**INDIAN PRISON SERVES AS WAREHOUSE FOR THE INNOCENT**

By: -

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**January 13th, 2020**

**Few Outstanding Quotes that seem to be very relevant to the topic:**

 *“It doesn’t help to fight crime to put people who are innocent in prison.”*

*― Stephen Breyer*

*“Rather let the crime of the guilty go unpunished than condemn the innocent.”*

*― Justinian I*

**ABSTRACT**

This paper talks about the various reasons as to why the prisons in India are so overcrowded. People who are imprisoned as “Under-trial” prisoners languish in prisons for a long time. AT first there is an introduction to the term prison accompanied with a brief explanation of the structure of a normal prison. Then there is then a very brief summary of the prisons in India which includes the description of the types of prisons and the different stages of administration that helps in the successful working of the prisons in India. Next the paper covers the description of the Criminal Judicial System in India which speaks about the current state the various reforms suggested and difficulties it is facing in the present time such as; it being a replica of the judicial system that was prevalent during the British Rule in India and the lack of changes this century old system has gone through even though multiple reforms had been suggested by various people. The apathy to perform such reforms, the scarcity of judges and the corruption prevalent in these courts has all contributed to the delay in fair justice. It can be seen that around 67.3% of the entire population of the prisoners in India consist of “under-trial” prisoners. In majority of the cases there is delay in judgments due to the apathy of the police to conduct investigations and in some cases the inability of the defendants to appoint a lawyer or their lack of knowledge of the law contributes for the over-crowding of the prisons in India. In some cases of Bhim Singh and Rudul Shah it can evidently be noted that there also innocent people who are imprisoned in these jails. The paper also discusses on a more pressing issue, the state of these under-trial prisoners during the COVID pandemic and talks about the various judgments passed by courts to deal with this issue.

**KEYWORDS**

Under-Trial Prisoners, Article 21, Section 436 A of CrPC, Delayed Justice

**INTRODUCTION**

Before we start with the discussion of the topic at hand it is necessary to define the term ‘prison’ and also state its history and structure. The basic definition of a prison can be stated as a facility within which inmates (criminals and so on) are confined while denied some of their basic fundamental rights. This particular facility is under the authority of the state; their functions which include rules and regulations are all determined by the government and enforced by the Deputy Inspector General of the prison. There are different words in the English language (for example: jail, penitentiary, detention center, correctional facility and so on) which sometimes tend to denote a different meaning but the definition and functioning always remains the same. Prisons normally fall under the criminal justice system where people who are charged with a crime can be imprisoned while awaiting their trial or could also be imprisoned according to the judgment if found guilty of a crime, in other words this is a building that holds people who have committed a crime while temporarily revoking some of their fundamental rights.

**THE BASIC STRUCTURE OF A PRISON**

As stated above the prison holds people who have been deemed dangerous if let out in the free world. It is therefore necessary for the prison to have strict rules and regulations to make sure that the inmates do not engage in further activities that are prohibited by the law and make sure that peace is maintained within the precinct of the prison. Following are few of the ways in which order is maintained in prisons:

1. **Security –** This is the most important function that needs to be looked upon with great care and caution to make sure inmates are not engaging in any illegal activities and make sure order is maintained in these places. According to what I can infer maintenance of security is required as it helps in restricting the movements of inmates and does its best to keep their behavior at bay by embedding in them ‘the fear of getting caught’. There are many ways in which prisons maintain security in the prison, few of them include the introduction of CCTV cameras to cover all the places and leaving little to no blind spots, making sure the prisoners do not have any kind of weapon or drug by doing regular and thorough searches of their holding cells, maintaining peace and order among prisoners by segregating them based on their character and criminal, maintaining the sanity and the behavior of the inmates by providing activities (like recreational activities, educational activities, spiritual activities and outdoor activities) along with visitation rights is really important as it is their wellbeing that will determine the state in which the prison is, the most important of them all is the introduction of a strict and rigid timetable which the prisoners need to adhere to. Each and every way discussed above is very essential to be able to run a successful prison.
2. **Division of places in prisons for various facilities –** This next topic helps in ensuring the physical as well as the mental well being of a prisoner. The following include a list of basic facilities that is mandatory to be present in prisons for a successful functioning:
3. **Kitchen/Dining (Cafeteria) –** Prisons tend to have a large number a inmates and therefore to feed them all needs to have a large hall for the distribution of food. One of the most important factors that needs to be considered here is the need to account all the utensils present in the kitchen as even small objects like a butter knife could be used as a deadly weapon and spoons, forks could be used for the purpose of escaping.
4. **Healthcare Facilities –** As we know prisoners were people once convicted and stated to be dangerous by law. A prison is a collection of all these people and inevitably there is the possibility of riots and injuries that occur in prisons. These facilities are of utmost importance to tend to these injured people.
5. **Library and Educational Facilities –** Prisoners are send to these prisons t be able to understand their mistakes, understand the law that governs them and therefore very essential to educate them on these aspects. There is also the need to have libraries that contain books based on a variety of subjects giving prisoners their opportunity to educate themselves about the outside world which will be helpful on their release.
6. **Recreational and Fitness Facilities –** These facilities help aid the prisoners mental and physical well being. These are few of the facilities that are deemed to be a controversial topic as some people think prisons are being too ‘soft’ on inmates and some think prisons are too ‘cruel’ as they believe it is ‘dehumanizing’ to confine people for a number of years with little recreational activities.
7. **Control Units –** Prisoners are part of the ‘general population’ of the prison and are giving specific timeslots and places where they can socialize. Control Units basically refer to solitary cells/protective custody which are the complete opposite of socialization, people are put here for their bad behavior and if they are considered dangerous to the prison, others are placed in protective custody if they are in danger themselves.
8. **Miscellaneous Facilities –** These would include workshops, common room, laundry room, janitor’s room, visiting areas and so on that concern the miscellaneous tasks of people in prisons. These also include places for death row inmates.

All the above mentioned facilities need a lot of CCTV cameras for monitoring as they are various things present in these areas they could be used by prisoners to arm themselves (most important would be cafeteria for its utensils and the infirmary for its drugs).

**Why are people imprisoned?**

Following are few of the common reasons as to why people are imprisoned:-

1. **Rehabilitation –** One of the main reasons convicted people are imprisoned is because they believe inmates can learn and educate themselves through the various activities present in these prisons and when released are law abiding citizens, in other words it is a place which helps convicted people understand their mistakes and educate them about the various aspects of life. This idea started in the 19th century as an alternative to the inhumane punishments that were prominent at that time.
2. **Deterrence –** With respect to the above statements this basically refers to the need to impose harsher punishments on people who deserve it, instilling in them the fear of it. This is to make sure that if they consider criminal activities in the future they would be terrified of the consequence.
3. **Incapacitation –** This type of punishments states that when people are incarcerated in prisons they are unable to commit crime and therefore communities are safe from their influence.
4. **Retribution –** This type of punishment argues that when people are imprisoned they have to be exposed to a certain level that is in proportion to the crime committed by them.

**PRISONS IN INDIA**

Prisons in India come under the jurisdiction of the state which is covered under item 4 of the state list under the Seventh Schedule of the Constitution in India. The management of the administration of the prisons is under the jurisdiction of the State Governments who govern the administrations according to the Prison Act of 1894 and the Prison Manuals respectively. The states have the primary role of marinating these prisons and have the responsibility and authority to conduct the functions of the prison with the assistance of the Central Government in a few aspects. With respect to the prisoners the Supreme Court of India has laid down 3 important broad principles which are; First is that a person when in a prison does not become a non-person, the Second is that a person when imprisoned in entitled to all the Human Rights within the limitations of the imprisonment and the Third one is that it clearly states that there is no justification for aggravating the suffering which is already in the process of incarceration.

There are various types of Prisons in India these include; Central Jails (these types of jails are home to various criminals who are to serve a time of more than 2 years), District Jails (these are similar to central prisons as they act as a central prison in places/states where there is no central jail), Open Jails (these are home to criminals who are deemed as “minimum security prisoners”) and in contrary Special Jails (these are home to criminals who are deemed as “maximum security prisoners”)

**PRISONERS LANGUSHING IN PRISONS**

Even though the functions and each and every duty of the government have been defined there are two issues that doesn’t seem like it will be resolved in the near future i.e. the prisoners are behind bars for a long time awaiting their trials and in some cases they are imprisoned for a time longer than they would be if was convicted under the crime committed. In relation to this there are also cases where the prisoners who are imprisoned for a longer time than intended could be proven “not-guilty” if a fair and just trial was conducted. In India the rate at which people awaiting their trial have finally convicted is very minimal when comparing it to the number of people awaiting their trial. This type of delayed judgment with a very low conviction rate brings out the inefficiency of the Criminal Judicial System in India and exposes the lack of effort done by the police and the prosecutors in their task. This results in a very dangerous problem as it may result in the loss of faith in the Criminal Judicial System by the citizens.

**Criminal Judicial System in India –** This system is primarily based on the penal legal system established by the British. This system has yet to undergo and further changes even though 70 years of Independence has passed by. The introduction of the Vohra committee along with the suggestions by the Chief Justice of Kerala and Karnataka for the need to reform this century old-criminal judicial system in the year 2000 are some of the few actions taken place that are worth mentioning.

**Why is there a need to reform this criminal judicial system?**

The most obvious answer would be is that the rate of conviction in India is humiliatingly bad. In the past the before reforms were introduced in the Criminal Judicial System, few of the most important problems were the punishing of people based on ancient and outdated laws. Exposing only the laws is not enough because even if the laws were different the judiciary is unable to proceed with fair and just judgments due to their apathy to conduct them (investigations are not conducted with the scope of providing justice but in some cases are done just for the sake of doing it). It is due to this inefficiency to deliver justice that in many cases a large number of guilty people go unpunished by law and in contrary a large number of innocent people remain as under-trial prisoners. According to the Prison Statistics India (PSI) of 2015 there are a total of 4.19 lakh inmates/prisoners in jails by the end of 2015 out of which 2.82 lakh are under-trial prisoners. Subsequently an analysis by News18 has revealed that the number of under-trial prisoners has risen by 21.5% between 2011 and 2016 as per the NCRB (in accordance with the statement preceding this), it also stated that in 2016 under-trial prisoners accounted for 67.7% or 2.93 lakh of total prisoners in the country which is definitely a bad thing as it sets a very terrible suggestion of the Criminal Judicial System in India. This large number of under-trial prisoners is not only affecting inside the prisons but is also greatly influencing the outside as well. This is also the reason as to why India is placed 15th out of 217 countries with respect to under-trial incarcerations. It should also be brought to light that according to a statistical investigation done by the NCRB about 75% of the under-trial prisoners were confined for only about a year or less, about 12.4% of under-trial prisoners were confined for a period of 1-2 years and about 6.8% of under-trial prisoners were confined for a period of 2-3 years. If these exorbitant amount of numbers are taken into consideration it can also be inevitably noted that the number of pending cases in the High Courts and Supreme Courts are also along the same lines. Another factor that is greatly affecting justice is corruption and because of which the judicial procedures have become very expensive. These problems that seem to be prevalent in the system will inevitably result in loss of trust by the citizens on the Criminal Judicial System and will continue to face unprecedented challenges (due to the changes in the natures of crime) if not looked into.

**Reforms Undertaken By the Government**

After a number of recommendations the government has looked into the state in which the current Criminal Judicial System in India is and has undertaken reforms, following are a few of them:

1. The Government has changed the definition of rape and has made many notable changes like the addition of new offences against women in the laws that protect the women.
2. The Government has taken the initiative to remove around a 1000 obsolete laws that otherwise would continue to interfere with smooth administration.
3. The Government has decided to draft a new body that will assist in the appointing of High Court and Supreme Court Judges along with the introduction of new technology to the police force.
4. Lok Adalats were established for providing justice to the citizens at their doorsteps and for the justice of the weaker sections of society the Legal Service Authority Act was enacted by the Parliament all of which done with the object of providing free and competent legal service.
5. Parliament of India has taken the initiative of improving the condition of under-trial prisoners and has amended Section 436 of the Cr.P.C. Section 436(A) of the Cr.P.C. states that he maximum period for which an under-trial prisoner can be detained.

**A NOTE ON DELAYED JUSTICE IN INDIA**

A famous phrase “justice delayed is justice denied”, holds a lot of importance in the present time because of the delay in judgement and the inability of the Courts to provide speedy judgements. To get an idea of the current situation there are around 19,000 judges, including 18,000 in trial courts who are dealing with a whopping amount of 3 crore cases pending in courts with a majority of them being under-trial cases. In India the penal process is that the defendants are to be in custody and need to wait for their cases to be taken up and tried. Few of the causes for the delay in justice are as follows:

1. Too many open cases in courts has inevitably resulted in this kind of delay in justice where basic fundamental rights of these people are being contravened every single time a person is deprived of his liberty. People are imprisoned as “under-trial” for a great amount of time and in some cases the defendants are behind bars for a time longer than they would be if convicted.
2. There is a great deal of shortage of judges in courts and therefore delays in filling up of vacancies all contribute as a whole for delay in justice. In terms of the police investigations and law and order are carried on by the same department hence it sometimes becomes burdensome. The Supreme Court in the case of Prakash Singh and ors v. Union of India directed the Government to separate investigations form law and order.
3. Another major reason for delay in justice is the prejudice against Muslims and the SC/ST castes. Around 43% of the prisoners were people who were not yet proven guilty and have remained behind bars for over 6 months again according to the report of 2015. Even though the Muslims and the SC/ST castes made up of about 39.4% of India’s population (according to the census of 2011) they made up of about 55% of the under-trial prisoners population. This may be for various reasons like their inability to afford a lawyer or their lack of knowledge of the law but numbers don’t lie and according to the numbers stated above it can be inferred that there is a sort of prejudice against Muslims and the SC/ST castes.
4. In the case of Rudul Shah v. State of Bihar, the defendant was arrested in 1953 and was imprisoned in Bihar’s Muzaffarpur jail. He was acquitted in the year 1968 by the High Court but was continued to be kept in custody for 30 years. Boka Thakur was an individual who was arrested at the age of 16 and was imprisoned and detained without trial for 36 years in Bihar’s Madhubani jail. In the case of Bhim Singh v. State of Jammu and Kashmir, the defendant was kept in custody (false-imprisonment) depriving him of his fundamental rights (Article 20 and 21). The court noted that even if it is a state of emergency or even when the person is imprisoned he cannot be denied his fundamental rights. It also stated it is justifiable if the person before being falsely arrested uses force in self-defense to avoid the same and if arrested a writ of Habeas Corpus can be filed. These are examples of few of the cases where people were detained in prison for a long time while being denied their right according to Article 21.

During the 1980’s the Criminal Judicial System did see minor reforms, and due to certain subsequent events led to major reforms in the future. In the trial of Hussain Khatoon v. Home Minister ((1979) 3 S.C.R. 169), Justice P.N. Bhagwati suggested in the case that the defendant who had been imprisoned as “under-trial” had the right to a speedy trial according to Article 21. Subsequently in the case of Maneka Gandhi v. Union of India, the court stated that “substantive due process shall be recognized as the fundamental aspect of Article 21”. Justice P.N. Bhagwati was concerned about the situation of the under-trial prisoners and therefore after a great up roar of media attention on this subject various changes were made about the conditions of the prisoners and in the year of 1980 the court prohibited the act of cuffing under-trial prisoners unless they are a threat or in the danger of escaping. In the similar manner in the case of Bhim Singh v. Union of India the Supreme Court had requested for the effective implementations of Section 436(A) according to few directions put forward by the court. In the case of Abdul Rehman Antulay v. R.S. Nayak, the Supreme Court laid down many guidelines for the implementation of better judicial proceedings with the object of speedy justice, these guidelines revolved around Article 21 and the prohibition of various acts that may harm the prisoner until the verdict is given (which happened to be a serious problem in the past).

**VARIOUS JUDGEMENTS BY COURTS IN INDIA ABOUT UNDER-TRIAL PRISONERS DURING THE COVID PANDEMIC**

 During the corona virus pandemic the courts in India have passed number of orders with respect to the under-trial prisoners. After the COVID was declared as a pandemic the Supreme Court passed an order on March 23rd, 2020 that directed the creation of various High Powered Committees (HPC) to determine which prisoner should be released from prison either on interim bail or through parole with a view to contain the spread of the virus. In the month of May, 2020 on Saturday (9th) the Delhi High Court passed an order to extend the interim bail of 2,177 under-trial prisoners by a period of 45 days which would start after the time period of their original interim bail would expire. A committee (the committee’s work is to make sure that the prisons were not congested to avoid the spread of the COVID virus) headed by Justice Hima Kohli recommended the same and the order for which was passed by Justice Siddarth Mridul and Justice Talwant Singh. In the month of September, 2020 on Tuesday (23rd), the Supreme Court of India clarified the intention behind the order it passed in the month of March. It clarified that it directed the creation of the HPCs not with the intention of releasing every under-trial prisoner irrespective of their crime but were created for the sole purpose of decongesting prisons to follow social distancing and in some cases release prisoners based on the seriousness of their crime. After this in the month of October, 2020 on Thursday (29th) the Supreme Court stayed a Delhi High Court Order which stated that the under-trial prisoners whose interim bail was extended due to the COVID pandemic had to surrender in a phased manner between November 2nd and 13th. This was done because the Supreme Court had received an appeal by the National Forums of Prison Reforms (NFPR) against a Delhi High Court order which stated that its blanket order (on March 25th the interim bails were extended to 15th May and later was extended to October 31 on August 24th, it was applicable to 356 prisoners) which extended the time of interim bails would not remain in effect after October 31. The order that was passed on 29th of October was that the Supreme Court had stayed the order of the Delhi High Court that stated that those whose bail was extended due to the pandemic had to surrender in a phased manner between the 2nd and 13th of November. This matter was still in the apex court and on the 25th of November the apex court extended the stay by a week and was listed on the 1st of December for it to appear in the court for hearing. Subsequently the stay that under-trial prisoners were to surrender themselves was again extended to January 21st of 2021 when it came up for consideration in the Supreme Court on Monday (7th of December, 2020) for hearing before the bench headed by Justice L Nageswara Rao also comprising of Justice Hemant Gupta and Justice Ajay Rastogi. In the month of January on Monday (4th) of 2021 a writ petition was filed before the Delhi High Court seeking the implementation of Section 436A of the Cr.P.C. for under-trial prisoners to be released if they have completed at least half of their maximum sentence. This plea was put forward by the Indian Undertrial Prisoner Support Forum stating that over 1200 under-trial prisoners had completed half of their maximum sentence but only 416 were released. The plea proclaims that there are two main reasons for them to languish and they are; firstly the HPCs appointed to decongest prisons did not do its duties in this regard and secondly, it professed that these prisoners did not have the sufficient means to raise their grievance before the court.

Along with this, other judgements passed by the apex court in regards to the COVID situation is the directions for the interest of Children who fall under the ambit of juvenile justice which was put forward by a bench consisting of Justice L. Nageswara Rao and Justice Deepak Gupta. In view of the number of cases pending in the different court is a bench consisting of Justice S.A. Bobde, Justice D.Y. Chandrachud and Justice L. Nageswara Rao directed that measures should be taken for the functioning of the courts through the virtual platform.

**CONCLUSION**

Legislature is not doing its part and the judiciary is attempting to perform the functions of the legislature in view of the constant pressure created on the judicial forum, some may call it judicial over reach but it needs to be noted that when citizens, that too innocent ones are languishing in jails some arm of the constitution should extend its helping hand. It is high time that the legislature performs its functions efficiently so that human dignity and freedom of an innocent person is taken care of at the very first available opportunity.

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Ganav S. Reddy is currently in his 1st year of a BA LLB course studying at Christ (Deemed to be University). He has had a passion for law from a very young age, mostly thanks to his father and mother, whom he believes in a lot. He has always loved the way his father helps people in need and has understood that law is not a place to only earn money (as stereotypically believed) but is a field which helps you in communicating and connecting with the world around, understand the difficulties faced and try his utmost best to solve these problems. He is currently still in search of his passion in the legal field and is cautious in his journey of education to find his field of expertise which he hopes to find in the not so distant future.