedure, 1973 provided the following provisions for the protection of detainees. Which are mentioned below:-

- i. Section 436(A) of the code provide provision for maximum period for which an undertrial prisoner can be detained.
- ii. Section 437 of the code deals with the provision that when bail may be given in case of non-bailable offence

- iii. Section 336 of the code empower the state government to empower officer in charge to discharge.
- iv. Section 167(2) of the code provide that the maximum period of detention of under trials only for ninety days in offences carrying punishment of death or imprisonment of life or ten years.

Applicability of Law

Section 436(A)¹ of the code of criminal procedure, 1973 which states that maximum period for which undertrial prisoner can be detained- any person during the period of investigation, inquiry or trial under this code of an offence under any law, not being an offence which is punishable with death, undergone detention for a period extending up to one-half of the maximum period of punishment specified for that offence under that law, he shall be released by the court on his personal bond with or without sureties

Provided that the court after hearing the public prosecutor, reason to be recorded in writing, order the continued detention of such person for period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties.

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for that offence under that law.

Section 167(2) ²of the code of criminal procedure, 1973 which state that no magistrate shall authorize the detention of the accused person in custody for a total period exceeding

- i. Ninety days, where the investigation relates to an offence punishable with death, imprisonment of life or imprisonment for term of not less than ten years
- ii. Sixty days, where investigation relates to any other offence

The accused person shall be released on bail if he is prepared to and does furnish bail.

Both of the said provisions 436(A) and 167(2) of code of criminal procedure,1973 talk about the release of the accused person on bail but the question is that whether they are able to get the bail, whether they are able to furnish the heavy securities and sureties and if they are able then why thousands and thousands of prisoners are in prison for days, months or years. The answer is one that in the presence of the provisions of getting bail in our legal system the accused are still not able to get it only because of the heavy demand of sureties and securities.

Around 2.8 lakh Indians are being held in prison during their trials or awaiting trial, without having been convicted of a crime. Many have been awaiting trial for years, some for longer period than their maximum formal sentence. These prisoners who are known as undertrials account for two out of three prisoners in India's prisons, a percentage far higher than other democracies around the world.

¹Inserted by the Code of Criminal Procedure (Amendment) Act, 2005, S.36 (w.e.f. 23-6-2006)

²Subs. by Act 45 of 1978, sec. 13(a), for paragraph (a) (w.e.f. 18-12-1978)

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceeding, and should occasion arise for execution of the judgement.

And now when we are clear with the issue that the, firstly; what are the consequences bared by the pre-trial detainees? Secondly the Fundamental rights which got infringed because of this unnecessary custody in which the person loses his faith of living a respectful life in the society. And in the worst case of scenario pre-trial detention leads to “custodial death” not in every single case but in exceptional cases. At the end it is concluded that “pre-trial detention” is a transgress of fundamental rights of an individual and proffering for bail or pursuing for bail is also the rightful step for not getting in this kind of torture.

Protection of Rights by Judiciary

Human rights are those rights that are major for human being. Human rights are the rights which provide freedom to every person everywhere throughout the world. These rights, other than being major and universal in character accepted worldwide.

These rights guarantee to make a man free. These rights perceive the essential human need. Each nation ought to guarantee human rights to its residents. The human rights should discover it's place in the constitution of each nation.

Sunil Batra vs. Delhi Administration³

In which the Hon'ble court held that the “right to life” included the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions. It would even include the right to protection of a person's tradition, culture, heritage, and all that gives meaning to man's life. It includes the right to live in peace, to sleep in peace and right to repose and health.

Maneka Gandhi v. Union of India⁴

In which the court held that Implicit in the power to deprive the sentence of his personal liberty, the court has to ensure that no more and no less than is warranted by the sentence happens. If the prisoner breaks down because of mental torture, psychic pressure or physical infliction beyond the licit limit of lawful imprisonment the prison Administration shall be liable for the excess. On the contrary, if an influential convict is able to advantage and liberties to avoid or water down the deprivation implied in the sentence the prison establishment will be called to order for such adulteration or dilution of court sentences by executive palliation, if unwarranted by law.

³ 1980 AIR 1579, 1980 SCR (2) 557

⁴Maneka Gandhi v. Union of India (1979) 1 SCC 248

CONCLUSION

At the point when Criminal procedure code endorses the greatest time of confinement as 60 or 90 days and in preventive cases and in other criminal statute the most extreme time frame is advised as 180 days, the police and legal executive applying an alternate law is absolutely illicit. When Cr. P.C. says notwithstanding with the end goal of investigation the accused can't be kept over 90 or 60 days. What is the motivation of keeping the accused in prison even after the fulfillment of investigation. The legal executive are often record that they are worried about the general public as for risk from the arrested individuals. The police often grumble that the charged will flee the justice, he won't co-operate the investigation, he will tamper witness and hamper investigation and these complaints are an everyday custom. At the point when there are safeguard provisions and primarily the pre-trial provisions and most importantly provisions for anticipatory bail, the pre-trial detention isn't at all defended. It isn't just against the soul of Cr. P.C. but it also damages the demands of the constitutional law and human rights. Without a doubt it is the police constrain and the legal executive who are responsible for pre-trial conviction. Indiscriminate arrest by the police, Friday remand, legal executive denying bail, demanding of high securities make the accused to mope in the jail for months and years and sometime over the period of maximum punishment. The greater part of the accused people are underneath neediness line, everyday breadwinners and those who have no knowledge of law. These people can't bear to hire a legal advisor to seek bail, even if they manage to hire a lawyer they are not able to furnish such securities and sureties. The amended law of arrest denies superfluous arrest of people who are accused of offences having punishment of seven years or less than seven years. The cop is required to expressly state in writing the necessity of arrest. The law requires serving notice to the accused to report in the police headquarters for interrogation, if the individual complies with the notice and co-operate in the investigation then there is no need of arrest. If the police arrive to the conclusion that the individual won't flee the justice and subject himself to examination, the arrest of the individual is not required according to the present law. The congestion of the prisons of the pre-trial prisoners can be avoided if the police have the sense of justice.