

Undertrial Prisoners' Human Rights : Violation Problems and Solutions

I was arrested in 5th September 2005 while contesting assembly election from K-ward, Amboli, Andheri (w), Mumbai. During election, a case was registered against me by strong political opponent and I faced goons, police, Crime branch and IT raids in my offices.

When I was arrested in 2005, I was not aware of the Human Rights guidelines. It's only after taking admission in human rights diploma course in 2017 (HURT foundation associated with Govt Law Collage) and started exploring the subject, I came to know about the rights of under trial prisoners. What are ground level facts and how UDHR , CrPc and Supreme Court guidelines are being violated by States and authorities?

My Inside jail's story-

I was sent to Arthur Road Jail, I got bail after three days, but did not complete formalities because I contemplated many illegal activities were happening in jail with the help of police and authorities for convicted and undertrial prisoners' Human Rights' was violated every-times by police and goons.

There were 1993 bomb blast accuses, goons of D-Comany and Chota Rajan: D K Rao, Ejaz Pathan, Yusuf Bachkana, Vicky Malhotra, who would live a lavish life beyond imagination, they were even controlling gangsters and criminals. They were running a brutal business of kidnapping, extortion and drugs smuggling from inside the jail. They would captivate the wealthy undertrial prisoners (they get information by police) in their cell for extortion, and would sent the demand of ransom to prisoner's families through their visitors or on/off duty police men, and they distribute the ransom amount among convicted prisoners, gang members and police/authorities. I am the witness of all these things.

Drugs smuggling inside the jail : -

They were engaged in smuggling of drugs and would use the poor prisoners for their personal work in exchange of a minimum amount of drug. Foreign Prisoners specially Nigroes are associated with drug dealing inside the jail. They would stuff the drugs in their private part (anal), sometimes even the jail attendant would help them.

They would use some typical words :

Nambarkari - If more than one person is involved in the same crime

Garddula - Who use drugs and works for goons.

Katela - If wound on face, they call them Katela.

Goli - Drugs

Jarti - Thorough searching of the body by metal detector as well as manually.

Token : The criminals were given tokens instead of money which is sent by their respective families for small purchases (There are small stalls which are run by jail authorities) inside jail.

Timing for food :

Breakfast : 6:30 AM

Lunch : 10 AM

Dinner : 3 PM

Problems :

Over crowding - It is major issues in jails

Sleeping - Due to over crowding their is scarcity of per capita place of sleep. They are used to sleep sideways.

Foods - Improper hygiene measures leading to a number of health issues.

Medicine - Similar medicines are used for almost all diseases.

Sanitary - Low number of sanitary units with poor maintenance and scarcity of water.

Legal aids - As per government guidelines every prisoners should be given free legal aids but they are deprived of this facility due ignorance of prisoners and negligence of concerned authorities.

Visitors issues - Many a times police do not allow to meet the visitors with their relatives (Prisoner).

Poor - Most of the prisoners are poor , they do not have money to afford advocate, they even lack knowledge. They don't even have a minimum of hundred to two hundred rupees to pay for their granted bail, they are just drifting their lives as "badhua majdoor" (bonded labour) of D-company and Chota Rajan's goons.

Threatening to me for extortion :

In 2012, I had also received similar call for extortion of money from notorious Yusuf Bachkana and Vicky Malhotra and got police protection for three months from Navi Mumbai crime branch. During inquiry police came to know that Yusuf Bachkana was in jail in karnataka and he had called from inside the jail.

Violation of Human Rights

This is not important what had happened to me; although what I observed in one hand and what I came to know about prisoners and their activities inside the jail in another hand is "what is happening to the undertrial prisoners"! Their Human Rights are being violated in all the aspects, everyday, as the State and concerned authorities are not following the guidelines of UDHR for the rights of the prisoners.

Gang run by strong criminals inside the jail :

Big Criminals run gang from jails ,it's not just a saying . It had been happening and has been happening till today. Sometimes such news also comes in news papers. I watched Dawood's man, Mustafa Dossa, who would run gang in Arthur Road Jail with direct help of goons and indirect support of jail authorities.

You would be surprised knowing this "Goons who committed crimes (murder, threatening, Kidnapping) for them and were arrested, were provided cloths , money, legal aids, drugs and financial support to their families by D-Company and Chota Rajan gang".

Many under-trial prisoners are detained in prisons for long periods, which in some cases extend beyond the maximum period of imprisonment prescribed for the offence with which they are charged. Is this not violation of Human Rights ?

I would like to focus on some facts and figures: What is basic principles for the treatment of prisoners as per UDHR ,International Law and Indian Law for undertrial prisoners and how it is being violated convicted / undertrial prisoners' human rights.

Who are undertrial Prisoners ?

Undertrials - those detained in prisons during trial, investigation or inquiry. 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 a longer period than their maximum formal sentence. These prisoners who are known as 'undertrial Prisoners' .

Facts and figures

India's undertrial population is estimated to be the 18th highest in the world and the third highest in Asia. As of December 2015, 67% per cent of the people in Indian jails are undertrials — people not convicted of any crime and currently on trial in a court of law. Among the larger States, at 82.4 per cent, Bihar had the highest proportion of undertrials, followed by Jammu & Kashmir (81.5 per cent), Odisha (78.8 per cent), Jharkhand (77.1 per cent) and Delhi (76.7 per cent).Three States from the Northeast also had a high proportion of undertrials: Meghalaya (91.4 per cent), Manipur (81.9 per cent) and Nagaland (79.6 %). A fourth of all the under trials have been under detention for more than a year. The ratio is highest in Jammu and Kashmir.

Foreign Convicts

Over two thousand foreign convicts (2,353) were lodged in various jails in India at the end of 2015. The highest number of foreign convicts — 1,266 — were in jails of West Bengal, followed by Andaman & Nicobar Island (360), Uttar Pradesh (146), Maharashtra (85) and Delhi (81).

Prisoner Profile

Seventy per cent of the convicts are illiterate or have studied only below class tenth.

Custodial Death

On an average, four died every day, in 2015, a total of 1,584 prisoners died in jails. 1,469 of these were natural deaths and the remaining 115 were attributed to unnatural causes. Two-thirds of all the unnatural deaths (77) were reported to be suicides while 11 were murdered by fellow inmates — nine of which were in jails in Delhi.

The 'Prison Statistics India 2015' report was released by the National Crime Records Bureau (NCRB) 22 Oct 2016. Below chart shows the state-wise population of undertrials and prisons occupancy rates.

1	Andaman and Nicobar Islands	72	0	40
2	Andhra Pradesh	2737	11	88.9
3	Arunachal Pradesh	136	8	86.8
4	Assam	5476	28	109.7
5	Bihar	20372	3875.2	75.2
6	Chandigarh	339	1	61.4
7	Chhattisgarh	7738	16	233.9
8	Dadra and Nagar Haveli	0	0	276.7
9	Daman and Diu	0	0	28.8
10	National Capital Territory of Delhi	10465	8	226.9
11	Goa	88	1	38.6
12	Gujarat	5405	11	95.5
13	Haryana	10489	19	109.3
14	Himachal Pradesh	579	4	110.7
15	Jammu and Kashmir	1783	12	77.9
16	Jharkhand	12071	22	114.3
17	Karnataka	7829	27	95.9
18	Kerala	2388	14	118.3
19	Lakshadweep	0	0	37.5
20	Madhya Pradesh	16121	50	139.8
21	Maharashtra	21227	37	112.8
22	Manipur	533	4	67.1
23	Meghalaya	862	4	177.9
24	Mizoram	608	7	94.9
25	Nagaland	390	11	33.8
26	Odisha	5144	14	88.6
27	Puducherry	91	1	45.9

28	Punjab	12016	16	117.8
29	Rajasthan	10871	33	102.4
30	Sikkim	140	2	99.2
31	Tamil Nadu	5020	18	63.6
32	Telangana	2732	10	87.8
33	Tripura	256	3	47.8
34	Uttar Pradesh	62203	62	168.8
35	Uttarakhand	1316	8	136.4
36	West Bengal	10673	19	102.9

Undertrial prisoners' condition in India

Known Cases-

Rudal Shah, arrested in 1953, remained in Bihar's Muzaffarpur jail for 30 years despite being acquitted in 1968.

Boka Thakur, arrested at 16, was jailed and detained without trial for 36 years in Bihar's Madhubani jail.

Shah and Thakur are just two of the 282,879 undertrials in Indian prisons, according to Prison Statistics 2014 -- a number equal to the population of the Caribbean nation of Barbados.

Undertrials - those detained in prisons during trial, investigation or inquiry -- are presumed innocent till proven guilty. But they are often subjected to psychological and physical torture during detention and exposed to prison violence and poor living conditions. Many lose their family ties and, often, their livelihoods.

Undertrials tend to have restricted access to legal representatives for two reasons: Lack of resources and curtailed liberty to communicate with lawyers from within the jail premises. This is despite a 1980 Supreme Court ruling that Article 21 of the Constitution entitles prisoners to a fair and speedy trial as part of their fundamental right to life and liberty.

Undertrials often remain behind bars for years despite the provisions of Section 436A of the Code of Criminal Procedure (CrPC) which came into effect in 2005. This section mandates the release, on personal bond with or without surety, of undertrial detainees who have been imprisoned for half the maximum sentence they would have received if convicted for the offence they are charged with.

This section does not apply to those who could be sentenced to death or life term. But 39 per cent of those charged for crimes under the Indian Penal Code (IPC) couldn't be punished with life term or death penalty, Prison Statistics 2014 show.

More than 25 per cent of undertrial prisoners in 16 out of 36 states and Union territories have been detained for more than one year in 2014. Jammu and Kashmir leads this list with 54 per cent, followed by Goa (50 per cent) and Gujarat (42 per cent). Uttar Pradesh leads in terms of sheer numbers (18,214).

In June 2013, in a letter to the Supreme Court, former Chief Justice of India R.C. Lahoti had talked about how inhuman conditions persisted in 1,382 prisons despite a series of court and government orders.

About 6,000 undertrial prisoners were released between July 1, 2015, and January 31, 2016, However, those released were 2 per cent of undertrial prisoners in Indian jails.

The pendency rate of IPC crimes -- 84 per cent and 86 per cent in 2014 and 2015, respectively -- shows how slow the process of change will be.

One of the major causes of high pendency is vacancies in lower courts. It would take a minimum of 12 years to clear the 25 million pending cases in Indian courts.

There is also little awareness among police and prison inmates about Section 436A of the CrPC. This section, which is a procedural mandate under CrPC, is often mistaken for an offence under IPC, according to Amnesty International.

Non-functional UTRCs, discrepancies in prison records, poor management of information systems, lack of effective legal aid and cancellation of trials due to shortage of police escorts and video conference facilities are factors that keep the number of undertrial prisoners in Indian jails high, reported Amnesty International.

Human rights safeguards for undertrial detainees in Indian law

The police in India have wide ranging powers to make arrests. Once a person suspected of a criminal offence is arrested, they are supposed to be brought before a Magistrate within 24 hours by the police. This safeguard is intended to protect the accused from the possibility of custodial torture or other ill-treatment. Courts have held that a failure to produce an accused person before a magistrate during this stipulated time period makes the detention wrongful.

Once the accused person is brought before a magistrate, the magistrate may extend the period of detention in police or judicial custody for up to fifteen days if she determines that the investigation cannot be completed within 24 hours. If further investigation is required, the accused person may also be remanded in judicial custody – in 15- day periods – for up to 60 or 90 days, depending on the nature of the offence.

During this period, the accused person has a right to be released on bail, if they are accused of an offence categorized as 'bailable'. If the offence is categorized as 'non-bailable', the court can decide whether to grant bail or not, considering circumstances such as the gravity of the offence and the probability of the accused person absconding, or tampering with evidence, or intimidating witnesses.

The Supreme Court has ruled that bail, not jail, should be the norm, and that if the appearance of the accused person in court can be secured through other means, then it is not necessary to detain them. Once the court takes cognizance, remand can be extended in 15 day periods.

Article 39A of the Constitution of India states that free legal aid must be provided to ensure that access to justice is not denied because of economic or other disabilities. The Supreme Court of India has stated that the right to free legal aid is part of the right to life and personal liberty under Article 21 of the Constitution.

In the landmark 1979 case of Hussainara Khatoon v. State of Bihar, a petition brought before the Supreme Court revealed that an alarmingly large number of people were in prison for years awaiting trial. The Court observed that several undertrials accused of minor offences were being detained for periods even longer than their formal convictions. It ruled that every undertrial had a right to a fair and speedy trial, and recommended that states build a comprehensive legal aid framework to tackle the issue of excessive undertrial detention.

In 2005, the CrPC was amended to insert section 436A, which states that if an undertrial has served half the maximum sentence of the offence for which he has been charged, he can be released on a personal bond, as long as the offence is not punishable with a death sentence. In the same year, a public interest litigation was led before the Supreme Court in the Bhim Singh v. Union of India case, seeking effective implementation of section 436A. In 2012, the Ministry of Home Affairs issued a set of directives to reduce overcrowding of prisons by ensuring that states conduct periodic monitoring to identify undertrials eligible for release under section 436A.

In 2013, R.C. Lahoti, a former Chief Justice of India, wrote to the then Chief Justice Altamas Kabir, about what he described as the inhuman condition of prisoners in 1382 prisons across the country. The letter was taken up by the Supreme Court as a public interest writ petition. The social justice bench of the Supreme Court directed the relevant authorities to procure information pertaining to overcrowding of prisons and living conditions of prisoners. The Court reiterated the Home Ministry's directives.

In an interim order passed in 2016, the Court stated, "Unfortunately, even though Article 21 of the Constitution requires a life of dignity for all persons, little appears to have changed on the ground as far as prisoners are concerned and we are once again required to deal with issues relating to prisons in the country and their reform."

In February 2017, the Union Minister for Law wrote to Chief Justices of all High Courts stating that all stakeholders "need to take collective responsibility for ensuring that institutional mechanisms work seamlessly to ensure access to justice for the undertrial population".

In April 2017, the Law Ministry launched three new programs aimed at extending legal aid to marginalized people.

In May 2017, the Law Commission of India recommended in a report that provisions on bail in the CrPC be amended to facilitate a reduction in the number of undertrials in prison.

Prisoners' Rights

Right to free legal assistance

A person accused of a criminal offence has a right to free legal assistance, including when they are first produced before a magistrate. Article 39A of the Constitution provides that the state should provide legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The Legal Services Authority Act, 1987 was enacted towards providing "free and competent legal services" to people from vulnerable sections of society. It empowers relevant authorities to frame schemes, and utilize funds for dispensing equitable legal aid. The CrPC also provides that when an accused is presented before a criminal court, he is to be provided with legal representation if he cannot afford a lawyer.

In 1980, in the case of *Hussainara Khatun v. State of Bihar*, the Supreme Court ruled that the right to free legal services is implicit in the right to life and personal liberty guaranteed under Article 21 of the Constitution, as an "essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence".

The Court said that states should work towards building an effective legal aid system which could be easily accessed by the poor. Soon after this, in *Katri v. State of Bihar*, the Supreme Court directed Magistrates and Sessions Judges to inform accused persons about their right to free legal representation.²⁷ The Supreme Court has also set aside convictions on the ground that the accused did not have access to free legal representation. The Supreme Court has also detailed guidelines that would allow NGOs and other organizations to avail government support for their legal aid initiatives.

More recently, in a 2016 order passed by the Supreme Court in the *Re-Inhuman Conditions in 1382 Prisons* case, the Court directed legal aid lawyers to engage with the system in order to release undertrials. The Court remarked that the State and District Legal Service Authorities should empanel competent lawyers, in order to prevent 'legal aid for the poor' from becoming 'poor legal aid'.

The NALSA lays down policies for making legal services available and effective. It also allocates funds and grants to State Legal Services Authorities (SLSAs) and NGOs for implementing legal aid schemes. In every state, an SLA is expected to implement

policies as directed by NALSA to provide legal services and conduct Lok Adalats (alternative dispute redressal mechanisms). Legal services authorities are supposed to be set up at the district, and taluka (sub-district) levels. The Supreme Court and High Courts also have legal services committees to provide legal assistance to people from vulnerable groups.

Undertrials eligible for release under section 436a of crPc

Section 436A of the CrPC provides that where an undertrial has been detained for a period equal to half of the maximum sentence specified for the offence for which they are charged, they are eligible for release on personal bond, with or without sureties.

In 2014, the Ministry of Home Affairs issued detailed guidelines to the governments of all states and union territories on how eligibility for release under section 436A was to be determined. The guidelines clarified that where an undertrial is accused of multiple offences, the “half-time” is to be calculated for the offence that has the longest sentence. If the undertrial is accused of multiple offences and his dates of arrest are different, then the dates of detention will be calculated separately for each offence.

Problems and Solutions

An under-trial prisoner’s right against unnecessary detention and the procedure to secure his/her release is given under the Cr.P.C.

A. Problem: Indiscriminate arrests

The power of the police to arrest people is very wide and they arrest people even when they cooperate with the investigation and are not likely to evade trial. This results in unnecessary detentions.

Solution: Limiting the powers of arrest as proposed by the Code of Criminal Procedure (Amendment) Bill 2006 passed by both the Houses of the Parliament in December 2008 and awaiting the Presidential assent.

The Code of Criminal Procedure (Amendment) Bill 2006 amends the existing provisions for arrest, i.e. section 41 (and also inserts section 41A into the Cr.P.C). Section 41 limits the indiscriminate powers of arrest of police officers. A person cannot be arrested merely because there is a complaint against her/him. It must be a “credible” complaint/information and the police officer must “have reason to believe” that “such person has committed the said offence”. In cases involving an offence punishable with imprisonment up to a maximum of seven years, the police officer can arrest a person only under certain specified condition laid down in the law. The officer must record her/his reasons for arresting in writing. In cases, where the specified conditions are not met, the police officer may, instead of arresting a person, issue to her/him a notice of appearance. This requires the accused to appear before the police officer when required and to cooperate with the police officer in the investigation of the offence. This provision, if properly implemented, will lead to a vast reduction in the number of persons – accused for offences punishable up to 7 years – who would have otherwise ended up being detained in prison during the period of investigation, inquiry or trial of their offence.

B. Problem: Detention in bailable cases owing to poverty

Many poor people are detained in prisons for alleged involvement in bailable offences primarily because they are unable to furnish surety. This is a serious concern because in such cases bail is a matter of right and people end up spending long periods in jail merely because they are poor.

Solution: Amended section 436

Section 436 Cr.P.C., which deals with the right to bail in bailable offences was amended in 2005. It mandates the police or court to release an indigent person on personal bond without asking for any surety. The amendment allows an indigent person to execute a bond that s/he shall appear before the court and stand trial. The section states that the court shall consider any person who is unable to furnish bail within 7 days from the date

of her/his arrest as indigent. Therefore, a person accused for a bailable offence can be detained in prison for a maximum period of 7 days.

C. Problem: Delay in investigation

Many prisoners languish in prisons because the police do not finish investigation, and file the chargesheet in time. This is a very serious matter because such people remain in prisons without any inkling of a police case against them.

Solution: Section 167

Section 167 Cr.P.C. lays down the maximum period within which the police investigation must be completed and a chargesheet filed before the court. This period is 90 days for offences punishable with death, life imprisonment or imprisonment for a term of not less than ten years, and 60 days for all other offences. Where the investigation has not been completed within the stipulated timeframe, it is mandatory upon the Magistrate to release the accused on bail, provided he is ready to furnish bail. This provision shields the accused from suffering incarceration on account of the inability of the investigating agency to wind up its investigation.

D. Problem: Delay in trial in certain cases

Many prisoners are charged with a non-bailable offence which is not very serious and is triable by a Magistrate. They remain in prisons for long period because of the delay in trial.

Solution: Use section 437(6)

In a case triable by a Magistrate, section 437(6) makes it mandatory for a person to be released on bail where the trial has not concluded within 60 days from the first date fixed for taking evidence. The magistrate may refuse such release, but only after recording the reasons in writing.

E. Problem: Prolonged detention

Many under-trial prisoners are detained in prisons for long periods, which in some cases extend beyond the maximum period of imprisonment prescribed for the offence with which they are charged

Solution: Use section 436 A

Section 436A Cr.P.C.20 lays down the right of an undertrial to apply for bail once s/he has served one half of the maximum term of sentence s/he would have served had s/he been convicted. On a bail application filed under this section, the court shall hear the public prosecutor and may order the-

- 1) Release of such person on a personal bond with or without surety; or
- 2) Release of such person on bail instead of personal bond; or
- 3) Continued detention of such person.

This section further proscribes the detention of an undertrial beyond the maximum period of punishment prescribed for the offence that s/he is alleged to have committed. Therefore, in effect, this section prescribes the maximum period an undertrial can be detained in any case.

Undertrials and their Release: possible obstructions in effective implementation of the existing provisions even though the provisions to avoid unnecessary detention of prisoners have been in existence for years, they are not implemented, resulting in a large number of under-trial population within prisons. The reasons for non-implementation are known. Most prisoners who are unable to use the provisions under section 167 or 437(6) are not only unaware of their right to seek release but also too poor to furnish surety. It is imperative that the legislature amends these sections on the lines of section 436 so that poor people may be released on furnishing personal bonds in such cases where either the police have not been able to make out any case against them or the trial is not concluded within the stipulated time. In the absence of a legislative change, the judiciary must take a proactive role and release such people on personal bonds.

In so far as the non-implementation of the liberalized provisions under section 436 or the bail provisions under section 436 A is concerned, the primary reason is the lack of awareness amongst the under-trial prisoners. The law does not mandate the State Legal Services Authority, jail superintendent or the trial court to inform the accused about this law. Almost 3 years have passed since section 436A was introduced, but it is yet to have the impact that it sought to achieve. At the time of enactment, news reports stated that the introduction of this provision would impact as many as 50,000 under-trial prisoners across India. However, there has been no substantial change in the number of under-trial prisoners who languish in prisons bearing the physical and mental costs for an offence they might not have even committed.

Although some High Courts have issued directions for the release of under-trial prisoners under these sections, substantive results are yet to be seen. A decision of the Patna High Court²⁷ is instrumental in this regard wherein the Court suo moto initiated a PIL for the efficient and effective implementation of section 436A Cr.P.C. The Court explained the role of the Jail Superintendent, the Inspector General (Prisons) and the legal services authorities for the implementation of this section. In its directives, the Court entrusted the Jail Superintendent with the primary duty to inform the under-trial prisoners of the benefits of section 436A Cr.P.C. The Inspector General (Prisons) was attributed the role as a 'Monitor' for the whole process.

In a disposition regarding section 436 Cr.P.C., the Bombay High Court in October 2008 took up the issue of under-trial prisoners in bailable cases who could not furnish bail.²⁸ During the proceedings, it was submitted that in one of the prisons within Bombay itself, 1660 out of 2296 inmates were booked in for bailable offences. The Court decided to undertake the task of monitoring the situation for a year and directed all Sessions Judges of the state to call for periodical records from the magistrates and jail superintendents. With regard to the implementation of section 436, the court stated that the state government and jail authorities should not ignore the law and allow such persons to stay inside jails.

An effective implementation of the various provisions and amendments of the Cr.P.C. is vital to ensure a just criminal justice system which assures the presumption of innocence and the right to liberty to an accused, and prevents her/him from suffering the deprivations that incarceration offers.

What role can the prison authorities and the prison visitors/monitors play?

In India, the subordinate courts are assigned the primary task of ensuring the enforcement of the provisions under the Cr.P.C.³⁰ In addition to the judiciary, prison authorities and prison monitors also have a significant role to play in order to ensure justice to under-trial prisoners.

Prison Authorities

The custody and security of prisons and prisoners within its are the fundamental duties and responsibilities of every member of the prison staff. The executive personnel in prison i.e. the superintendents, additional superintendents, deputy superintendents, assistant superintendents and the guarding staff are entrusted with the primary responsibility to ascertain that the human rights which the prisoners are entitled to are not impinged upon and restricted beyond the limit inherent in the process of incarceration itself.

Under the Prisons Act 1894, the superintendent must maintain a register of all prisoners admitted and a book showing when each prisoner is to be released. The superintendent has easy access to information relating to the period of detention of each under-trial prisoner under his custody, and hence it should be his duty to inform the prisoner when s/he might become eligible to apply for bail under the various provisions of the Cr.P.C. Indeed, the Patna High Court seems to agree with this contention and has directed the superintendent to inform the prisoners of the benefits of section 436A.

Arguably, the prison staffs are the primary custodians of prisoners, and have the advantage of being in direct contact with prisoners. They should undertake the responsibility of making prisoners aware of the benefits that might accrue to them under these provisions. They should impart legal information in all forms, written or oral among under-trial prisoners to make them aware of their right of release under the relevant provisions of the Cr.P.C.³⁵ The prison authorities should also encourage and assist the dispatching of applications for free legal aid to the competent authorities in cases where the prisoner cannot afford legal assistance. This paper believes that the prison authorities stand at the forefront for the effective implementation of the provisions of the Cr.P.C. which secure release of undertrial prisoners unnecessarily detained in prisons.

Prison Visitors

The concept of the Prison Visiting System is found under the Prisons Act 1894. The system was introduced to provide transparency within the prisons and bring some degree of accountability to the prison management. Prison visitors can be classified as either official or non-official. Apart from these, other external visitors to prisons can also be appointed by the courts and the Human Rights Commissions. This system is an effective tool to improve prison conditions as well as ensure observance of prisoners' legal rights.

Prison visitors stand at a unique place within the prison system wherein they have a two-fold role to discharge. On the one hand, they act as the eyes and ears of the prisoners to the outside world by providing the prisoners knowledge about their legal rights. On the other hand, they also act as the eyes of the outside world to scrutinize what goes on within the prison walls. Thus a prison visitor not only acts as an accountability mechanism but also as a custodian for prisoners and their rights.

Prison visitors act as guardians to ensure that humane conditions prevail within the prison walls. A prison visitor is well placed to ensure that the directions issued by the courts, the government and the Human Rights Commissions are properly implemented within the prison. A prison visitor is able to enquire into the complaints of the prisoners and assist them in taking remedial action. Prison visitors may also undertake certain special responsibilities with regard to under-trial prisoners. They may periodically check the register, enlisting the period of detention for prisoners, which is maintained by the Superintendent under the Prisons Act, or they may ask for such information specifically. Where they find that there are prisoners who can be released under the provisions of the Cr.P.C., they can take steps to assist such prisoners in seeking release. The prison visitors can either inform the prisoner of his rights and ways in which he may apply for release or ask the prison authorities to take appropriate action. In future visits, the prison visitors can follow up these cases to ensure that no undertrial has been unnecessarily detained in prison.

Prison visitors can also take steps to create awareness of legal rights and procedures among both the prisoners and prison staff. They may also try and inform them of the latest amendments that are introduced in the law and keep them updated regarding court guidelines on concerned issues. Therefore, a prison visitor has a vital role to play in ensuring compliance with the numerous guidelines, judgments and legal provisions that are introduced from time to time.

Conclusion : My Opinion

The basic principle of criminal jurisprudence that every person shall be presumed innocent till proven guilty but do responsible authorities really care to this theory ?

No person should be made to suffer the deprivations of incarceration before she/he has been proven guilty in the eyes of law. By depriving them of their right to liberty through unnecessary detention, the existing system "punishes" the accused in violation of the basic principle of criminal jurisprudence that every person shall be presumed innocent till proven guilty. To ensure justice for under-trial prisoners, it is essential to effectively implement the existing provisions of the Cr.P.C. All the agencies of the criminal justice system including the police, the judiciary, the prosecution, the defence lawyers and the

prison department must adopt a concerted and a well coordinated approach to ameliorate the plight of the 'forgotten souls' i.e. under-trial prisoners, who languish in prisons unnecessarily.

Home Ministry guidelines - 13 February, 2017 Union Law Minister, Ravi Shankar Prasad, said "All the stakeholders — the Government of India, the judiciary, including the Legal Services Authority — need to take collective responsibility for ensuring that institutional mechanism, such as UTRC and legal aid system, work seamlessly to ensure access to justice for the undertrial population" .

Despite executive guidelines, legal reforms, and Supreme Court judgments, the proportion of undertrials in prison population has stubbornly hovered around this level over the last decade.

Unless existing laws and policies are strictly enforced, and the legal aid system is reformed, the rights of thousands of under-trials will remain at risk.

I strongly believe that this problem could be minimized by educating the prisoner about their rights and proper counseling. The State should look after this neglected part and should take responsibilities by following the guidelines of UDHR, CrPc and Supreme courts.

At Last

There are many So-Called Human Rights NGOs and activists, They must fight for undertrials Prisoners' Human Rights, specially for them who are poor and illiterate. I am one of them. I must fight for undertrials prisoners' Human Rights after completing my LLB (now in second years) and I will provide free legal aids to poor and illiterate prisoners.

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