

Rights of Under Trial Prisoners

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ABSTRACT: *An individual might be condemned or imprisoned, but acquires a basic right to live a dignified life. An individual is typically considered as an offender if an F.I.R. is filed for offence before a prosecution officer or for an offence for which the contempt was filed or performed before the competent magistrate to try or send a judge to investigate the offence. Such a person can be arrested on bail by the police or courts or the competent authority. If the suspects are held in prison, they are probably referred to as prisoners on trial. There are various law passed by Parliament to preserve rights of under trial prisoners. Now by way of this piece of research, the author is attempting to throw light upon the concept of under trial prisoners, the rights acquired by them and the complications they face while being detained in prison along legal protection available for them as there safeguard.*

KEYWORDS: *Constitutional Rights, Legal Aid, Prisoners, Under trial Prisoners, Speedy Trials.*

INTRODUCTION

All individuals can be classified as a social animals. Their core need is to live better in society. People enjoy a life of peace and harmony. He lives in a structured community for this reason. A powerful and civilized state takes place only in organized society. The state authority takes care of any human being who lives in the state.

India's criminal law derives its foundation from colonial time laws. It is hostile to society's vulnerable and poorer classes. The law also represents, protects and disregards the interests as required. This partiality has driven wealthy people to escape the law, and the prison is most frequently filled with the unprivileged class in society. The hierarchy of courts and appeals following appeal led to a situation in which the poor, due to the high costs of its entry, cannot knock the doors of justice. In other words, one can claim that the indirect denial of justice is to offer justice at a higher cost. Such circumstances lead to an apparent breach of the judgement of the Supreme Court, which held that legal assistance for the vulnerable is a constitutional mandate which cannot be refused by the government, not only under Article 39A, but in Articles 14, 19, 21 as well.

Commonly, it can be understood as 'under-trial' is a person who is currently being tried or detained while waiting for trial. As understood by a layman, 'under-trial' is a person who is currently being tried or detained while waiting for trial. Under-trial individuals are those in the competent courts who face trial. In the Oxford Dictionary 'People in a court of law on trials' are identified as under-trials. A person retained in court custody for investigation is taken under definition of under-trials by virtue of 78th Report of Law Commission. There are various institutions for trials in several countries. The fundamental human rights issue of under-trials is impede in the proceedings. The purpose of custody trials is to ensure a fair way so that they cannot manipulate or induce the witnesses. More than 65 per cent of the detained population is sub-tried in the Indian Jails.

The study of Indian criminal case law is a mere expression of the British Victorian legacy. Over time, the pressure groups and the voting banks have only been met with a few amendments some time in a while. It was possibly uncertain whether the situation and socio-economic circumstances of 70% of this country's citizens living in severe poverty had been taken on board in these rules, which have existed for nearly seven decades. As India is a developing country which is suffering from poverty, it needed a blind copy of the laws prevailing in developed western countries.

DISCUSSION

1. Meaning of under trial Prisoners

Persons going through any trials in courts are detained in prisons till the trials are over and such persons are referred as 'under-trial' prisoners. Simply stated, an under-trial means that a person has been detained for a felony waiting to be brought before the judicial officer. He is guilty of this and his or her culpability has not yet shown that he or she cannot be deemed a criminal. Different laws also have established a similar under-trial.

In accordance with Section 2(xiv) "under-trial prisoner" means a person who, by the Court or by competent body, had been imprisoned and has trial pending for his case.

National Delinquency Report 2015 was described as under-trial prisoner as a prisoner while charges against him were being tried in prison (judicial custody).

We can therefore claim that a person whose trials are pending at the court and who is either detained for some reason in police detention or in prison detention.

2. Rights of under trial Prisoners: Constitutional Rights

2.1.Right to Citizenship

Person when arrested or being suspicious for any crime does not acquire the status of being non-citizen of the country. As stated under Article 10 in Constitution, every person shall be considered as a citizen of country until any law passed by Parliament denies the same or snatches his status of being a citizen of country. This right can only be taken away though any expressed statute passed by parliament otherwise can't be snatched indirectly.

2.2.Right to Equality (Article 14)

Equality of citizen before law along with equal legal protection of citizens is furnished in Article 14. State cannot snatch the right of equality from any person equality or equal legal protection within the boundaries of India.

Equality of status is reflected from these phrases. Benefits out of such right are extracted by both citizens and non-citizens. Substantive law or procedural law, both imbibe Article 14.

Nevertheless, persons under trial shall be labeled differently from convicted persons and should be detained separately and also in the same manner juvenile offenders shall be dealt severally from adult criminals.

In several cases it has called into question the constitutionality of the law for the creation or authorization of the Executive to form special courts applying a particular criminal proceeding. Some cases are discussed below in this respect:

2.2.1. *State of West Bengal v. Anwar Ali Sarkar*¹

Deriving power from Act in 1950 which over took W.B. Special Courts Ordinance 1949, establishment of special courts took place. Such court followed a different path to resolve cases which was followed by no other courts.

In the matter, Apex court arrived to conclusion that section 5(1) of the West Bengal Special Courts Act, 1950 is directly contradicting Article 14. Further it added that prescribed procedure is not much effective than ordinary procedure enshrined under Criminal Code for accused person. Hence, Act declared inequitable.

2.2.2. *Kathi Raning Ravat v. State of Saurashtra*²

Even when special courts were created and new procedure was framed accordingly, the Saurashtra State Public safety measures ordinance (9 of 1948) was given a green signal by the Apex Court of India. The case was based

¹ A.I.R. 1952 SC 75

² A.I.R. 1952 SC 123

upon different stage from Anwar All's cases. This case acted as a channel to discover the spirit to construct such special courts enshrined in preamble of ordinance through Kathi Raning case. These courts conducted trails in matter of public safety, maintenance or public order etc. The established procedure was also not regarded as contradictory like it was judged in procedure originated through Bengal Act because of which it was awarded with a green signal.

2.2.3. *Kedar Nath Bajoria v. State of West Bengal*³

This case also elaborates a scenario where Apex court granted Special Courts as reasonable which was constructed through West Bengal Criminal Law Amendment Act. The discretionary command of Government over cases that are meant to be referred to special tribunal was not violating Article 14 because discretion was availed only within the capacity reflected in policy of Act as declared by majority bench.

2.3. *Right to Freedom (ARTICLE – 19)*

All the freedoms which one can take benefit of, are enshrined in Article 19 which is inclusive of rights like freedom in speech and expression, right to peacefully assemble without arms, right of formation of unions or associations, move freely within Indian territory, to stay and settle anywhere in India, the freedom to exercise any trade or business in any occupation.

2.4. *Protection to Accused Persons (Article 20)*

The defense from convictions for offences is provided within Article 20. It states that person is convicted of any offence, except for a violation in effect at the moment when the act charged is committed as an offense, nor is the subject of a penalty greater than the one imposed by the statute in force at the time of the commission or is entitled to a penalty greater than the one imposed by it. Also, for the same offence no person shall be more than once prosecuted and punished and no person who is accused of any crime shall be obliged to be a witness against himself. Protection of Life and Personal Liberty (Article 21)

Unless in the process set down in any statute specifies, Article 21 safeguards the right to life with personal freedom. Article 22 furnishes that no person arrested is held in custody without being told that the reasons for the detention have not been communicated earlier than it is practicable, or the legal practitioner of his choice is entitled to consult and to defend him or her for such arrest without being told of any grounds for such arrest. Each person detained in prison shall be presented in front of the nearest magistrate, and not after that date, shall be held in custody without the jurisdiction of the judicial officer within a time period of twenty four hours of that arrest, except time required going from the place of arrest to the Court of the judge.

IN MANEKA GANDHI CASE⁴

In the following cases an accused person shall be entitled to gain benefits from Article 21:

2.4.1. *Bail*

An offender has the right to obtain a bail, bail is the law and denial seems to be an exception. The Apex Court held that the failure to issue a bail in a murder case for no cause is the deprivation of personal freedom.

2.4.2. *Speedy trial*

Under trials prisoners holds the right to get speedy or fast trial. Speedy trial is a fairly rapid trial that is part of Article 21, right to life and freedom. In Hussainara Khatoun v State of Bihar⁵ The Supreme Court noted that, unless such trials guarantee the prompt trial for deciding the person's guilt, a trials prescribed by the statute would not be "reasonable , fair or just" by preventing a person from enjoying his freedom.

³ A.I.R. 1953 SC 404

⁴ A.I.R. 1978 SC 597

⁵ A.I.R. 1979 SC 1360

In *Hussainara Khatoon (II) v. Home Secretary, State of Bihar*, The Court, in its dealings with the cases of under trials which had long since suffered, found that it is not possible to consider proceedings which hold such large numbers of persons behind bars so long without trial as fair.

2.4.3. *Legal aid*

An arrested person who does not have the means to send an attorney has the right to free legal assistance. The Supreme Court ruled that free legal services form a basic element of any fair, equitable and reasonable practice for the poor and needy.

In *Madhav Hayawadan Rao Hosket v. State of Maharashtra*, Three Justice Bench of Justice V.R Krishna Ayer, Justice D.A Desai and Justice O.Chinnappa Reddy claimed that the government has a responsibility to provide legal services to persons accused by reading Articles 21 and 39-A, section 142 and section 304 of the IPC.

2.4.4. *Handcuffing of prisoners*

Any person charged with a non-remunerable offence punishable by more than three years in prison having been convicted of handcuffing regularly is in violation of Articles 14, 19 and 21. The application of iron is not exempt in very special circumstances. However, the escorted authorities must state why, otherwise the proceedings would be unreasonable and unfair under Article 21.

The accused person or in custody should not be subject to handcuffing in the absence of any excuse. In *Perm Shankar Sukla v Delhi Administration*, the accused found that they were educated and that they selflessly devoted their work to the public good in a bailable offence.

2.4.5. *Release*

If the accused are held without trial for a long period of time, he is entitled to be released. And that is more than the actual punishment time that could be levied when had he been convicted of the crime he was charged with.

2.4.6. *Detention*

Detainee holds the freedom to write or publish a book. Also, Article 246 established under seventh schedule of Constitution and in second list, more precisely Entry No. 4 of State list empowers State Government to create law in the matter of prisons.

The Apex Court has argued that, in the event of a suspension of freedom and a suspension of freedom due to a presidential proclamation suspending Article 21, Article 21 is the sole depository of life and freedom.

2.4.7. *Rights against Inhuman Treatment of Prisoners*

Article 21 states that no person shall, other than in accordance with the procedure laid down in the constitution, be deprived of his life or personal freedom. And human rights are an important part of life with dignity. So the personal speech requires a warranty against the state or its officials' violence and attack.

In the case of *A.K Gopalan v. Union of India*⁶

In this case, the communist leader A.K Gopalan was arrested under the 1950 Preventive Detention Act. He challenged to see that his arrest on the ground was legitimate and violated his right to freedom of movement in compliance with Article 19(1)(d), which is the cornerstone of personal freedom conferred by article 21 of Constitution.

⁶ 1950 AIR 27, 1950 SCR 88

2.4.8. *Right to be informed and to meet family members and friends*

In the case of Sunil Batra (II) v. Delhi Administration⁷

The Supreme Court through this case recognized the prisoners' right to see their friends and family. The Court encouraged its visits, but was subject to search, discipline and other safety requirements. Family and enjoyable visits to the prisoners are solace, and it can only lead to the vicarious enjoyment that a dehumanized system deprives prisoners. These rights are intrinsic and need to be recognized and protected by Articles 21 and 22(1) of the Constitution.

2.4.9. *Right to be interview with lawyers*

In the case of Hussainara Khatoon v. Home Secretary, Bihar⁸

The Hon'ble Supreme Court states that any accused person who is unable, by reason of poverty, indigence or non-communication, to engage the lawyer and obtain legal services shall have a constitutional right to free legal services, and the State is required to provide a lawyer to that person if the requirements of justice exist. This right shall be regulated by constitutional law. The trial itself may be vitiated as contradicted in Article 21 if free juridical services are not given.

2.4.10. *Narco analysis or brain mapping*

Narco analysis, polygraph testing or brain mapping per se has proved to be the most common method of research agencies in the evolving development of science and technology. However, the process was sadly deemed a violation of a prudent man's right to privacy. This has been done several times in the Arushi Assassination Case, in the case of Abu Salem, in the case of Pragya Thakur, etc.

2.5. *Right to Constitutional remedies (Article 32)*

Prisoners on trial have the right to pass their basic human and constitutional rights to the Supreme Court in accordance with Article 32 and to the High Court in Article 226 of the Constitution. The Apex Court shall, pursuant to Article 32(2), be granted authority to issue directions or orders or writs, including Habeas corpus, mandamus, prohibition, quo warranto and certiorari. Any rights granted by Part 111 of the Constitution can, where applicable, be implemented. Article 226 gives the High Court the authority, within the sense of its general jurisdiction, to issue such acts for the protection of basic rights or for some other purpose.

The accused people have the right to a speedy trial. The Apex Court has a constitutional obligation as protector of the fundamental human rights, by providing the State with the required guidelines, including constructive measures such as increase and improving the investigative mechanism and the new ways, the fundamental rights of the accused to implement them.

The prisoner was held to be protected by his rights under Articles 32 and 226. Prisoners are also persons, but the Supreme Court can and should take action to rescue a prisoner if a prisoner's rights are violated under the Constitution or under other laws.

3. *Reason for so many under-trials*

3.1. *Indiscriminate arrests:*

It is a situation where people get detained by cops beside the fact that they are evenly responding to the conducted investigation hence, just misusing their power. Sometimes, they are not even pushed to trials. This causes unnecessary detentions of nature. 268th report issued by Law Commission concluded minimum 60 per cent of unnecessary arrests.

⁷ 1980 AIR 1579, 1980 SCR (2) 557

⁸ 1979 AIR 1369, 1979 SCR (3) 532

3.2. Failure to pay Bail Bond/Surety:

Persons with genuine cases are mostly detained. Reason came in light was that they are incapable and lack money to pay as bail amount, therefore, squashing their right to get bail.

3.3. Slow investigation by police:

Shortage in police panel has led to slow investigation. Also, there is a blend of powers w.r.t. law & order functions and investigation conduct.

3.4. Slow trials:

Khatoon case gave birth to Right of Speedy Trial as decided by Supreme Court. Elongated delays are the reasons behind abridgement of such a right. Various reasons for such delay is as follows:

- Inadequacy in number of judges and pleaders.
- Hearings are carried over without any actual cause by the judges because of lack of time and patience.

3.5. Lack of use of provisions:

It won't be right to accept that there is no legal provision with regards to eradicate unnecessary detention of prisoners. They are enforced in country but lacks proper implementation. Explanation behind such improper implementations is that not only do many prisoners not know their right to release, they also know that they are too poor to have security. The administration's lack of sympathy as well on their parts.

3.6. Failure of Legal aid schemes:

As mentioned above, people are unknown about their rights and along with that there is no mechanism to implement legal aid schemes effectively. This contradicts the opinion of the Supreme Court that legal assistance for the needy is not only a constitutional mandate under Article 39A but also under Articles 14, 19 and 21, that the government cannot deny.

3.7. No proper distribution and communication for resolving problems of such a nature, between Centre, Judiciary & State Governments.

4. Problems due to large number of Under-trials

4.1. Criminalizing effect on prison:

There remains a probability that staying with hardcore criminals will convert young offenders into serious offenders as well. It is an ultimate result because of lack of reasonable segregation among serious offenders and young ones.

4.2. Prison violence:

Within the premise of prisons, police staff is entitle to do a violence activity that ultimately gives it a tag of dangerous place. In police station misconduct is very frequent by police officials. Meek and criminals were first tortured and forced to perform all their humble duties. The worst form of prison abuse was seen in "Khatri v. State of Bihar," where 80 alleged offenders had been blinded by the police by acid punching and smearing their skin. Mentioned activity goes against the spirit of minimum rules set to treat prisoners.

4.3. Health problems

Prisoners are detained in such a large extent that in such a congested they become ignorant of their health and are devoid of healthy environment where health issues are normal to arise. Also, it can be transmitted easily from one to others. Long detention also leads to a mental disintegration.

4.4. Effect on the families of prisoners

Detention of main earner of livelihood often drags his family into indigence. They turn incapable even to acquire basic needs for themselves. The family also comes across various social discriminations. The unnecessary detentions even result in making their children work and experience exploitations.

4.5. With rise of population in jails there is an increment in unnecessary expenditure that State has to incur.

4.6. Also, unnecessary detention and conducting no trials goes against phrase of being innocent till you are proven guilty.

5. Case Law

Hussainara Khaton (II) v. Home Secretary, State of Bihar⁹

Facts: This case provided origin to the right needed by every person detained into the prisons from uncountable years and is at standby to be presented in front of competent authority. Sometimes such persons are innocent but still detained in courts from several years apart from their families.

A petition was presented in Bihar court to conduct hearing procedure for under trial prisoner in order to rescue them from prison. The authorities of state were issued with directions to come up with amended charts containing the year wise based data of detained prisoners, categorizing them into offenders of major and minor offences. It was repugnant to consider the data of under trials and state's administration over such matter. Individuals to a great extent together with many women and children were detained looking for window to approach magistrate.

There were persons who were kept imprisoned for a period longer than the period of punishment decided under statute if they were actually convicted for that offence. All the basic rights were snatched by them.

Court Ruling: It was directed by the court to set free some prisoners as it was violating their freedom conferred by constitution. It was sad to realize that spirit of Article 21 is harshly damaged because procedural law is silent in matter of speedy trials. Also, it neglects the fact of release of persons prior to trials on bond basis. It also directed to present persons in front of bench so that bench can arrive at decision quickly and cases can be resolved.

CONCLUSION

The topic of the prisoners on trial is a rather important one that concerns the right to a fair trial as statistics displays. The National Crime Reports Bureau of Indian Prison Statistics 2012 indicates that there are 2 54 857 subjugates compared to actual convicts 1.27,789.

In 2005, by amending the Code of Criminal Procedure (the Code) and adding Section 436A, the Parliament tried to resolve this question of extended detention. The section lays down maximum time for which a person can be imprisoned as detainee within a statue. However, it shall not be applicable where capital punishment is specified as one of the punishment. In accordance with that provision, an individual who has been detained under that Law for a term of not more than a half of the statutory required sentence for that offence shall be released by the Court on personal bond with or without protection during the time of investigation or trial.

⁹ 1979 AIR 1369, 1979 SCR (3) 532