
THE LOST SOULS: SHEDDING LIGHT ON THE ORDEAL OF UNDERTRIAL PRISONERS IN INDIA

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ABSTRACT

This paper delves into the plight of undertrial prisoners in India, individuals presumed innocent until proven guilty yet languishing in jails due to systemic issues. Originating from a landmark 1979 Supreme Court decision emphasizing the right to a speedy trial, the term "undertrial" gained clarity in the 78th Law Commission Report. Despite legislative strides, two-thirds of India's prisoners are undertrials, facing challenges exacerbated by the pandemic. This paper navigates the adversities faced by undertrials, ranging from prison bias to societal judgment, unveiling the multifaceted impact on mental health. It scrutinizes the judicial patchwork safeguarding their rights and elucidates the rise in undertrials, attributing responsible factors. The analysis culminates in practical suggestions to revitalize India's criminal justice system, aiming for a fair and just legal process for all. The urgent need for legislative reform is underscored to uphold human dignity and restore public trust in the justice system.

1. EXPLORING THE DEFINITION OF UNDERTRIAL

Undertrials are people in jail who haven't been found guilty of a crime yet. They are waiting for their trial in court and, according to the law, they are considered innocent until proven otherwise. But even though they are supposed to be in "judicial custody," they usually end up in regular jails.

Back in 1979, The Indian Express newspaper shed light on the tough situation of undertrial prisoners.¹ They reported on the terrible conditions faced by many people who spent years in jail without even having a trial. This led to a court case in the Supreme Court. In 1979, the Supreme Court made an important decision in the case of **Hussainara Khatoon v. State of Bihar (1979)**.² They said that a speedy trial is a fundamental right for people accused of crimes.

The term "undertrial" was explained in the 78th Report of the Law Commission of India in 1979. Before that, the rules for undertrial prisoners were based on laws from the colonial era in 1898. But in 1973, the Indian Parliament passed a law called the Code of Criminal Procedure (CrPC) that governs criminal cases all over India.

Nowadays, about two-thirds of all prisoners in India are undertrials. This means out of 3.81 lakh prisoners in India, 2,78,000 are undertrials. Surprisingly, the number of undertrial prisoners went up from 3,23,537 in 2018 to 3,30,487 in 2019, which is an increase of 2.15%. Some of these undertrials are women, some are children, and some are convicted prisoners who are still waiting for their cases to finish.³

The idea of keeping undertrials in custody is to make sure their trials are fair and that they can't influence witnesses. However, the big problem is the delay in these trials, and that's a human rights issue. This delay is the main reason why there are so many undertrial prisoners.

In some cases, undertrials are the only breadwinners in their families, so when they're in jail, their families struggle financially. Sometimes, women who are undertrial prisoners have to live in jail

¹ The Indian Express, <https://indianexpress.com/article/news-archive/web/starting-the-pil-revolution> (last visited 2nd December, 2023)

² Hussainara Khatoon v. State of Bihar AIR 1979 SC 1369

³ NCRB Prison Statistics India 2020, <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>. (last visited on 2nd December, 2023)

with their young kids because they don't have any other options. Besides the hardship of being in jail, being seen as a criminal can also hurt a person's mental health. Living as an undertrial prisoner is really tough.

2. NAVIGATING THE CHALLENGES FACED BY UNDERTRIALS

William Edward Gladstone once said, "*Justice delayed is justice denied.*" This means if justice takes a long time to happen, it's as if there's no justice at all. Think about someone who's accused of a crime and sits in jail for years. Later, it's proven they're innocent. But by then, the harm has already been done. The delay in giving them justice makes them suffer physically and mentally because of the prison environment.

In India convicted prisoners and undertrial prisoners are often treated the same way, even though there's a law from 1894 that says they should be kept apart.⁴ Because of a lack of space in jails, they end up living together. This can be really hard for undertrial prisoners and harm their mental health.

2.1 PRISON BIAS

In 2018, there was a shocking incident caught on video in Uttar Pradesh's Hamirpur District Jail. In the video, convicted prisoners were seen harshly whipping undertrial prisoners with leather belts. Even the jailor didn't step in to stop this. It turns out that in Uttar Pradesh jails, this kind of thing was happening regularly. New undertrial prisoners were being threatened by both convicted prisoners and jail staff to get money and do work inside the jail.⁵

This is just one example of how undertrial prisoners were being mistreated. It made them lose confidence and feel scared and frustrated. The prison environment itself can cause problems. Even if an accused person is later proven innocent, they can still suffer from mental anxiety and social stigma. Being in prison can make people feel angry, frustrated, and anxious, which can lead to

⁴ The Prisons Act, 1894, § 27(3), No. 9, Acts of Parliament, 1894 (India)

⁵ Times Now, <https://www.timesnownews.com/mirror-now/in-focus/article/whipped-like-animals-convicts-torture-undertrials-in-up-jail-jailor-approves/238961> (last visited on 3rd December, 2023)

mental health issues.⁶

The prison environment plays a big role in prisoners' mental health. Some key factors include being isolated, not having much mental activity to do, being cut off from family, and not having a comfortable environment.⁷

2.2 PANDEMIC IMPACT

When the pandemic hit in 2020, things got even tougher for undertrial prisoners. Their families couldn't come to visit them in prison, and this made them feel even lonelier. Not being able to see their loved ones affected their mental health. Because of the pandemic, the trials for their cases got delayed, which made them even more anxious and frustrated.

Feeling alone and missing their families made them feel depressed. The number of unnatural deaths in prisons went up by 18.1% from 2019 to 2020. The Supreme Court of India has said that being in jail before a trial can be really tough. People who are presumed innocent have to deal with the mental and physical challenges of jail life, often under even tougher conditions than convicted prisoners. They can lose their jobs and can't help prepare their defence. And the burden of their detention often falls heavily on their innocent family members.⁸ In cases where the accused person is the main earner for the family, the whole family can suffer from difficult circumstances.

2.3 SOCIETAL JUDGMENT

When an innocent person is an undertrial prisoner, they also have to deal with how society sees them. They face public embarrassment and humiliation. Even if the court later proves they are innocent, people treat them badly.

In other words, even when they are declared not guilty by the court, society still treats them like they did something wrong. This makes it hard for them to find jobs and make a living. So, these

⁶ Neelu Sharma, "Psychiatric Morbidity in Under Trial Prisoners" 4 International Journal of Health and Research 177 (2014)

⁷ J Nurse, "Influence of environmental factors on mental health within prisons: focus group study" 327 British Medical Journal 480 (2003)

⁸ Moti Ram v. State of Madhya Pradesh, AIR 1978 SC 1594

prisoners, who are suffering because justice takes so long, have to endure difficulties not just in prison but also when they're out of prison. This makes them lose confidence and might lead to mental health problems.

3. EXPLORING THE JUDICIAL PATCHWORD: EMPOWERING THE RIGHTS OF UNDERTRIAL PRISONERS

In India, the Constitution recognizes and incorporates many rights outlined in the United Declaration of Human Rights. However, there is no dedicated provision explicitly addressing the rights of undertrial prisoners. The Supreme Court looks to interpret and apply principles like the "golden triangle" and Articles 38, 39, 39A, and 42 from the directive principles of the Indian Constitution to safeguard the rights of undertrial prisoners.

In the case of **D.K. Basu v. State of West Bengal (1997)**,⁹ the Supreme Court firmly established that custodial torture is a direct violation of Article 21, which guarantees the right to life and personal liberty. This inhuman act can severely damage a person's dignity, and it was recognized that law enforcement officials often use force against individuals under their authority. To achieve broader justice, such practices must be eliminated.

Justice Krishna Iyer has emphasized the importance of human dignity, a fundamental principle of the Indian Constitution, and stressed that it cannot be compromised, even by prison staff. Furthermore, the violation of Article 21 has been declared in cases of mistreatment of female prisoners. The court mandated that all indigent accused individuals, regardless of gender, should receive free legal counsel.

The evaluation of undertrial prisoner rights can be summarized in following sub-headings:

3.1 SPEEDY TRIAL

In **Kartar Singh v. State of Punjab (1981)**,¹⁰ the court emphasized that the right to a speedy trial is a fundamental part of the right to life and liberty guaranteed by Article 21. This right begins

⁹ D.K. Basu v. State of West Bengal AIR 1997 SC 416

¹⁰ Kartar Singh v. State of Punjab AIR 1981 SC 928

from the moment of arrest and continues throughout all stages of the legal process.

3.2 FREE LEGAL AID

The court, in *Hussainara Khatoon's*¹¹ case, determined that the right to free legal aid, implicit in Article 39A, is crucial for ensuring a fair and reasonable legal procedure. The legal aid should be provided not only at the start of the trial but also when the accused person first appears before the magistrate. The court has consistently emphasized the importance of informing accused individuals of their right to a lawyer at the state's expense.

3.3 COMPENSATION

Under Article 32 and 226, undertrial prisoners have the right to seek compensation from the Supreme Court and High Court for any violations of their rights while in police custody. In *D.K Basu* case¹² the Supreme Court held that compensation for unconstitutional deprivation of fundamental rights is based on strict liability and is available in public law. This is in addition to the claim for damages in private law for wrongful acts by public servants. It serves to penalize wrongdoers and places responsibility on the state for failing in its public duty to protect citizens' fundamental rights.

In **Rudul Shah v. State of Bihar (1983)**,¹³ the court highlighted that one way to prevent rights violations and ensure compliance with Article 21 is to require violators to provide monetary compensation. The right to compensation is seen as a remedy for unlawful acts committed in the name of public interest by the state.

In **Bhim Singh v. State of J&K (1986)**,¹⁴ the court awarded compensation and emphasized that police officers, as custodians of law and order, must respect personal liberties and not engage in lawless acts.

¹¹ *Supra* note 2, at 2

¹² *Supra* note 12 at 7

¹³ *Rudul Shah v. State of Bihar* AIR 1983 SC 1086

¹⁴ *Bhim Singh v. State of J&K* AIR 1986 SC 494

4. UNLOCKING THE MYSTERY: WHY UNDERTRIALS ARE ON THE RISE

Even though the government's Executive and Judicial branches have started many programs and made promises, they haven't been able to make things better. Many people are stuck in prison without their cases getting a chance to be heard. This is because there are problems in how the criminal justice system works, like complicated procedures and structural issues. Following sub-headings shows the genuine reasons for their prolonged detention:

4.1 SHORTAGE OF JUDGES

The shortage of judges is one of the reasons behind the issue of undertrial prisoners in India. When there are not enough judges available to hear cases, the legal process gets slowed down. This means that people who are waiting for their trials to start can end up spending a long time in jail without a verdict.

Imagine a queue for a ride at an amusement park. If there are only a few staff members operating the ride, the line moves very slowly, and people have to wait a long time for their turn. Similarly, in the Indian legal system, the shortage of judges is like having too few "staff members" to handle all the cases. As a result, cases take a long time to be heard in court.

4.2 FAILURE TO ATTAIN BAIL

In India, sometimes undertrial prisoners face difficulties in getting bail, and this can be a significant reason for their continued incarceration. One important legal aspect related to this issue is Section 436A of the Code of Criminal Procedure.

Section 436A is a legal provision that is meant to help undertrial prisoners who have already spent a considerable amount of time in jail while awaiting their trial. It allows for the release of undertrial prisoners on bail if they meet certain conditions. These conditions include:

1. If the undertrial prisoner has spent more time in jail awaiting trial than the maximum punishment for the offense they are charged with, they are entitled to bail.
2. If the undertrial prisoner is accused of a non-bailable offense but has already spent half of

the maximum punishment for that offense in jail, they can also apply for bail.

This section aims to prevent the unjust and prolonged detention of undertrial prisoners. It acknowledges that being in jail without a conviction can be a form of punishment in itself.

So, when undertrial prisoners are unable to secure bail, it means that they are not benefiting from the relief provided by Section 436A. This can lead to overcrowded jails and long periods of imprisonment, even for those who might be innocent or eligible for bail under the law. Addressing this issue is important to ensure a fair and just legal system in India.

4.3 CHALLENGES IN PRISON SYSTEM

Prisons are managed by people like guards and superintendents, and they are the most important in solving problems with undertrials in the justice system. There's a law called the Prisons Act from way back in 1894. It says that the Superintendent must keep a record of all prisoners coming in and when they should go out. All the rights and freedoms of prisoners, including undertrials, are taken care of by the prison authorities.

But, in most prisons in the country, they don't keep good records of undertrials, and they don't teach them how to use their rights under Section 436A. The prisons don't have enough staff or modern equipment to do their job properly. This is why the prison system isn't working well.

4.4 POLICE AUTHORITY

Another big reason for having so many prisoners is that sometimes the police arrest people too easily. They have a lot of power to arrest people under the law (CrPC). This means they can arrest people even if they are helping with an investigation. But the courts say that arrest should be the last option, not the first one.¹⁵ But this hasn't really stopped the problem.

In 2006, they changed the law to limit how police officers can arrest people. Now, they can only arrest someone if they have a good reason to believe that the person really did a crime, and the

¹⁵ Joginder Kumar v. State of Uttar Pradesh, AIR 1994 SC 1349

complaint against them is believable. Plus, this rule is only for serious crimes that could lead to seven or more years in jail.¹⁶

The police officer has to write down why they arrested the person. If the conditions aren't met, the police can just tell the person to show up when needed for the investigation instead of arresting them.¹⁷ If these rules are followed, we'll have fewer people in jail.

4.5 LACK OF LEGAL AWARENESS

Many people in jail who haven't been proven guilty don't know much about the law. Most of them are poor, can't read well, belong to lower social classes, or are part of religious groups that are smaller in number. These folks often end up in jail more than others. Many times, they don't have a lawyer to help them and they face a lot of unfair treatment.

According to the Constitution, these unproven prisoners should be able to talk to a lawyer they choose. The law also says they should get legal help, which is important for a fair process. But many of these prisoners don't ask for bail or legal help because they don't know how or can't find a lawyer. Sadly, many of them stay in jail for a long time without understanding their situation or knowing what they can do because they don't have enough help with the law.

4.6 REJECTED HELP WITH THE LAW

It's a rule that poor people should get free help with legal matters, and the government has to make sure of it. Not only at the start of a trial but also at the beginning and the end of it, those who can't afford a lawyer should get help. We really need to make big changes to how we provide this legal aid. Both the central and state governments should strongly support this, as it's very important for thousands of poor people who might not know much about the law.

The Law Commission's idea of having new lawyers work with legal aid for two years should happen quickly. We also need a system where there are lawyers who help people for free. The Supreme Court has said that the right to get free legal help is in the Constitution and it's crucial for

¹⁶ Code of Criminal Procedure, 1973, § 41, No. 2, Acts of Parliament 1974 (India)

¹⁷ Code of Criminal Procedure, 1973, § 41A, No. 2, Acts of Parliament 1974 (India)

a fair and just process when someone is accused of a crime. They also said that it's not enough to wait for poor and uneducated people to ask for help. If someone can't pay for a lawyer because they are poor, the judge has to tell them that they can get free legal help from the state.

5. SUGGESTIONS

5.1 REVITALIZING INDIA'S CRIMINAL JUSTICE SYSTEM: A PATH TO PROGRESS

In India, there's a big problem with people who are in jail but haven't been found guilty of a crime yet. To fix this, we need to do a lot of things. We can make the system better by doing these things:

1. Sorting Prisoners: We should put prisoners in different groups based on how long their sentences might be. Those who are waiting for their trial should have their own place in jail or somewhere similar.

2. Legal Help: Before someone is called a prisoner, they should get help from a lawyer. This lawyer should report to a group that watches over lawyers to make sure they do a good job. This helps make sure everyone gets the same kind of help.

3. Bail Rules: We should change how bail works so more people can use it. Bail is like a promise to follow the rules and come to court. The amount of bail should depend on how much money someone has. If someone doesn't follow the rules, they can get in trouble for that. This can help make sure everyone is treated the same way.

5.2 EMPOWERING EQUALITY: CREATING A FAIR AND JUST SYSTEM FOR ALL

4. Quick Release: If someone has been in jail for a while and is still waiting for their trial, we should let them go if they've been good. The rules about this should be very clear, and we shouldn't ask for too much money as a promise.

5. Helping After Release: Once people get out of jail and they weren't guilty, the government should give them money to make up for the time they spent in jail. This is something some other countries do to make things right. We should change a law that says how much money they can

get. We should also have special workers to help prisoners and their families when they get out of jail.

6. More Judges: We need more judges to make sure everyone gets a fair trial quickly. Right now, we don't have enough judges. We can fix this by hiring more judges and making it easier for people to become judges.

6. CONCLUSION

The practice of detaining individuals in jail before they have been proven guilty through a fair legal process raises significant concerns. This is fundamentally at odds with the principle that nobody should face punishment until their guilt is established in a court of law. Undertrial prisoners, who have not been convicted of any crime, often find themselves in jail, effectively serving a form of punishment before their guilt is determined. This practice is particularly unfair because the legal system is generally expected to give the benefit of the doubt to the accused. It is unjust to punish someone based solely on suspicion of a crime. Even if a person is declared innocent after spending years in jail, the government often fails to compensate them for the irreplaceable lost time.

One disturbing aspect of undertrial prisoners is that they often share similar living conditions and legal responsibilities with convicted inmates. This blurring of lines in the justice system raises questions about its effectiveness and fairness. Moreover, a disproportionate number of undertrial prisoners come from disadvantaged backgrounds, suggesting that societal factors contribute to their incarceration without conviction. Their prolonged detention is becoming a severe violation of the human rights of undertrial prisoners. Thus, the need for change is evident.

Indian lawmakers must address this issue urgently, by enacting new laws that protect human dignity and uphold people's rights to life and personal freedom. This necessitates substantial changes in how investigations and trials are conducted in India, with the ultimate goal of restoring public trust in the Indian justice system.