IJCRT.ORG ISSN : 2320-2882

INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

ANALYTICAL STUDY OF PRE TRIAL DETENTION UNDER CRIMINAL JUSTICE SYSTEM

ABHAY SHANKAR BHATNAGARLLM

ITM UNIVERSITY, GWALIOR M.P. INDIA

ABSTRACT

Pretrial detention refers to detaining of an accused person in a criminal case before the trial has taken place, either because of a failure to post bail or due to denial of release under a pre- trial detention statute. This section allows a judge to detain a defendant if the judge determines that conditions exist that raise doubt as to whether the defendant will appear at trial or whether the defendant may cause harm to the community. However, in determining whether the accused constitutes a danger to the community, each case must be considered on its own merits and a court must determine whether the need to protect the community becomes so sufficiently compelling that detention is appropriate.

Pretrial detention of juveniles is also allowed. However the court shall not direct detention unless available substitutes to detention, including conditional release, would not be appropriate, and the court finds that unless the respondent is detained: there is a substantial probability that he or she will not appear in court on the return date; or there is a serious risk that he or she may before the return date commit an act which if committed by an adult wouldconstitute a crime.

Keywords: Fair Trial, Pre Trial Detention, Law of Arrest, Law of Bail.

INTRODUCTION

In India, the pre-trial hearing instrument is not specifically recognized as a defining characteristic of the judicial method, while both the Code of Criminal Procedure and the Code of Civil Procedure include some clauses that may be utilized for this reason. Under the light of the constitution, people imprisoned as under trials under jails are considered innocent. The outcome of pre-trial detention is alarming. Offenders who are supposed innocent remain subject to jail life's psychological and physical deprivations, typically

with more onerous terms than those levied on convicted offenders. The imprisoned convict loses his work and is prohibited from adding to his prosecution. As significant as that, the strain of the imprisonment also falls heavy on his family's innocent members.

Trials are delayed by calling new witnesses even towards the end of the proceedings or even when they are carried in the higher courts. They are delayed due to the absence of pre-trials in India. There is an option of plea bargaining in criminal cases where the accused when accepting his fault may escape with less punishment. The law ministry is thus forming papers to file pre-trials conferences in India. There will be a separate court to hear the parties and they may discuss the time frame for conclusion and documents that they want to be discussed.

In the pre-trial detension, parties to the case and their attorneys have a pre-trial consultation until the jury starts in the presence of a defendant, or a prosecutor or a judicial officer who has less authority than a defendant. The government has been proposing proposals to reduce pretrial incarceration levels from time to time, but a little drastic reform has been seen. The Supreme Court has also given regular guidelines for the release of under-trials and the liberal usage of bail laws, but this has not contributed to any improvement in a large number of under-trials in prison.

Pre-trial proceedings are critical components of the justice process because at this point the vast majority of all criminal cases are resolved informally and never come before the courts. These include pre-arrest investigation, conviction, detention, court decision, initial appearance before a municipal judge, preliminary or grand jury hearing, evidence or indictment arraignment, and motions for pre-trial proceedings.

Pre-trial detention is the process of keeping a person who has been arrested in custody before conviction. Pre-trail detention refers to detaining of an accused person in a criminal case before the trial as taken place, either because of failure to post bail or detained under preventive detention statute. An under trial, or a pre-trial detainee denotes an un-convicted prisoner i.e. one who has been detained in prison during the period of investigation, inquiry or trial for the offence she/he is accused to have committed. Almost every third prisoner (32%) around the world is awaiting trial or the conclusion of trial. When the under trial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial. (Sanjay Chandra vs CBI)[1]

MEANING OF PREVENTIVE DETENTION:

Pretrial detention refers to detaining of an accused person in a criminal case before the trial has taken place, either because of a failure to post bail or due to denial of release under a pre- trial detention statute.

Preventive detention is a necessary evil.[2] It is both a sword and a shield. Though it is undemocratic yet it is also a weapon for safeguarding democracy. Preventive detention means detention of a person against whom there is a suspicion that he is likely to commit an offence, so as to prevent him from committing that

offence.

Preventive detention is a black spot on the fair name of democracy and liberty but it enhances their beauty. It invades liberty of the detenu but is resorted to protect liberty of others. Preventive detention of a person may also be resorted to where the evidence in possession of the authority is not sufficient to make a legal charge or to secure the conviction of the detenu but still is sufficient to justify his detention.

Preventive detention is the mischievous enemy of the right to personal liberty. It envisages detention without trial which is against the basic canons of criminal jurisprudence. At times when the liberty of the individual crosses the limit and threatens the very existence of the State and at the point of time it fails to control the enjoyment of individual's liberty, then the State uses the preventive detention measure. This measure is not unknown in the dictatorial and the democratic regimes; the capitalist, the socialist and the communist governments. However, there was a difference in the exercise of the said power; some countries tried to handle this measure carefully and cautiously. They adopted it casually and only in grave situation affecting the very existence of the State. In other countries it became a part of the life of the country. They used the measure indiscriminately in time of war and peace and thus in such countries the right to personal liberty remained in eclipse.[3]

[1] (2012) 1 SCC 40;
[2] Raj Kumar Singh Vs. State of Bihar AIR 1986 SC 2173.
[3] Dhawan Rajeev & Jacob Alice (edited): 'Indian Constitution Trends and Issues'; N.M. Tripathi Private Ltd.Bombay. 1978, p. 203.
Preventive detention as part of the constitution is a very unusual provision in constitutional jurisprudence.

There is no authoritative definition of the term 'Preventive Detention' in Indian Law, though as description of a topic of Legislation it occurred in the Legislative lists of the Government of India Act. 1935, and has been used in item 9 of list I and item 3 of list III in the Seventh Schedule of the Constitution. The expression has its origin in the language used by Judges or the Law Lords in England while explaining the nature of detention under Regulation 14(B) of the Defence of Realm Consolidation Act, 1914, passed on the outbreak of the First World War; and the same language was repeated in connection with the emergency regulations made during the last World War. The word 'Preventive' is used in contradiction of the word 'Punitive'.[4]

AIM AND OBJECTIVE OF RESEARCH

1. To justified the legality of pre-trial detention of the accused.
2. To determine pre-trial detention of the accused
3. To determine violation of Human Rights.
4. To support the data available in the finding and conclusions.

THE HYPOTHESES

1. Pre-Trial Detention is in total disregard for the law of the land since it is against thesafeguards provided under the law.
2. The police and the judiciary are responsible for pre-trial detention of the accused.
3. Pre-trial detention is totally against the demands of the Universal Declaration ofHuman Rights.
4. Pre- trial detention is the effect of arbitrary arrest, automatic remand, refusal of bailand the demand of sureties and securities that are not within the reach of the poor.

METHODOLOGY

The methodology applied is doctrinal and empirical. Doctrinal methodology involves collection of materials from statutes, judicial decisions, articles, newspapers, journals and

[4] A.K. Gopalan Vs. State of Madras. AIR 1950 SC 27;

internet. Empirical methodology involves collection of views from the judges, advocates, police, social workers and people interested in this field through interview schedule.

STATEMENT OF THE PROBLEM

Pre-trial detention is the burning topic of the Criminal law which issue questions the very existence of justice and the topic chosen is pre-trial detention in the criminal justice system to highlight the sad plight of the under trial prisoners. Much is said about law. Law is majestic, law is an ocean, no one is above law, law is for the people, and law is sublime, and so on. The most important definition of law is: Law is not an abstract thing; law is a living organism because it is applied on living human beings. The first demand from a judge is of being humane. Law is to be applied with its letter and spirit. The legislators have framed laws taking into the essential thoughts that it is applied on living human beings. The police and the courts of law tend to become rigid and inconsiderate while applying the laws made for the common man. This research is about the sufferings of the common man and basically about the forgotten under trial detainees.

To comprehend a law fully well one has to know its basics and the intent of the representatives. Judge cannot administer law in an arbitrary, imaginary and oppressive manner and the application should be right, just and fair[5]. The judges and courts of law are not above law. The judges should learn law, comprehend its basic structure and avoid self made declarations. In most of the judgments we find judges arguing the case away from the concerned law as to favor someone or to negate the law.

THE SIGNIFICANCE OF THE STUDY

Disturbing reports are achieved to spotlight the drawn out pre-trial confinement. Preference, nepotism and defilement are profound established in award of or refusal of bail. Pre-trial conviction is the infringement of the brilliant standards of the criminal law; infringement of the Constitutional shields; and infringement of the essential rights ensured under the Universal Declaration of Human rights. Hence this study to highlight the role thoroughly negative played by the Criminal Justice Administration.

LAWS AND POLICIES TO PREVENT MISUSE OF PRE-TRIAL IMPRISONMENT

[5] Manaka Gandhi Vs. Union of India AIR 1978 SC 597

a. "Ensure that the law on pre-trial detention fully reflects international standards, isclear, and does not contain conflicting provisions.
b. Rule out use of pre-trial detention where there is no likelihood of a custodial sentenceif the defendant is convicted.
c. Limit the overall time that a person can be detained pre-trial.
d. Require judges, when imposing or extending pre-trial detention, to provide concrete,case-specific reasons for their decision, in writing.
e. Mandate the consideration of alternatives to pre-trial detention.
f. If money bail is used, require that it is set with proper regard to the defendant'smeans.
g. Require the prosecution to disclose to the defence the case file or the principalevidence on which the charges are based, prior to the first pre-trial detention hearing.
h. Ensure that time spent in pre-trial detention is always deducted from any custodialsentence".

STEPS IN PRE TRIAL

In India, all criminal cases consist of pre-trial and post-trial stages. To a pre-trial case, the offence must be classified as either cognizable or non-cognizable defined as cognizable crime and non-cognizable crimes, respectively.

Cognizable crime means a crime that can be charged without a warrant by a police officer. In the event of cognizable offences, the Police Officer is obliged to file an FIR (First Information Report) under Section 154 of the Code of Criminal Procedure immediately and may undertake investigations and acts such as arrest etc. In general, cognizable crimes are extremely severe in nature or situations where immediate action by the police is required.

Cognizable offences can be either bailable or non-bailable as described in Section 2(a) of Code of Criminal Procedure. Non-cognizable crime is a crime in respect of which a police officer has no right to arrest without warrant. While FIR does not need to be registered for non-cognizable offences, the same must be entered in a separate register held for that purpose. In these cases, a police officer may initiate an

investigation after obtaining permission from the competent court according to Section 155 of Code of Criminal Procedure.

The police collect evidence, arrest and produce the accused before the Judge and secure police detention or judicial remand orders. If the police consider that no prima facie case is made out of the final report, the investigation shall be terminated and filled in before the tribunal. If the investigative agency thinks a case is made prima facie, it will prepare a charge sheet which is filed before trial. The Magistrate must pass final orders reporting and charging boards. The case will be depending on the Magistrate's order either to be dropped or put up for prosecution and trial.

FIR is the first record of details submitted in compliance with Section 154of the Code of Criminal Procedure.[6] The FIR is just the specific details that should be made available to police when there is a cognizable crime. FIR is the first stage from which birth is taken froma criminal case.

Document their statements, gather relevant items, carry out searches and arrests, apprehend the suspects, document their statements and confessions, organize parades for test identification, obtain technical reports and opinions from experts and compile a case log of all of them for each case investigated. Therefore, these conflicting principles need to be fine- tuned, and there are serious concerns about the possibility of breaching the different freedomsopen to citizens in the hands of police investigators.

A criminal case consists of several stages, ranging from initial conviction to sentencing and eventual appeal. The following is a summary of what to expect in a criminal prosecution during the pre-trial process.

1. **Arrest**

Usually, criminal action starts with an arrest by a police officer. A police officer may arrest a person if (1) the officer sees a person committing a crime; (2) the officer has reason to believe that that person has committed a crime, or (3) the officer makes the arrest under a valid arrest warrant. Following the arrest, the suspect is booked by police. At the point when the police finishes the booking cycle, the suspect is held under detainment. Where the suspect has submitted a minor offense, the police might give a request to the suspect with directions to show up in court later. An individual is arrested by police and is at this point not allowed to

[6] The Code of criminal procedure, 1973

leave or move around. Actual assurance isn't suitable, like cuffs: everything necessary is the activity of police authority over a person.

2. Booking

Typically, an individual is taken to the police station after being detained, and "booked" or entered into the police system. This process may involve collecting personal data, taking fingerprints and confiscating personal property. The person is usually put in a holding cell of some kind after reservation.

3. Bail

Where bail is given to a suspect in police custody, the suspect might pay the bail aggregate as a trade-off for a delivery. Delivery on bail depends on the speculates obligation to show up in all court procedures planned. Bail can be given to a presume following the booking or at a resulting bail audit hearing. On the other hand, a litigant can be delivered on his "own affirmation." A respondent delivered on his acknowledgment need not post bail however should consent to show up at all booked court hearings recorded as a hard copy. Arrival of affirmation is given after the court perceives the reality of the wrongdoing and the criminal record of the respondent, risk to the local area and family and occupation relations. In specific cases, the individual isn't permitted to post bail following the capture and should either delay until a bail hearing is held or for arraignment. If so, an adjudicator can decide if the individual ought to be delivered on bail and may set the bail sum.

4. Arraignment

The defendant makes his first arraignment appearance in court. The judge reads the charges filed against the defendant in the indictment during the arraignment and the defendant decides to plead "guilty," "not guilty" or "no contest" to those charges. The judge will also review the bail and set dates for future proceedings on the defendant. The arraignment is the principal criminal case to be brought under the watchful eye of a court. Future hearings can be booked, for instance, the primer hearing and the preliminary. The prosecutor provides all documents related to the case, such as the police report, to the defendant and his or her lawyers. If the crime with which the person is charged can result in a imprisonment, the defendant is entitled to an attorney, even if they cannot afford one. Assuming they can not manage the cost of an attorney however wish to have one, now the adjudicator will delegate a legal advisor to address the litigant.

5. Plea Bargain

At this point, many criminal cases are concluded. The defendant agrees to plead guilty, at times to a lesser charge than the one for which they were originally arrested, or at times to a lesser punishment than they might receive if found guilty in a trial. When a defendant is charged with many crimes, they may sometimes plead guilty to one of the crimes, and the prosecutor may decide to drop the other charges. Plea bargains can either be agreed where the prosecution and defence both agree on the punishment, or ungreased, where each side suggests a punishment to the judge, and the judge chooses whatever he or she sees fit. In certain states, a concurred request is viewed as "protection restricted," which implies that

assuming the adjudicator needs some level of punishment that is more limit than the respondent proposes, the litigant will pull out their supplication of blameworthy and continue to court.

6. Preliminary hearing

If no plea deal is reached following arraignment, a preliminary hearing is held. At this point, the judge listens to the testimony of the prosecutor and determines if there is ample proof to charge the crime against the defendant. Trail hearing roles differ from state to state. A preliminary hearing, or preliminary review, is an adversarial process where witnesses are challenged by lawyers and both parties present claims. Instead, the judge makes the final determination of probable origin.

If the investigating officer considers a case fit for prosecution then he must file a charging sheet in the case. The charge sheet also includes the names of the person being questioned but who may not be charged for lack of proof in the investigating agency's view. Filing the charge sheet usually means that the investigation in the case is over, and now the court needs to consider the facts the prosecuting agency needs to be obtained. It should be reminisced that if any new details come to light during the case, the agency can file additional charge sheets.

RIGHTS OF AN ACCUSED PERSON DURING PRE TRIAL DETENTION

Every person has a rights to protect from getting violation during any process. Similarly, an offender also have some rights which provided by the law to protect from getting violated by police and during investigation. Those rights are as follows:

1. Knowledge of accusation
2. Legal assistance
3. Speedy trial
4. Right to bail
5. Right against self incrimination
6. Restriction on double jeopardy

CONCLUSION and SUGGESTION

Judges' most recognizable responsibility is to administer over trials or hearings, and to tune in as attorneys safeguard their clients. Judges rule on the admissibility of evidence and tribute processes and can be called upon to determine disputes between contending attorneys. They should guarantee that rules and guidelines are followed, and judges interpret the law to choose how the trial will proceed if explicit circumstances happen under which standard procedure have not been explained. Judges regularly hold pretrial hearings on cases. They pay attention to the charges and decide whether the proof introduced is deserving of a jury. In criminal cases, judges might conclude that individuals blamed for violations are to be held in prison forthcoming preliminary, or they might set conditions for discharge.

Judges and magistrates sporadically force restrictions on the parties in civil cases, until a trial is held. Criminal law controls how speculated accused are caught, charged, and tried; punishments are constrained on indicted wrongdoers, and strategies for testing the legitimateness of conviction are entered after judgment. In this field, case regularly manages clashes of major significance to the portion of force between the state and its residents. Even a solitary day in prison annihilates the accused. He is isolated from the family of which he is the worker; in this way, the entire family gets denied of their every day bread. The disgrace related with the capture and the resulting remand embarrasses the litigant. The preposterous and imaginative utilizations of laws reduces the opportunity and freedom of these people.

Suggestions are:-

1. The Constitutional Courts recording "the prima facie case made out" on seeing the F.I.R and 161 statements must be stopped. F.I.R and 161 statements are not evidence but only material facts. Bail getting refused on this flimsy reason should be avoided.
2. Section 438 of the Criminal Procedure Code declares grant of bail even to persons apprehending arrest. The legislator has comprehended the stigma attached to the arrest and the remand. While so refusing bail under section 437 and 439 of CriminalProcedure Code is highly arbitrary and should be stopped.
3. The courts imposing pre-trial detention by refusing bail to the accused against the golden rule "presumption of innocence till proved guilty is highly erroneous.
4. Records reveal that almost all jails in India are housing more persons than it could accommodate. In all cases the number of under trial prisoners are two -fold, three-fold and sometimes six-fold. If the detention of under trials are avoided the overcrowding can be totally avoided.
5. The word non-bailable in section 437 of Criminal Procedure Code is misleading as to avoid the grant of bail. The word non-bailable should be replaced with the words conditionally bailable. The intention of this section is to impose conditions if necessary.
6. The criminal procedure has wrongly used the word "the collection of evidence" while defining investigation. It is not collection of evidence but collection material facts to be presented before the court as evidence. This definition is misleading and the courts believe that facts are evidence and refuse bail.
7. As stated above "law is not abstract thing, it is a living organism since it is applied on living human beings". The police and judiciary should bear this in mind and change their existing mindset and be humane.
8. Pre trial detention can be totally avoided if the existing laws are further more amended to cancel the discriminatory powers granted to the courts and to grant bail and not to deny bail. The judiciary can delay the grant of bail to collect the antecedents of the accused, the nature of the offence, to learn whether the accused will flee justice, tamper the witnesses, hamper the investigation and furthermore, as to impose suitable conditions

REFERENCE

Website

https://www.legalmatch.com/law-library/article/pre-trial-stages-of-a-criminal-case.html

https://timesofindia.indiatimes.com/india/Pre-trial-conference-in-the-works-to-avoid-lengthy- litigation/articleshow/22273309.cms

https://studentscholarships.org/salary/492/judges_magistrate_judges_and_magistrates.php

https://shodhganga.inflibnet.ac.in/bitstream/10603/209003/8/08_chapter%202.pdf

https://www.lawctopus.com/academike/concept-fair-trial/

Statues

1. Code of criminal procedure
2. Constitution of India