
SPEEDY TRIAL UNDER ARTICLE 21: JUDICIAL RECOGNITION AND THE CONTINUING CRISIS OF UNDERTRIAL DETENTION IN INDIA

Prisha J Chanchani, B.A.LL.B. (Hons.), SVKM NMIMS Kirit P. Mehta School of Law,
Mumbai

ABSTRACT

The right to a speedy trial has been recognized to be a part of the right to life and personal liberty in Article 21 of the Constitution of India. This is after the historic ruling in *Hussainara Khatoon v. State of Bihar*, the Indian court has many times pointed out that the long pre-trial detention process is a violation of the fundamental tenets of fairness and process of due procedure. Nevertheless, in spite of such constitutional recognition, the proportion of Undertrial prisoners in the Indian prison population remains a disproportionately large share of the total population, which indicates a chronic disjuncture between constitutional ideals and criminal justice reality.

The paper will be a discussion and analytical treatise on the right to speedy trial in India to be applied to Undertrial prisoners. It compares the development of the Article 21 jurisprudence by the major judicial pronouncements and analyzes the procedural system of criminal trials according to the Code of Criminal Procedure. The paper is based on secondary empirical data, such as National Crime Records Bureau (NCRB) data and prison statistics and prison conditions reports, to indicate that systemic delays, restrictive practices in bailing, socio-economic deprivation, and inefficiencies in the institutions play as contributing factors to the increased time in undertrial detention.

It states that even though judicial interpretation has greatly extended the right to speedy trial, due to lack of proper procedural enforcement measures, the right has been rendered virtually meaningless in reality. It has ended by highlighting the necessity of structural and procedural changes so as to make constitutional guarantees become relevant to the protection of undertrial prisoners.

Keywords: Right to Speedy Trial, Undertrial Prisoners, Article 21, Criminal Justice System, Procedural Due Process.

1. Chapter I – Introduction

1.1. Concept of Speedy Trial

The Constitution of India in article 21 gives the ruling that no human being shall be subjected to deprivation of his life or personal liberty without reference to the procedure laid down by the law. The Supreme Court greatly increased the scope of this provision in *Maneka Gandhi v. Union of India*, in which case it was ruled that such procedure should be fair, just and reasonable.¹ Over years, via judicial interpretation Article 21 has been made to encompass a number of procedural protections one of them being the right to a speedy trial. This was well laid down by *Hussainara Khatoon v. State of Bihar*, the Supreme Court acknowledged speedy trial as part of the right of life and personal liberty.²

Speedy trial is a right that the protection of individual liberty greatly depends on, especially where the State is involved in criminal prosecution with the possibility of losing either life or liberty. Speedy trial is one of the fundamental goals of the criminal justice system because excessive time wastage is the opposite of the ideal justice. Poorly trialed inmates are individuals charged with criminal offences that are not convicted but remain in judicial custody take particular impact with respect to the delays in the investigation and trial.

The very logic behind the acknowledgment of the speedy trial as a constitutional right is to allow the accused not to suffer harassment and extended uncertainty at the hands of the law system, but, at the same time, protect the interests of the victims by granting them justice as quickly as possible. As much as it is essential that criminal cases should be determined within the shortest time possible, there should be no compromise on the issue of fairness and due process. The adage that justice hurried is justice buried highlights the need to ensure a sense of fairness in procedure coupled with judicial expediency.

The Code of Criminal Procedure and various other laws related to the criminal procedure are aimed at making criminal proceedings at the various levels swiftly disposed of. Nevertheless, delays often occur because of non-availability of witnesses/counsel, adjournment, over-scheduling of court dockets, failure to deliver day hearings and delays in the delivery of verdicts. These delays are not only harmful to an accused and the victim but affect the

¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

² *Hussainara Khatoon v. State of Bihar*, (1980) 1 S.C.C. 81, 84 (India)

confidence that people have in the justice delivery system. The unjustified long-term confinement leads to the further loss of personal freedom without the sentence.

Judicial decisions have made it clear that the right to speedy trial is applicable in all the phases of a criminal case such as investigation, inquiry, trial, appeal, revision and retrial. It follows that the constitutional guarantee in Article 21 does not just refer to the trial only but the entire criminal process.

1.2.Speedy Trial and Personal Liberty

The promise of individual freedom by Article 21 of the Constitution does not just mean protection against unreasonable deprivation of life or liberty but also entails the right to a trial which is fair and just. In *Maneka Gandhi v. Union of India*, the Supreme Court unanimously held that the procedure provided in the law, as provided under Article 21, must be fair, just and reasonable, rather than arbitrary, fanciful or oppressive.³

Within this expanded understanding of Article 21, the right to a speedy trial emerges as a crucial safeguard of personal liberty. Prolonged criminal proceedings subject an accused to continuous uncertainty, anxiety and social stigma even before guilt is judicially established. The denial of a reasonably expeditious trial therefore operates as a form of punishment without conviction, striking at the core of the right to personal liberty.⁴ Delay in the criminal justice process transforms lawful detention into arbitrary incarceration, particularly in cases where the accused remains in custody for extended periods.

Article 21 is directly connected to the concept of human dignity and personal liberty is inseparable. The Supreme Court has always appreciated the fact that the right to life always contains the element of dignity and any procedure that compromises dignity is bound to fail the constitutional scrutiny of constitutionality.⁵ In criminal matters, long periods of detention, numerous adjournments and slow adjudication have destroyed the dignity of an accused by leaving the individuals as procedural convenience and not as citizens entitled to their rights. This effect is most visibly experienced by the under trial prisoners who are still placed under limitations to liberty even though a decision on guilt has not been made.

³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁴ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

⁵ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

The presumption of innocence, which is one of the main principles of criminal jurisprudence, supports the relation between speedy trial and personal liberty even more. An accused is innocent until confirmed guilty and a prolonged denial of liberty in the process is a grave constitutional issue. Delays cause the presumption of innocence to become deceptive because once the delay leads to a long time of incarceration of the undertrial prisoner, you have a circumstance in which the accused is essentially experiencing the punishment of conviction without safeguards of a field trial.⁶

The scholarly debate has pointed out the contradiction existing between the need to deliver expeditious justice and the need to have procedural fairness. Excessive haste is indeed de facto a threat to the quality of adjudication; nevertheless, the unreasonableness of delay itself is equally and arguably more destructive of individual liberty.⁷ The right to speedy trial must therefore be construed not as a demand to administer justice in a rush, but rather, as a constitutional requirement to avoid unnecessary and groundless delay which has a disproportionate impact on the suspect.

Referring to this, the right to speedy trial serves as a pivot link of the procedural law and the constitutional substantive protection. It guarantees that the criminal justice system does not become an instrument of long term deprivation of liberty and asserts that personal liberty contained within Article 21 should be safeguarded not just at the moment of arrest, but throughout the criminal process as a whole.⁸

1.3.Under trial prisoners in India

Undertrial prisoners refer to the group of persons accused of criminal acts and are under judicial custody awaiting the conclusion of investigation, inquiry or trial. Undertrial also, unlike convicts, have not been proved guilty by the competent court of law and still had the constitutional presumption of innocence. However, they still lack the freedom to act as individuals over prolonged periods, usually due to the delays taken by procedures and not the seriousness of the alleged crime.⁹

The prison population in India is typified with a disproportion of low number of undertrial

⁶ State of U.P. v. Naresh, (2011) 4 SCC 324.

⁷S.N. Sharma, Fundamental Right to Speedy Trial: Judicial Experimentation, 25 J. INDIAN L. INST. 1 (1983).

⁸A.R. Antulay v. R.S. Nayak, (1992) 1 SCC 225.

⁹State of Rajasthan v. Balchand, (1977) 4 SCC 308.

prisoners. Undertrial in the Prison Statistics India published by the National Crime Records Bureau indicate that this has been a consistent pattern of the criminal justice system where almost two-thirds of the entire prison population is always undertrial as opposed to being convicted.¹⁰ Although the Constitution and procedural legislation stress on liberty and due process, the fact that undertrial still predominate in the prisons speaks of a structural incongruity between theory and practice when it comes to legal principles.

The under-trial prisoners are some of the most adversely affected by the criminal justice process delays. The long before trial detention subjects them to overcrowded prisons, loss of livelihood, social stigma, and fallen mind even though they had not been found guilty. Undertrial in most instances end up serving a sentence longer than the maximum term spelt out by the alleged crime, thereby, the delay acts as a punishment mechanism and the pre-trial detention becomes punishment in itself.¹¹ This fact is crucial in highlighting the reason as to why undertrial prisoners are the most vulnerable group of people in the criminal justice system and why analysis of the right to speedy trial should inevitably focus on the experiences of undertrial prisoners.

1.4. Research Questions, Hypothesis and Methodology

In light of the constitutional recognition of the right to speedy trial and the persistent challenges faced by undertrial prisoners in India, this paper seeks to address the following research questions:

1. How has the Indian judiciary interpreted and developed the right to speedy trial under Article 21 of the Constitution?
2. To what extent has judicial recognition of the right to speedy trial translated into actual relief for undertrial prisoners in practice?
3. What procedural, institutional, and socio-economic factors contribute to prolonged undertrial detention in India?
4. Why do existing legal safeguards under the Code of Criminal Procedure, including bail

¹⁰ National Crime Records Bureau, *Prison Statistics India 2022* (Ministry of Home Affairs, Gov't of India 2023).

¹¹ Vijay Raghavan, Undertrial Prisoners in India: Long Wait for Justice, 51 *ECON. & POL. WKLY.* 17 (2016)

jurisprudence, fail to effectively prevent excessive pre-trial detention?

Based on these questions, the paper proceeds on the hypothesis that although the right to speedy trial is firmly embedded within Article 21 jurisprudence, structural inefficiencies, procedural delays, and socio-economic inequalities significantly hinder its effective realization for undertrial prisoners. Consequently, the constitutional guarantee often remains aspirational rather than enforceable in practice.

This research adopts a doctrinal and analytical methodology, supported by secondary empirical data. Judicial decisions of the Supreme Court and High Courts, provisions of the Code of Criminal Procedure, Law Commission Reports, and academic literature have been analyzed to examine the evolution and scope of the right to speedy trial. In addition, secondary data from official sources such as the latest available Prison Statistics India published by the National Crime Records Bureau, along with scholarly studies and policy reports, have been utilized to assess the ground realities of undertrial detention and procedural delay within the criminal justice system.

2. Chapter II - Constitutional Development of the Right to Speedy Trial

2.1. Article 21 and Due Process

Prior to *Maneka Gandhi v. Union of India* the interpretation of Article 21 was characterized by a formalistic approach that was narrow. In *A.K. Gopalan v. State of Madras*, the Supreme Court, determined that the term procedure established by law simply meant that there needed to be a lawfully enacted procedure, regardless of whether it was fair or reasonable.¹² The Court did not believe that any principles of natural justice or substantive due process could be inferred into Article 21, so long as the act did not amount to depriving one of personal liberty. This interpretation greatly restricted the constitutional protection that could be afforded to persons who suffered State action and turned Article 21 into a mere show-business thing instead of being a substantive protection of liberty.

In *A.K. Gopalan*, the ruling served the effect of shielding the act of legislation against judicial review due to fairness, which meant that arbitrary and oppressive procedures were allowed to proceed within the precincts of constitutional legality. Procedural guarantees of this type, like

¹² *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

safeguard against undue detention or unreasonable delay of a criminal trial, therefore had little constitutional backing. Article 21 was an insignificant protection against systemic injustice in the criminal process during this stage as it concerned the presence of procedure rather than its qualitative substance, thus providing little protection against systemic injustice in the criminal process.¹³

With the seminal ruling of *Maneka Gandhi v Union of India*, this restrictive interpretation was changed radically. Leaving the formalism of *A.K.Gopalan*, the Court equated that the procedure laid down by the law in Article 21 should be fair, just, and reasonable and not arbitrary, fanciful, and oppressive.¹⁴ The Court further harmonized Articles 14, 19, and 21, recognizing that personal liberty could not be curtailed by a procedure that failed to meet standards of substantive fairness. This marked the emergence of due process like protections within Indian constitutional jurisprudence.

The Article 21 expansion that occurred after *Maneka Gandhi* provided the conceptual basis of acknowledging the different procedural rights as a part of individual liberty. The Court made Article 21 a substantive source of rights by stressing on its fairness and reasonableness. This change allowed the courts to examine not just the presence of the legal processes, but also their effect on personal freedom and dignity. As a result, procedural protections of the criminal justice system, such as the right to a speedy trial, started to be considered constitutive elements of Article 21, as opposed to procedural privileges in the form of statutes.¹⁵

The alteration of Article 21 into a substantive protection and not a formal one, therefore, constituted the constitutional room to acknowledge rights that would help in averting arbitrary and extended loss of liberty. In this broadened context, the right to speedy trial became an inevitable extension of the right to a fair trial to reflect the unfairness of a slow adjudication process and prepare the way to the future judicial evolution of *Hussainara Khatoon* and similar cases.

2.2.Hussainara Khatoon vs St of Bihar: The Turning Point.

The decision in *Hussainara Khatoon v. State of Bihar* can be defined as a landmark in Indian

¹³ S.N. Sharma, *Fundamental Right to Speedy Trial: Judicial Experimentation*, 25 J. INDIAN L. INST. 1 (1983).

¹⁴ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

¹⁵ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 106–10 (1999).

constitutional jurisprudence, especially relating to the field of criminal justice and personal liberty. The case was a result of a row of writ petitions brought to the Supreme Court on how thousands of under trial prisoners were languishing in the Bihar jails over years without trial. Still, most of these inmates were charged with minor crimes and had been held in custody several times longer than the maximum sentence approved to the supposed offence, and under this case national attention was focused on the plight of undertrial, effectively concealed within the legal system.¹⁶

In solving the problem, the Supreme Court interpreted Article 21 in a broad and purposive way. Based on the post-Maneka Gandhi conception of due process, the Court noted that the right to a speedy trial was a necessary element to the reasonably expeditious process called a reasonable, fair and just process as guaranteed in Article 21.¹⁷ to the Constitution, given that the lack thereof led to the unwarranted denial of individual liberty. The Court in this way raised speedy trial beyond a statutory anticipation to a constitutional right making it squarely a part of individual liberty.

In addition to identifying the right, the Court passed a set of remedial orders which were intended to bring temporary relief to the undertrial inmates. These also encompassed the release of prisoners that had served longer sentences than the maximum term prescribed to them under their alleged offences, and the demands to facilitate the delivery of free legal assistance to the indigent accused individuals.¹⁸ The Court also underscored the obligation of the State to organize its criminal justice machinery in a manner that prevents undue delay, thereby acknowledging that systemic inefficiency cannot be used as a justification for the continued deprivation of liberty.

But as much as *Hussainara Khatoon* was a great declaration of constitutional principles and human rights, it was also the start of the divide between judicial aspiration and institutional practice. The ruling linked doctrine to hope by imagining the criminal justice system where the primary value would be liberty and fairness. However, as the further unfolding events demonstrate, the expectations that the Court had were fulfilled in part. The fact that the number of undertrial prisoners in Indian jails has not reduced and might be still significant points to the idea that the transformative potentials of *Hussainara Khatoon* are still limited by the structural

¹⁶ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

¹⁷ INDIA CONST. art. 21.

¹⁸ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98.

and administrative constraints, a theme that this paper explores in the following chapters.

2.3. Post Hussainara Khatoon

Since the landmark decision of Hussainara Khatoon, the Supreme Court was repeatedly requested to determine the limitations, contents and enforceability of the right to speedy trial. The early post-Hussainara cases were indicative of a judicial interest in the welfare of the undertrial prisoners, especially those who had been in custody over a length of time without any substantial development of their cases. In *Kadra Pahadiya v. State of Bihar*, the Court faced a situation that was quite similar to the one in Hussainara where the Court was dealing with undertrial prisoners held in custody over a prolonged period, which was a breach of Article 21 and ordered the State to ensure that the accused was brought to trial or freed.¹⁹ The importance of the *Kadra Pahadiya* is in the fact that the Court reiterated the principle according to which the right to speedy trial is not limited to the time of trial itself but is also applied to the whole criminal process. The ruling highlighted the constitutional duty of the State to discourage unconstitutional imprisonment by administrative or procedural omission. The Court underpinned the post-Hussainara interpretation that delay can constitute constitutional harm, especially to undertrial prisoners, by stating that the delay itself can be considered constitutional injury.

A more detailed and well-organized explanation of the right to speedy trial was formed in *A.R. Antulay v. R.S. Nayak*. The case required the Supreme Court to perform a massive reappraisal of its previous jurisprudence and established binding principles under which the right is to be used. The Court further explained that speedy trial right is relevant at every stage of crime investigation, inquiry, trial, appeal, revision and retrial, and thus made it clear that the process of constitutional review is not confined to the trial process.²⁰

We have seen that scholarly analysis views post-Hussainara jurisprudence as a decisive movement towards rights-based idealism to judicial pragmatism. Although the establishment of speedy trial as a constitutional right was an important constitutional development, as it was determined by S.N. Sharma, there were several later cases illustrating judicial reluctance to accord automatic relief on the basis of delay alone, which did not enhance the transformative

¹⁹ *Kadra Pahadiya v. State of Bihar*, (1981) 3 SCC 671.

²⁰ *A.R. Antulay v. R.S. Nayak*, (1992) 1 SCC 225.

scope of *Hussainara*.²¹ By introducing evaluative standards such as prejudice and reasonableness, the Court sought to balance the interests of justice with administrative realities, thereby limiting the transformative reach of *Hussainara Khatoon vs State of Bihar*. In such a way, the post-*Hussainara* era of jurisprudence broadened the jurisdictional area of the right to speedy trial and at the same time limited its enforceability. Despite the fact that the right was accepted as to be applied throughout each and every stage of the criminal process, its non-absoluteness and focus on contextual evaluation watered down its ability to provide uniform relief. This constitutional optimism and judicial restraint remains a source of the lived experience of undertrial prisoners and provides a fundamental backing to understanding the existence of procedural delay in the criminal justice system.

2.4. Restraints of the Right to Speedy Trial.

Although the establishment of the right to speedy trial under Article 21 has been considered an important gain in constitutional development, the judicial cases that have followed have pointed out that the right is not unqualified and it suffers reasonable restriction. The Supreme Court has always made it clear that the delay in criminal proceedings alone does not necessarily constitute a violation of the right to speedy trial. Rather, the courts must determine whether or not such delay has caused any real prejudice to the accused. Such qualification indicates judicial restraint as to the adoption of a fixed or mechanical approach to the right.

The doctrine that delay is not in itself a violation of the constitution was authoritatively stated in *State of Maharashtra v. Champa Lal Punjaji Shah*. The accused, in this case, argued that the starvation in prosecuting criminal activities against his right to a speedy trial in Article 21.²² 1 but the Supreme Court ruled that a delay trial does not in any way imply a trial that is not fair. The Court noted that delays could be caused by numerous factors, such as the behavior of the accused, prosecutor strategies or institutional limitations and thus cannot be evaluated separately.

The Court in *Champa Lal* added the criterion of showing prejudice as a key factor in the roadmap of finding out whether the right to speedy trial has been violated. According to the Court, the accused should demonstrate that the delay has negatively impacted on the conduct of the defense, hampered the possession of evidence, or otherwise led to a denial of fair trial.

²¹ S.N. Sharma, *Fundamental Right to Speedy Trial: Judicial Experimentation*, 25 J. INDIAN L. INST. 1 (1983).

²² *State of Maharashtra v. Champa Lal Punjaji Shah*, AIR 1981 SC 1675.

The Court has reversed the emphasis on whether the delay has occurred to change the connotation of time on the rights of the accused. Through that, the Court aimed to strike the balance between ensuring personal liberty and the realities of criminal adjudication. The commentary in the academic literature has pointed out that the prejudice test is a shift to the rights-based optimism of Hussainara Khatoon towards a more conservative and pragmatic judicial approach. According to S.N. Sharma, although the necessity of prejudice contributes to ensuring that the speedy trial provision is not abused by suspected criminals who seek the technical acquittal, it also increases the burden of relief in instances of undetected criminals who might not have the means to prove that they are unfairly prejudiced.²³

The right to speedy trial therefore takes the form of its outer limits through the adoption of the prejudice test. Even though the right is applicable in all the phases of criminal proceedings, its application is based on a situational analysis of delay, responsibility, and harm. This judicial system reflects the conflict of constitutional idealism and institutional pragmatism, pointing out to explain why the prolonged undertrial detention is still in place even after the right to speedy trial is officially acknowledged. This limitation, as applied to undertrial prisoners especially, can bear serious consequences on them due to the fact that their extended stay in prison can be attributed to the inherent inefficiency of the system and not necessarily the bias in the actions of their defense.

3. Chapter III - Undertrial Prisoners and Procedural Reality

3.1. Statistical Reality of Under-trial detention.

The extent of undertrial detention in India brings into sharp focus the difference between constitutional provisions of freedom of the individual and how the criminal justice system operates in reality. An analysis of the current available Prison Statistics India released by the National Crime Records Bureau (NCRB) shows that until recently, the two-thirds of the total prison population in the country has always been undertrial inmates, as opposed to those who have been convicted through the process of adjudication.²⁴

The major effect of the high number of under trials is the issue of prison congestion which has remained a problem. According to NCRB statistics, numerous prisons are serving a vast

²³ S.N. Sharma, Fundamental Right to Speedy Trial: Judicial Experimentation, 25 J. INDIAN L. INST. 1 (1983).

²⁴ National Crime Records Bureau, *Prison Statistics India 2022* (Ministry of Home Affairs, Gov't of India 2023).

number of inmates exceeding their authorized capacity with the greatest percentage of undertrial inmates contributing to this overcrowding.²⁵ Overcrowding has led to poor living conditions, limited access to medical care and access to legal services, and compounded the psychological and physical stress of prisoners. Although much has been said about prison congestion as an administrative problem, the cause of this congestion is in the long time of pre-trial detention and a systemic slowness of the investigation and trial process.

Besides the numerical hegemony, the constitutional concerns are raised by the length of undertrial detention. There is a high population of undertrial prisoners serving longer terms that are more than the maximum term of the alleged offence and research studies on undertrial detention patterns point out that perhaps it is the delays in investigations, numerous adjournments and ineffective bail conditions that are leading to longer incarceration periods. Consequently, pre-trial detention is gradually turning into a form of punishment and not a procedural requirement.

The conclusion is verified by the analysis of scholarly works which demonstrate that the undertrial crisis is not incidental, it is structural. Empirical evidence in the Economic and Political Weekly is that most undertrial prisoners represent economically and socially marginalized groups and lack the means to get bail or quality legal representation.²⁶

Taken as a whole, these statistical patterns indicate that undertrial detention is not the exception but the characteristic of the penal system in India. The statistics indicate that the criminal justice system is one in which delay, not conviction, is the order of the day in determining the incarceration of individuals, thereby rendering the constitutional guarantee of speedy trial virtually useless to a large segment of the prison population. This empirical fact underlies the study of the interaction between the two components of procedural delays and bail practices to encourage underlying incarceration.

3.2. Prison Conditions and Human Impact

In addition to statistical representation, the real life experience of undertrial prisoners demonstrates the human cost of the delay in the criminal justice system in terms of procedures.

²⁵National Crime Records Bureau, *Prison Statistics India 2022* (Ministry of Home Affairs, Gov't of India 2023).

²⁶Murali Karnam & Trijeeb Nanda, Condition of Undertrials in India: Problems and Solutions, 51 *ECON. & POL. WKLY.* 14 (2016).

Detention under undue charges is very common in poorly equipped and overcrowded prisons where the living conditions are well below the constitutional and human rights norm. Overcrowding, poor sanitation, inaccessibility to health services, and lack of legal consultation among others contributes to the degradation of the dignity of persons who are not yet convicted of any crime.²⁷

Human consequences of long periods of undertrial incarceration have been recorded through individual narrative in both empirical and socio legal research studies. An example that is often used in scholarly literature is the situation of Shanti Sahu, an under-trial prisoner who spent several years in jail concerning a petty crime, even though she was legally free to go, which caused not only the deprivation of the personal freedom but also the social and economic loss that could not be recovered, such as the collapse of the family ties and the loss of means of livelihood.²⁸ These stories further highlight the overwhelming impact of delay in criminal cases on people who do not have access to the law.

The effects of extended detention are not restricted to physical incarceration but have a direct effect on mental health and psychological fitness. The offenders sentenced to undertrial frequently develop anxiety and depression and a feeling of apprehension caused by the incarceration that is indefinite and therefore does not produce specific time when the suspects will be taken to court or released once again.²⁹ To a significant number of undertrial, the process of criminality itself becomes a punishment, regardless of whether they will later be found guilty.

The extended period of under trials also causes great damages to accused families. When one of the family members has been incarcerated, it often leads to loss of income, social stigma, and disruption of caregiving duties, especially in families that are already living in economic precocity. Research shows that the families of prisoners under trial face even more financial expenses during the process of covering legal fees and travelling costs and, at the same time, are deprived of the main source of income in the family. These implications demonstrate the fact that the impact of procedural delay goes way beyond prison gates and affects whole social networks.

²⁷National Crime Records Bureau, *Prison Statistics India 2022* (Ministry of Home Affairs, Gov't of India 2023).

²⁸Murali Karnam & Trijeeb Nanda, Condition of Undertrials in India: Problems and Solutions, 51 *ECON. & POL. WKLY.* 14 (2016).

²⁹ Vijay Raghavan, Undertrial Prisoners in India: Long Wait for Justice, 51 *ECON. & POL. WKLY.* 17 (2016).

Constitutionally speaking, this fact of undertrial detention raises grave questions as to the consistency between undertrial detention with right to life and personal liberty as provided in Article 21. When the prisoners, awaiting the trial, are detained under poor conditions in incarceration without any trial to be made on the guilt, the presumption of innocence as well as the right to dignity has been made practically symbolic, this is when the Supreme Court has reiterated numerous times that the right to live is accompanied by the right to live with dignity.³⁰ This human effect of delay therefore supports the claim that the inability to provide a speedy trial has an erosive system wide effect on constitutional safeguards.

3.3.Delay as a Structural Phenomenon.

The continued existence of the deep undertrial detention in India cannot be explained only by a few inefficient and corrupt acts or by a few failures of the criminal justice system members; delay is a structural element of the criminal justice system. Delays at the investigation stage are also common occurrences as a result of insufficient resources of the police, large case workloads, and long investigations which go well beyond the time limits of the statutes. In spite of the fact that the Code of Criminal Procedure provides time constraints to conduct an investigation, they are frequently rendered irrelevant in reality as investigations are being prolonged and there is lack of appropriate judicial monitoring.³¹ In consequence of which accused persons spend several days in custody without any meaningful progress of the investigation.

Further complications of delays are based on the inability to produce under trial prisoners in court. Often undertrial are never produced on set hearing dates because of shortages of police escorts, logistical, or administrative lapses.³² Because of this, an adjournment is repeated, and detention continues without the trial making any progress. In the case of undertrial inmates, such breakdowns in the process turn to prolonged imprisonment due solely to circumstances that are absolutely not within their control, which supports the punitive nature of pre-trial detention.

Another important structural cause of delay is the ubiquitous culture of adjournments in the trial courts.³³ Adjournments are regularly requested on the ground of the non-availability of

³⁰Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.

³¹CODE CRIM. PROC., 1973, §§ 167, 173 (India)

³² Vijay Raghavan, Undertrial Prisoners in India: Long Wait for Justice, 51 ECON. & POL. WKLY. 17 (2016).

³³Murali Karnam & Trijeeb Nanda, Condition of Undertrials in India: Problems and Solutions, 51 ECON. &

counsel, absence of witnesses or overcrowded court dockets. Although adjournment is meant to be fair, the high number of adjournments and lack of control leads to stretched trials taking many years to be completed with the undertrial prisoners still being detained pending adjudication.

Both of these procedural delays are based on a larger issue of judicial capacity. The number of judges in India is acutely short, and the ratio of judges to the population in India is still considerably low compared to most other jurisdictions, which means that available courts are overworked and criminal trials take longer to be resolved. The structural discrepancy in the relationship between the workload and the judicial power continues to hinder the success of the reforms designed to speed up the trial despite the efforts to speed the process, including fast-track courts and digitization.

When combined, all these details indicate that the delays in the criminal justice system are more of a systematic than of exceptional character. Production failures, investigative inefficiencies, habitual adjournments and incompetence of the judicial system all contribute to pre-trial detention. This disposition aspect of delay has a direct effect on the jurisprudence of bail where in most cases undertrial prisoners are consistently forced to stay behind bars not due to the severity of the crime, but due to the fact that procedural bottlenecks have forced failure to undertake justice in time. The interaction of systemic delay and restrictive bail practices is thus a key context of explanation as to why undertrial detention is still prevalent in spite of constitutional and statutory protections.

4. Chapter IV - Bail, Poverty and Structural Inequality

4.1. Bail Jurisprudence Theory

The Bail is placed in the center of the criminal procedure scheme as it is one of the most important protections to avoid unwarranted denial of personal liberty. The conviction that bail is the rule and jail is the exception represents the constitutional right to liberty in the article 21 and the presumption of innocence, which forms the basis of criminal jurisprudence. Ideally, pre-trial detention should be an exception, where it is applied only when there is need to guarantee the accused person appears before the court, to avoid obstructing the delivery of

justice or the safeguarding of the interest of the populace.

In the *State of Rajasthan v. Balchand*, the Supreme Court stated this principle very clearly that denial of bail should be an exception rather than a rule.³⁴ The Court noted that detention even before conviction should not be considered as a form of punishment and that personal liberty cannot be limited only on the pretext of accusation. This ruling highlighted the fact that the idea of imprisonment preceding conviction is constitutionally questionable except in cases where there are sound reasons to do so and thus made freedom the priority in the decision of bail.

This enhanced the constitutional aspect of the jurisprudence of bail in *Moti Ram v. State of Madhya Pradesh*.³⁵ Here the Supreme Court criticized a mechanical application of monetary and surety conditions, which amount to the denial of bail to the economically disadvantaged accused, and that poverty should not be used as a filter to the freedom of the accused. The Court disregarded the fact that the idea of financial capacity should dictate the right to bail and therefore made a direct connection between the bail jurisprudence and the philosophy of equality and fairness in Articles 14 and 21.

Combined, *Balchand* and *Moti Ram* form the normative system of the bail jurisprudence in India. They validate that bail is not an act of mercy but a provision enshrined in constitutional principles of freedom, dignity and equity. In this context, pre-trial detention may only be done in extraordinary cases and must be backed by a rational judicial decision. Theoretically then, bail serves as a crucial preventive tool in order to avoid any lengthy period of undertrial detention and to make sure that the criminal process is not itself a punitive procedure even before the trial.

Nevertheless, although the nature of bail jurisprudence as a tradition indicates a high level of adherence to individual freedom in theory, it can be seen that in practice, it sometimes runs strongly counter to these constitutional principles. The incongruity of doctrinal articulation with ground-level reality is seen especially clearly when bail is discussed in relation to poverty, procedural delay, and undertrial incarceration, a discrepancy that the remaining part of the chapter attempts to explore.

³⁴ *State of Rajasthan v. Balchand*, (1977) 4 SCC 308.

³⁵ *Moti Ram v. State of Madhya Pradesh*, (1978) 4 SCC 47

4.2. Bail in Practice

Although the doctrine is absolutely clear in stating that bail is the rule and jail exception is the exception, the real working of the bail in India brings about the realization of a strong deviation of constitutional visions. Empirical research proves that accessibility to bail is often not based on the legal right and judicial discretion with references to constitutional principles, but on an assessment of the ability to afford bail by the accused. Practically, bail usually operates on a property-based system, in which the capacity to post monetary collateral or generate solvent sureties is the difference between being released on bail and being held in custody. Also, the surety system that mandates alleged individuals to provide individuals who are willing and capable of ensuring that they appear in court introduces more inequality in the bail adjudication. In the case of most undertrial prisoners, especially migrants, daily wage workers and members of socially disadvantaged communities, a surety with verifiable assets is an impassable obstacle.³⁶ Even where there are minor orailable offences on hand, the inability to offer onerous bail often means that an undertrial is simply kept in custody. This makes the constitutional promise of liberty in practice a failure because the judicial orders stating who should get bail do not in fact set them free.

It is further worsened by lack of a legal aid provision framework, which has led to the failure of the bail system. Despite the fact that constitutional provisions require free legal assistance as one of the conditions of the right to fair procedure, as provided in Article 21, the legal assistance engine is insufficient and overloaded. Research has shown that undertrial prisoners in most cases do not have access to competent legal assistance at the bail hearing stage and hence, their applications are delayed, the submission is poorly argued, or there is no representation at all.

It has been argued in scholarship that in India liberty remains mediated by property and not constitutional principle, the existence of property-based bail practices demonstrates that judicial rhetoric and institutional reality are not aligned and structural constraints exist to hamper the effective exercise of judicial rights. This is specifically clear with respect to the undertrial prisoners where the failure to provide bail leads to extended jail term, although there is no conviction.

³⁶ Vijay Raghavan, *Undertrial Prisoners in India: Long Wait for Justice*, 51 *ECON. & POL. WKLY.* 17 (2016).

In practice, therefore, bail is no longer a useful protection against undertrial detention. Rather than being a tool to support the presumption of innocence and defend personal liberty, the system of bails tends to further consolidate the socio-economic inequalities. Such a failure of the bail jurisprudence together with systemic delays in the investigation and trial makes the undertrial detention standard and not an exception a dynamic that fundamentally compromises the constitutional mandate of speedy trial under Article 21.

4.3. Bail, Delay and Under-Trial Incarceration.

The collapse of bail systems, as understood in conjunction with the systemic delay of criminal cases, is an outcome determinant of further undertrial imprisonment in India. Although it is theoretically possible to compensate prolonged trials by granting them bail, the restrictive and property based bail procedures guarantee that delay translates to further detention. In the case of undertrial detainees who cannot provide the required bail, the time spent in prison is completely determined by the inefficiency of investigations and trials carried out as structural inefficiencies.³⁷ Consequently, the failure to be able to provide bail is the turning point between the delay of the procedure and the lack of freedom.

The undertrial detention becomes not temporal and obtains punitive nature in those situations when the bail is denied or made ineffective because of such efforts to alienate it. The interrelation between delayed adjudication on the one hand and imprisonment on the other hand creates a scenario where innocent people are imprisoned not due to a poor judicial determination, but because the criminal justice system is not capable of completing the proceeding within a reasonable time.³⁸ This outcome stands in direct contradiction to the presumption of innocence and undermines the constitutional commitment that pre-trial detention should be an exception rather than the norm.

The constitutional guarantee of speedy trial, however, has a large part of its effect upon the ground when the accused is imprisoned during the time of proceedings pending. The acknowledgement of the right to speedy trial in Article 21 was judicial because the assumption was that the procedural protection measures such as the bail would be effective in protecting personal liberty during any delays.³⁹ But in the conditions, where bail is not available, the right

³⁷ Murali Karnam & Trijeeb Nanda, Jail, Bail and the Poor, 51 *ECON. & POL. WKLY.* 5 (2016).

³⁸ *State of Rajasthan v. Balchand*, (1977) 4 SCC 308.

³⁹ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

to speedy trial does not avail much to the undertrial prisoners, since postponed trials still have real and irreversible impacts of the years of unwarranted incarceration.

Empirical research also proves that a higher number of the undertrial prisoners end up serving longer sentences simply because of their inability to raise funds through bail and not necessarily because of the severity of the crime or the threat they pose to society.⁴⁰ All of these factors combined are what guarantee that the undertrial detention becomes the regular aspect of criminal justice administration instead of the exception that has to be strictly controlled.

As a result, the right to speedy trial, when deprived of good practices in terms of bail, will become a formal right that lacks the protection. The manifestation of the continuing under trial jailing shows that the delay in criminal justice cannot be resolved merely by the declamation of rights in the doctrinaire way. As far as the concept of bail is not a viable measure that prevents excessive detention, the constitutional guarantee of a speedy trial in Article 21 is little more than a myth to the most vulnerable to the systemic slowness.

5. Chapter V - Critical Analysis: Why does the Promise Fail?

5.1. Administrative Reality Vs Judicial Idealism.

The Indian judiciary has been characterized by a high normative insistence on personal liberty and constitutional morality in its judicial involvement with the right to speedy trial. Since the Supreme Court in *Hussainara Khatoon* has repeatedly explained the right to speedy trial as a vital part of Article 21 and stated its emphasis on fairness, dignity and the presumption of innocence.⁴¹ These utterances indicate what can be termed judicial idealism- a convocation based on the feeling that constitutional interpretation could serve as a mobilizing agent of institutional change. The lack of administrative and institutional change in response to judicial acknowledgment of rights, however, prompts the conclusion that judicial activism has not been reciprocated by administrative and institutional reform.

The critical analysis by scholars has identified rights-based adjudication as lacking the capacity to do away with structural gaps that are deeply embedded in the criminal justice system. In his critical interaction with the speedy trial jurisprudence Upendra Baxi warns against the belief

⁴⁰ Vijay Raghavan, *Undertrial Prisoners in India: Long Wait for Justice*, 51 *ECON. & POL. WKLY.* 17 (2016).

⁴¹ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

that the articulation of broad rights by the courts can in itself result in the redressing of systemic injustice.⁴² To him, the failure of the courts in enforcing the articulated broad rights is because of the administrative capacity, political will and institutional accountability. Without this kind of support, the constitutional rights will be mere ceremonies of affirmation as opposed to a tool of material transformation especially on undertrial prisoners who are not in a position to invoke judicial solutions in an effective manner.

This gap between clarity in doctrine and effectiveness in practice can further be demonstrated by a comparison to current literature. Numerous doctrinal research papers by students, and those of the doctrinal research, published in law review, are often limited by the fact that they often do not give adequate consideration to the dynamics of administrative inertia, the constraints of infrastructure, and non-adherence by the executive to demands, which would continue to perpetuate delay.⁴³ Consequently, judicial optimism is frequently put forth without an evaluation of institutional plausibility.

Administrative reality and judicial idealism are especially incongruent in the case of undertrial detention. It has always been the belief of courts that when constitutional obligations are expressed, any investigative agency, trial courts and prison authorities would then make corrections to their practices. Nevertheless, empirical evidence and socio-legal research indicate that delays still remain as a result of insufficient access to policing, insufficiency of judges, incompetence of legal assistance, and non-observance of the procedures.⁴⁴

To this effect, although judicial idealism has been critical in broadening of Article 21, its revolutionary power is limited by failure to transform and incapacity of administration. The inability of under-trial incarceration to be stopped despite judicial interventions on numerous occasions speaks volumes of the necessity of shifting to declaratory rights and into an enforceable, institutionally based system of accountability. The conflict between constitutional ideal and administrative action is the central issue in the implementation of the right to speedy trial and provides the basis of further analysis of the limitations in the execution in the following sections.

⁴² Upendra Baxi, Right to Speedy Trial: Geese, Gander and Judicial Sauce, 25 J. INDIAN L. INST. 90 (1983).

⁴³ Rights of Prisoners and Speedy Trial, 4 INDIAN J.L. & LEGAL RES. 112 (2021).

⁴⁴ Murali Karnam & Trijeeb Nanda, Condition of Undertrials in India: Problems and Solutions, 51 ECON. & POL. WKLY. 14 (2016).

5.2. Structural Failures

The fact that despite the frequent judicial affirmation of the right to speedy trial, undertrial detention remains a common practice indicates that the criminal justice system is suffering from systemic as well as structural inefficiencies. The lack of clear delay accountability mechanisms is one of the most important inadequacies. Although the courts have recognized that unreasonable delay is a contravention of Article 21, the blame of having such delay is seldom placed on any given institution or authority. Delay on the part of the police, prosecution, or court administration is rarely looked into and this has created a system in which procedural inefficiency is not punished as a constitutional vice.⁴⁵

Going hand in hand with this lack of accountability is the lack of enforceable schedules in the criminal process. Even though it has been pointed out severally by the Supreme Court that swift investigation and trial is necessary, it has never given strict or compulsory time limits. Although such flexibility is justified in *A.R. Antulay v. R.S. Nayak*, as the Court clearly stated that the fixed timelines are inadmissible because the right to a speedy trial should be evaluated individually in every case, this aspect in turn allows the investigative agencies and the trial courts to exercise a large amount of discretion at the expense of the undertrial inmates who are kept in custody without the definite timeframe.⁴⁶

The absence of schedules is also enhanced by a poor implementation of court orders. In instances like *Hussainara Khatoon*, the Supreme Court on its part passed sweeping remedial directions of which the State authorities were expected to restructure their criminal justice machinery to avoid undue delay although such directions were not backed by sustained supervision or even institutional follow up.⁴⁷ Consequently, it led to the high level of compliance being determined by the willingness of the executive, not force of law, and restricted the scope of the long-term effects of judicial intervention.

As noted in scholarly criticisms, the Indian criminal justice system does not have proper monitoring mechanisms to handle the delay and ensure that it adheres to the constitutional standards. Law Commission Reports have repeatedly highlighted the absence of institutional frameworks to oversee investigation timelines, regulate adjournments, and ensure

⁴⁵ Upendra Baxi, *The Supreme Court under Trial: Undertrials and the Supreme Court*, 1 SCC (J.) 35 (1980).

⁴⁶ *A.R. Antulay v. R.S. Nayak*, (1992) 1 SCC 225.

⁴⁷ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

accountability for prolonged detention. Without such mechanisms, the right to speedy trial remains vulnerable to administrative inertia and procedural neglect.⁴⁸

These structural failures, when put together, result in the enforcement of the right to speedy trial being largely reactive, but preventive. The relief is only frequently given when incarceration has already taken place over a long period and is of little significance in redressing the undertrial prisoners who are already irreversibly damaged. Without a sense of accountability, enforceable timelines, and sound monitoring, the constitutional guarantee of speedy trial remains more of a proclamation than a tool to prevent a lengthy denial of liberty.

5.3. Speedy Trial: An Illusionary Right

The historical review of the constitutional doctrine, empirical evidence, and institutional practice indicate that the right to speedy trial in India is a constitutional ideal but not a constitutional guarantee. Although there have been numerous reassertions by the Supreme Court that speedy trial is a critical part of Article 21, its practice will always be subject to the successful operation of the investigative agencies, trial courts and administrative institutions. Without institutional mechanisms to enforce it, judicial recognition has not been effective enough to help stop long periods of pre-trial detention.⁴⁹

The continuation of the delay in the criminal justice system is one of the reasons to believe that the guarantee provided under Article 21 is more reactive than proactive. Relief is typically provided when much time has already passed, and the damage to personal liberty, dignity, and livelihood is already sustained, and so the speedy trial pledged in the constitution is symbolic to the undertrial prisoner who fails to achieve the goal of going through a trial.⁵⁰ Under these circumstances the right is *ex post facto* and it provides a form of recognition without redress of any significance.

The unwillingness of the judiciary to dictate timeframes that can be followed or by which time-slip can be held against a party is also a factor that adds to the illusion through which the right is perceived. The right to a speedy trial, as defined in *A.R. Antulay v. R.S. Nayak*, is not absolute but rather must be evaluated on its merits, though it facilitates the complexity of the

⁴⁸ Law Commission of India, 245th Report on Arrears and Backlog: Creating Additional Judicial (Wo) manpower (2014).

⁴⁹ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

⁵⁰ Vijay Raghavan, *Undertrial Prisoners in India: Long Wait for Justice*, 51 *ECON. & POL. WKLY.* 17 (2016).

procedure it undermines the enforcement of the right to a speedy trial by allowing institutional delay to occur with impunity.⁵¹ The fact that the accused should be able to prove that they have been prejudiced by others creates another category of burden to the undertrial prisoners since most of them do not have the means or legal ability to prove that they have been unfairly prejudiced.

Critiques of the constitution have always pointed to this disjunction between constitutional expression and institutional performance. The analysis provided by Upendra Baxi addresses the fact that the transformative power of judicial pronouncements should not be overestimated without administrative reform; otherwise, it will become the plaything of judicial morality instead of social change.⁵² The prevalence of undertrial in Indian prisons even decades after decades of speedy trial jurisprudence is one instance of such a limitation.

Based on this, the right to speedy trial, which is deeply entrenched in Article 21, is weak in practice. The right does not preserve the interests of the most vulnerable to procedural injustice and in the absence of institutional implementation, delay responsibility, and good bails. The case of undertrial prisoners shows that constitutional acknowledgment which is not coupled with structural reform alone cannot guarantee freedom. The right to speedy trial thus runs the danger of being an idealistic ideal unless it is converted into mandatory, system-wide guarantees that will have an effect of deterring the long-term deprivation of personal freedom.

6. Chapter VI - Conclusion

The right to speedy trial as enshrined in the constitution in Article 21 is one of the most important judicial interventions in the criminal justice system in India. The case of *Hussainara Khatoon v. State of Bihar*, the Supreme Court attempted to bring criminal procedure back to the principle of liberty, dignity and fairness when the court ruled that a long adjudicating process cannot be satisfactory to personal liberty. The jurisprudence that followed broadened the rights under this right throughout the entire criminal procedure process and at the same time limited its application by use of non-strict standards like the prejudice test. All these developments formed a strong doctrinal base on the protection of undertrial prisoners.

But, as this paper has illustrated, in practice, the constitutional guarantee of speedy trial has

⁵¹A.R. *Antulay v. R.S. Nayak*, (1992) 1 SCC 225.

⁵²Upendra Baxi, *Right to Speedy Trial: Geese, Gander and Judicial Sauce*, 25 J. INDIAN L. INST. 90 (1983).

failed to result in any substantive safeguard of under trial prisoners. The empirical evidence has constantly indicated that undertrial have occupied most of the prisoners in India and in most cases, spend a long time in prison without their guilt being decided upon. Failure of speedy investigation and trial processes, ineffective bail systems and socio-economic status all contribute to the fact that pre-trial detention is often taking on a punitive role. The interplay between systemic delay and restrictive bail practices makes the presumption of innocence merely an illusion to those not able to get released.

The analysis also shows that the violation of the right to speedy trial cannot be blamed on any ambiguity in the doctrine but on institutional weakness. The recognition of the judiciary has not been supported by enforceable accountability measures, time limits, and continuous oversight of an adherence. The major relief courts have resorted to declarative remedies and the post facto relief which tends to give redress once the prolonged incarceration has taken place. As a result, the protection afforded by Article 21 remains reactive rather than preventive, providing recognition without guaranteeing timely enforcement.⁵³

Considering these results, some changes are required that will help to make the right to speedy trial a meaningful guarantee, but not a mere empty promise. To start with, there should be regular judicial checks of the undertrial detention made compulsory, especially in the cases of extended imprisonment. Second, specific laws and requirements like Section 436A of the Code of Criminal Procedure should be reinforced by providing more straight forward guidelines and enforcing of the same to make sure that release is a natural occurrence after stipulated time of detention is over. Third, the bail jurisprudence should cease to be based upon property-related requirements but instead propose more non-monetized, person-centered findings that are more indicative of the socio-economic condition of undertrial inmates. Lastly, institutional controls like the time limited investigation supervision and responsibility of recurrent adjournments have to be incorporated in the criminal justice process.

Finally, judicial articulation cannot realize the right to speedy trial. The absence of institutional accountability, administrative responsibility and structural change means that constitutional guarantees will probably remain just aspirational and not transformative. The under trial prisoner's experience also highlights the pressing necessity to redefine criminal procedure as not just a procedure of adjudication, but as a procedure that protects liberty. Nothing is going

⁵³ A.R. Antulay v. R.S. Nayak, (1992) 1 SCC 225.

to happen unless the right to speedy trial is turned into real and practical causes of action, except that Article 21 will keep on pledging justice and at the same time will allow personal liberty to be taken away in the name of justice.

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