



**Research Article**

**JEOPARDIZE OF UNDER TRIALS PRISONERS IN INDIA- A STUDY IN  
RELATION WITH RIGHT TO LIFE**

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**ABSTRACT**

The human civilization has always been governed under the rule of a supreme power. The role and form of supreme power has changed over the centuries. During the ancient times the role of state was that of a Police State, where it's only duty was to protect the State from internal and external aggression and maintenance of international peace. But, at the present time the role has changed from police State to Welfare State, where the role of the State is not only to protect from external aggression and maintenance of internal peace, but also to develop the welfare of its subjects. The concept of punishment has also changed like the concept of State responsibility over the centuries. The nature of punishment depended on the basis of religion and the administration of the Kings. During ancient times, the concept was punishment was retributive basis, where the criminals were given barbaric form of punishment. Later, over the passage of ages, the importance of human rights increased which in per se paved way for the substitution of Retributive theory by Reformatory and Rehabilitative theory. The main object of prison is reformation of the prisoners. But the fate of the under trial prisoners in the present ages is not in accordance to this object. The imprisonment of them for a period longer than the required duration for their trial to be processed is in contrary to the basic object of a prison. Their fate to be imprisoned without proved of either their guilt or innocence is against the norms of punishment. This is an act of violation of their Right to Life under Article-21, as their prolonged stay in the prison could have an adverse effect on their life.

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**INTRODUCTION**

The human civilization has always been governed under the rule of a supreme power. The role and form of supreme power has changed over the centuries. Starting from the monarchy form of government to the present democratic, republic and other forms of government, the responsibility of the supreme authority has varied a lot. During the ancient times the role of state was that of a Police State, where it's only duty was to protect the State from internal and external aggression and maintenance of international peace. But, at the present time the role has changed from police State to Welfare State, where the role of the State is not only to protect from external aggression and maintenance of internal peace, but also to develop the welfare of its subjects. The famous jurist Austin has defined law as, that which descends from the Supreme authority of a society and not from any other source. Thus, in accordance with his view, the State has the vital responsibility to legislate laws which would ensure peace and security and also enhance the welfare of the society. The concept of punishment has also changed like the concept of State responsibility over the centuries. The nature of punishment depended on the basis of religion and the administration of the

Kings. During ancient times, the concept was punishment was retributive basis, where the criminals were given barbaric form of punishments. Later, over the passage of ages, the importance of human rights increased which, in per se paved way for the substitution of Retributive theory by Reformatory and Rehabilitative theory. The object of imprisonment under Retributive theory was to just detain and punish the prisoners. But the object of imprisonment under Reformatory theory is not only to detain the prisoners but also to reform them and to provide rehabilitation for them, as under this theory the prisoners are treated as humans apart from just prisoners.

The main object of prison is reformation of the prisoners. But the fate of the under trial prisoners in the present age is not in accordance to this object. The imprisonment of them for a period longer than the required duration, for their trial to be processed, is in contrary to the basic object of a prison. Their fate to be imprisoned without being proved of either their guilt or innocence is against the norms of punishment. This is an act of violation of their Right to Life under Article-21, as their prolonged stay in the prison could have an adverse effect on their life.

**Objectives**

1. To study the theoretical view of the Prisons and under Trials in India.

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2. To examine the staidtical status of under trials in india.
3. To analyse the challenges of under trials in india.
4. To suggest some legal and procedural remdies for the under trials in india.

### ***Innocent till proven guilty***

Under trial prisoners constitute nearly the major population in the prison<sup>1</sup>, which is not justifiable according to the natural justice. The under trial prisoners are actually kept inside the prison for their trial and investigation duration and that doesn't imply that they should held inside the prison forever. Prison is for 'accused' who are found guilty and not for the 'suspects'. How our legal system could be said as a just and fair system, when it is negligent about the fate and injustice of the under trial prisoners. A criminal justice system could be called effective only when it is ensuring fair and basic justice to all of its citizens including the prisoners.

### ***National and International aspects for the Rights of the under trials***

The United Nations Minimum Standard Rules for the Treatment of Prisoners ensures basic standard human rights for the prisoners also. It establishes a provision that the under trial prisoners should be assumed as innocents and should be dealt fairly under the prison administration of a nation<sup>2</sup>. The Body of Rules also establishes the same. It also lays down the condition that the arrest or detention of such persons should be done only for the investigation purpose and not for the reasons in exception under the law of a country.

Article-21 of the Constitution of India enhances the basic liberty to lead one's life with adequate facilities and dignity. Thus, when an accused itself is protected under both the National and International aspects to be ensured with proper facilities and rights, then the under trials are not an exception to be neglected.

The Member of National Human Rights Commission of India, Justice K. Veeraswamy has highlighted on the status of under trials in India, in a letter to the Chief Justices of High Courts in India, that the majority of the under trial prisoners in India are those from the economy of limited means who are unable to pay their bail amount required to be paid under law in order for their bail to be granted. The prolonged detention of them inside the prisons affects their liberty of movement and dignity guaranteed by the Constitution of India.

The Punjab State Policy gives more importance to the status of the under trials in the prisons and the basic objective of that State Government is that no prisoner should be detained inside the prison for an unreasonable prolonged detention. It also focuses on the speeding up of the trials which is the only effective way as a remedy for the fate of the under trials<sup>3</sup>. However, the implementary process of the procedures established under the law, is not satisfactory in nature. The under trials are mostly neglected by the law and the judiciary. The analyses on the aspect of their human rights are as follows

1. under trials and the Convicted are mostly kept in the same institution, which is against the provisions of both the National Legislations of India (The Prisons Act of 1894, The Prisoners Act of 1894 and the United Nations Standard Minimum Rules for the Treatment of Prisoners of 1955.
2. The number of adjournments is done in more than necessary, which slows down the judiciary process.
3. Delay in the trial of the suspects.
4. Prolonged detention in the name of investigation.
5. Actual confinement more than the pronounced sentence.
6. Acquittal after confinement.
7. Vexatious arrests.

### ***The Code of Criminal Procedure in India***

The Criminal Procedure Code of 1973 establishes the various procedures to be followed by the legal system in India while handling the prisoners. It classifies the offenses as Bailable and Non-bailable offenses on the grounds of the intensity of the offenses, but failed to define the term 'bail'. The bailable offenses are those which are less serious in nature and non-bailable offenses are those which are more serious in nature.

The former one is provided by the police itself and the latter ones are provided by the courts on the basis of the circumstances and character of the accused. Despite the fair and reasonable provisions established by the law, the implementation of the law is discriminatory. The Legal Aid Committee of 1971 established by the Government of Gujarat has stated in its reports that, the bail system established by the law, though not discriminatory by statute, it is found to be discriminatory in terms of its implementation<sup>4</sup>.

Most of the individuals found guilt are those with limited means who are unable to pay the bail amount while, the people with adequate means get bail by paying the amount.

While on the other hand, in few cases, even when the bail amount is fixed by the court on a minimum standard, some people find it difficult to pay it due to their limited means. This system reflects the fact that, either the poor has to beg the rich for their bail money or to face the bars. This is not an actual legal justice system. The Supreme Court in a case has held that, unwarranted sureties and expensive custodies are unlawful. No person should be deprived of his basic protective rights established by the law, only because on the grounds of his economic status. The government after realizing the situation amended the Criminal Procedure Code to establish favorable liberalized bail provisions.

### ***Under trials- infringement of Article-21***

The Constitution of India which is the supreme document of India establishing the fundamental Rights, Freedoms and procedures to be followed by the Government of India.

It also establishes the fact that any act of the Government or the people in violation of the Fundamental rights enshrined by it, is to be considered as an infringement of their rights and should be termed as a violation of law. Among the various Fundamental rights enhanced by the Indian Constitution, Article-21 establishes one of the vital fundamental rights of

1. <http://www.humanrightsinitiative.org/download/1457162682Undertrial%20Prisoners%20and%20the%20Criminal%20Justice%20System.pdf>,
2. United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955, Article-65
3. <http://www.humanrightsinitiative.org/download/1457162682Undertrial%20Prisoners%20and%20the%20Criminal%20Justice%20System.pdf>,

4. <http://www.humanrightsinitiative.org/download/1457162682Undertrial%20Prisoners%20and%20the%20Criminal%20Justice%20System.pdf>,

*Life and Personal Liberty*<sup>5</sup>. It is the most widely interpreted rights among the fundamental rights of India.

The Article-21 requires the following conditions to be fulfilled before a person is deprived of the property

1. There must be a valid law.
2. The law must provide a procedure.
3. The procedure must be fair, just and reasonable.
4. The law must satisfy the requirements of Articles 14 and 17 I.e. it must be reasonable.

When these conditions are compared with the fate of the under trial prisoners, then we could find that the delay in trial and prolonged period of investigation though is a procedure established by the law, is not just, fair and reasonable. In a case<sup>6</sup> the Supreme Court of India has held that the word 'law' in this Article did not merely mean an enacted piece of law, but it incorporates the principles of natural justice, and a law depriving a person of his personal liberty without complying with the rules of natural justice could not be held to be valid under Article-21.

The Right to Speedy Trial is one of the extended rights by the judiciary under the scope of the Article-21. In a case<sup>7</sup> the Supreme Court has held that it is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article-21 of the Constitution. Speedy trial is the essence of criminal justice. In United States speedy trial is one of the constitutionally guaranteed right under the Sixth Amendment. J.Bhagwati has stated in his judgment that although, unlike the American Constitution speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article-21 as interpreted in Maneka Gandhi's case.

**Statistics of the under trial Prisoners in India**

According to the Statistics report of the National Crime Records Bureau Ministry of Home Affairs of India 2015, the number of Under Trials in India amounts to 2,82,076 which is about (67.2%) of which 2,70,160 are females and 11,916 are males. As of dated 31.12.2015 1,35,634 are under trials in India between the age group of 18-30. 1,15,181 are between the age group of 30-50 years. 31,229 are above 50 years of age.

**Table 1** Number of Jails, Capacity and Occupancy of Inmates in India, 2015<sup>1</sup>

S.no	Types	No. of Jails	Capacity	Population of Inmates	Occupancy rate
1.	Central Jail	134	159158	185182	116.4
2.	District jail	379	137972	180893	131.1
3.	Sub-Jail	741	463368	39989	86.2
4.	Women jail	18	4748	2985	62.9
5.	Borstal school	20	1830	1003	54.8
6.	Open jail	63	5370	3789	70.6
7.	Special jail	43	10915	5769	52.9
8.	Others	3	420	13	3.1
9.	Total	1401	366781	419623	114.4

**Table 2** Distribution of different types of inmates by Age-group in the country, 2015<sup>1</sup>

S.no	Category	16-18 years%	18-30 years %	30-50 years %	50 years %	Total
<b>Indians</b>						
1.	Convicts	0	31%	50%	18.1%	131815
2.	Under trials	32%	48.1%	40.8%	11.1%	278281
3.	Detentues	0%	37.3%	56.5%	6.1%	2525
4.	Others	4.2%	19.6%	70.2%	6.0%	382
5.	<b>Total</b>	<b>48%</b>	<b>42.6%</b>	<b>44.1%</b>	<b>13.3%</b>	<b>413003</b>
<b>Foreigners</b>						
6.	Convicts	0%	43.6%	50.0%	6.4%	2553
7.	Under trials	0%	49.8%	41.0%	9.2%	3795
8.	Detentues	0%	56.8%	43.2%	0	37%
9.	Others	0%	51.3%	37.7%	11.0%	435
10.	<b>Total</b>	<b>0%</b>	<b>47.7%</b>	<b>44.0%</b>	<b>8.3%</b>	<b>6620</b>

**Under trial prisoners- their legal dispersion**

The reason for the major ratio of under trial prisoners in India are due to various factors which act as an impact for their fate. But the legislation has taken note of it and has brought some necessary changes into the legal system in order to secure the right of the under trial prisoners. But the affectivity of their implementation into the practical issues is not in accordance with the objective of such amendments. Some of the few problems and their solutions in accordance with the recent amendment of 2013 in the Criminal Procedure Code of 1973 are as follows.

**Indiscriminate arrests-** the arrest powers of the Police were wide under the previous Code. They were vested with powers to arrest even when a person refuses to cooperate with the investigation. This was mostly misused by the police. By the Amendment of 2013 the Section-41 and Section-41A establishes that a police officer could arrest only in credible cases where there arises a necessity for the arrest of the person. In those cases involving imprisonment for more than 7 years, the police shall arrest only when they are satisfied that there is a necessity for arrest.

**Delay in period of investigation-** one of the major reasons for the suspects to remain inside the prison is the prolonged period of investigation by the police. The reason for the suspects to be held inside the prison is that they should not escape anywhere during their investigation period until their trial is completed and they are found guilty. But, this doesn't imply that they could be held inside the prison for indefinite period in the name of investigation. This is certainly an infringement of their fundamental right under Article-21.

Hence, the amendment of 2013 under Section-167 has laid down that the maximum investigation period for the police to complete it are 90 days and within that period, the police are supposed to complete the investigation. This however is not that effective in reality. The statistics report stated above is not justifying the effective implementation of this provision. Either the police are not completing within the specified period in spite of its requirement or the judiciary on the other hand is not resolving the cases in a speedier manner, thereby prolonging the imprisonment of the prisoners.

**Delay in trial in certain cases-** the police is not the only reason for the confinement of the under trials in the prison. The judiciary on the other hand is not rendering justice in a speedier manner as required by the natural basis. This in *per se* extends the imprisonment of the under trials inside the

5. Constitution of India, Article-21.  
 6. A.K.Gopalan v State of Madras, AIR 1950 SC 27.  
 7. Hussainara Khatoon (No.1) V Home Secretary, State of Bihar.

prison. The judiciary which is responsible for the justice of the citizens is not supposed to render injustice to the under trials in name of trial.

**Prolonged detention-** the prolonged detention is the major impact factor for the fate of under trial prisoners. They are detained in the prison for a longer period than the required period in the name of investigation. This is not reasonably justifiable as one cannot hold an individual inside the prison as a suspect not being either proven guilty or proven innocent. They have the equal rights of equality and rights to be provided with the justice they required.

Many under trial prisoners have even died inside the prison during their confinement inside the prison. The reason for their confinement inside the prison is to prevent their evasion from the hold of law which would delay the process of investigation and it may also lead to the tampering of the evidences and the witness by them. But this doesn't justify their situation of being held inside the prison. In order to provide solution for this, Section-436A establishes that an under trial prisoner being held inside the prison could be released from the prison when he or she completes 1/3rd of the imprisonment period and could apply for bail in the court. The court if is satisfied for providing bail, then it could grant bail for that person. The bail is granted on the basis of the circumstances and behaviors and good conduct of the under trial prisoner. The prisoner is released on the following grounds

1. The prisoner is related on a basis of a personal bond with a surety.
2. The prisoner is released on bail without entering into personal bond.
3. The prisoner could also be held in a continued detention without provided with bail.

#### **Prison Authorities and their impact upon the Under Trials**

The prison authorities like Superintendent of Jail, Jail officer etc are the persons having direct communication with the prisoners. They are the authorized persons to duly take care of the inmates and are responsible for their welfare inside their prison for the entire period of their imprisonment. Hence, they could make aware of their legal remedies and benefits available for an under trial prisoner who is unaware of the benefits available for them. They could take the role of providing legal aid for them as a factor of social responsibility.

The prison visitors who could be either official or non-official could also take the responsibility as they are the bridge between the outside world and the prison administration for the under trials.

#### **The Reality**

Over 67% of prisoners in India are Under Trial prisoners who are not either proven guilty or proven innocent.

The Bihar has the highest rate of Under Trials with a percentage of over 82.4%<sup>8</sup> followed by the states like Jammu and Kashmir, Odisha, Jharkhand and Delhi. The Northeastern states with high percentage of Under Trials are Meghalaya which tops the list with a percentage of 92.4% followed by Manipur and Nagaland.

The Law Commission of India once made reports to the Government of India to make provisions for the under trials to be released on the grounds that if they have completed 1/3rd of their punishment inside the prison. It took this initiative because according to its report over 70.6%<sup>9</sup> of the inmates are illiterates who are unaware if their basic rights and legal remedies available to them. The commission also reported that over 60% of the arrests are 'unnecessary arrests' which are done for minor prosecutions and these costs over 42.3% of the jail expenditure to the government. These reasons have resulted in the 'Overcrowding' of the prison.

#### **Suggestions**

1. Speedy trial is the effective remedy for the under trial prisoners.
2. The remedies established under the law should be implemented in a more effective manner.

#### **CONCLUSION**

The Government is the Supreme source of law for the people in a society. The people of a country depend upon the government to be governed and regulated. Thus, the government is duly responsible for the maintenance of peace and order and security of the society. The government is supposed to treat its subjects in a just and reasonable manner. The prisoners are the actual criminals who are found guilty by law. Yet, they have been enshrined with basic standard rights and freedoms under the both National and International perspectives. The prisoners are first to be viewed as humans and not as prisoners. When this is in the case of the prisoners who are found guilty, then the under trials who are not the actual guilty, as they are in the investigation period waiting for their trial, should be treated in a much more fair and reasonable manner. The prolonged detention of the under trials in the prison is the violation of their Right to Life and Personal Liberty established under Article-21 of the Constitution of India.

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