IJCRT.ORG ISSN : 2320-2882

INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)
An International Open Access, Peer-reviewed, Refereed Journal

AN ANALYTICAL STUDY ON THE CONDITION OF UNDERTRIAL PRISONERS IN INDIA AND STRATEGIES FOR EFFECTIVE REHABILITATION

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Abstract: In the landscape of Indian criminal justice, the condition of undertrial prisoners has emerged as a critical concern, warranting urgent attention and comprehensive solutions. This analytical study delves deep into the multifaceted dimensions of this issue, seeking to shed light on the historical underpinnings, current challenges, and potential strategies for effective rehabilitation. By delving into these complexities, this study not only seeks to shed light on the dire circumstances faced by undertrial prisoners but also advocates for meaningful reforms aimed at safeguarding their rights and restoring their dignity. Through the exploration of effective rehabilitation strategies and policy recommendations, this dissertation endeavors to contribute to the ongoing discourse on prison reform in India, emphasizing the imperative of upholding human rights principles and ensuring justice for all individuals ensnared within the criminal justice system.

I. INTRODUCTION

In the landscape of Indian criminal justice, the condition of undertrial prisoners has emerged as a critical concern, warranting urgent attention and comprehensive solutions. This analytical study delves deep into the multifaceted dimensions of this issue, seeking to shed light on the historical underpinnings, current challenges, and potential strategies for effective rehabilitation.

Throughout history, the treatment of prisoners has reflected the prevailing societal attitudes, political ideologies, and legal frameworks. In India, the roots of the undertrial prisoner predicament can be traced back to colonial-era laws and practices, which often prioritized punitive measures over rehabilitation. The legacy of these policies has persisted, manifesting in overcrowded prisons, prolonged detention periods, and inadequate access to legal representation and fair trials.

My study aims to analyze the various factors leading to the difficult situation of undertrial prisoners in India. Throughout this research, a fundamental question persists: do individuals forfeit their basic human rights and dignity as a consequence of being incarcerated, particularly when they remain legally presumed innocent until proven guilty? Through a nuanced analysis of legal frameworks, empirical data, and qualitative insights, this dissertation aims to dissect the mechanisms through which undertrial prisoners are marginalized within the criminal justice system, often subjected to overcrowded and unsanitary conditions, prolonged detention periods, and limited access to legal representation. Moreover, it critically evaluates the societal and institutional factors perpetuating this cycle of deprivation, interrogating whether the punitive nature of imprisonment should entail the forfeiture of fundamental human rights.

1.1 Who Are Undertrial Prisoners?

Undertrial prisoners, commonly referred to as those accused but not yet convicted of a crime, pose a challenge to the legal system's core principles. The principle of presumption of innocence demands that individuals be treated as innocent until proven guilty by a court of law. Simultaneously, the State and the Judiciary are responsible for upholding justice for the accused and the victims. Striking a balance between these principles remains a complex and unresolved legal question. Therefore, navigating through the provisions of the Criminal Procedural Code (Cr. P. C.) to address the issue effectively becomes imperative.

Upon initiating criminal proceedings through filing a First Information Report (FIR), the arrest and subsequent confinement of the accused become pivotal stages. The granting of bail, whether by the Court or the police, becomes a pertinent issue in this process. While the Cr. P. C. does not offer a precise definition of bail; it categorizes offenses as bailable and non-bailable. Bail can be sought in bailable offenses as a matter of right, whereas it is subject to the Court's discretion in non-bailable offenses.

Consequently, any individual arrested, whether with or without a warrant, assumes the status of an undertrial prisoner, endowed with certain rights under the law.

1.2 Rights of Prisoners

Prisoners are human beings. They are entitled to human rights and constitutional rights except those that are to be necessarily denied because of their condition of imprisonment. The State is under a Constitutional obligation to honor and protect their rights, particularly their right to live with human dignity.

The accused, under- trials, suspects and convicts do not cease to be human beings just because they are so named. Hence, their rights as human beings are to be protected and respected. The fundamental rights available to prisoners are not defined in the Indian Constitution in particular. The Judiciary, however, through the process of Judicial Activism, has expanded the scope of various freedoms guaranteed to individuals in relation to prisoners by expanding the horizons of Article 21 of the Indian Constitution and also taking into consideration the relevant provisions of International Covenants formulated for monitoring and supervising the prisoners.

1.2.1 A.K.Gopalan vs. State of Madras (1950)

In the beginning, the Supreme Court was not responsive to the protection of the rights of the prisoner. It examined the issue immediately after the commencement of the Constitution. It expressed the view that the prisoners are nonpersons and fundamental rights under the Constitution are not available to them by their being incarcerated.According to the Court, being detained under a valid law passed by a competent legislature means that a person loses their right to personal liberty. While under such detention, they are not entitled to enjoy their other fundamental rights.[i]

1.2.2 Charles Chopra vs. The State of Bihar (1978)

In Charles Chopra's case, the Supreme Court pointed out, "Prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement.[ii]

1.2.3 Sunil Batra vs. Delhi Administration (1978)
Sunil Batra (ii) vs. Delhi Administration (1980)

In Sunil Batra cases, while interpreting Articles 14, 19 & 21, the Supreme Court has assured many substantive rights to the prisoner. The extended dimension given to Article 21 has proved to be multi-dimensional. The right to life enshrined in Article 21 has been liberally interpreted to mean something more than survival and mere animal existence. It includes all those aspects that make a man's life meaningful, complete, and worth living. This aspect of judicial pronouncement leads to the emergence of prisoner's rights.

The significant extension areas were the rights not to be handcuffed, put on bars, and solitary confinement unless absolutely necessary. The right against custodial torture, right to a speedy trial, right to counsel, proper condition of detenue, right to meet relatives, friends, and lawyer, right to wages, and even the right to Compensation for violation of rights. Beginning with the Sunil Batra case, the Court has armed itself and embraced the jurisdiction to attend to the prisoners' complaints where their rights, either under the Constitution or under the law, are violated.[iii].

1.2.4 Nilabati Behera vs. State of Orissa (1993)

In the case of Nilabati Behera vs. the State of Orissa, the Supreme Court observed that convict prisoners or under-trials should not be stripped of their fundamental rights under Article 21. Only restrictions permitted by law can be imposed on their enjoyment of fundamental rights. The State has an obligation to ensure that the citizen's indefeasible right to life is not infringed, except in accordance with the law, while the citizen is

in its custody. This precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convict, under-trials, or other prisoners in custody, except according to the procedure established by law.[iv] .

1.2.5 Further developments in Prisoner's Rights

As an offshoot of the observations, comments, directions, and pronouncements regarding the upholding of the rights of prisoners in relation to the rights guaranteed to an ordinary citizen under the Constitution in various landmark judgments by the Supreme Court on this subject, so many Commissions constituted succeeding the Supreme Court Judgments adopted the rights of prisoners in their Report for strict implementation in prisons. Efforts are also being made to amend the existing statutes connected with prison administration to incorporate prisoners' rights and implement them mandatorily.

The National Human Rights Commission, State Human Rights Commission, and Human Rights Court established under the Protection of Human Rights Act of 1993 also contributed significantly to protecting Prisoners' rights.

The Government of India granted financial assistance to all States under Five Year Plans and Matching Grant (at the rate of a 50:50 ratio) under the modernization of Prison Administration to improve the prison atmosphere and living conditions in Prisons, such as additional accommodation, diet, clothing, and bedding, hygiene and sanitation, health care, water supply, electrification, recreation facilities, etc. The State Government, by utilizing these funds, made all possible efforts to improve Prison conditions and extend all facilities to Prisoners to maintain human dignity.

II. UNDERTRIAL PRISONERS IN INDIA

Under-trial[v]of committing but has not yet been convicted. Undertrials comprise a significant majority of the prison population, accounting for 65.7% of all prisoners. It's important to note that all those held in prisons as undertrials are considered innocent in the eyes of the law. It raises a critical question about how a justice system that claims to be fair and can justify depriving hundreds of thousands of "innocent" people of their liberty.

An effective criminal justice system inevitably needs to ensure that the accused stands trial for the crimes they are alleged to have committed. Therein lie the historical roots of incarcerating people charged with committing crimes. Depending on the gravity of the offence, the police are empowered to keep a person in their custody for 24 hours, after which the Judiciary must authorize any further detention. Save a few exceptions, all are entitled to be released on bail.

The *term "bail" is not specifically defined in the Criminal Procedure* Code of 1973 (Cr.P.C.). However, offenses are categorized as either bailable or non-bailable. Bailable offenses are considered less serious, and anyone accused of committing such an offense is entitled to be released on bail as soon as they are willing to provide the bail The term "bail" is not defined in Cr.P.C.. However, the offences are categorized as bailable and non-bailable.[vi] Bailable offences are considered less serious, and any person accused of committing such an offence is entitled to be released on bail as soon as they are willing to provide the bail. Section 436 Cr.P.C.

"When someone is accused of non-bailable offenses, the court can only grant bail if it is confident that the accused will appear in court for trial, won't interfere with evidence, witnesses, or the police investigation, won't commit any other crimes, and won't obstruct the course of justice.[vii]"The bail provisions, despite their appearance of fairness, are highly discriminatory in their implementation."

The Supreme Court has held that the unwarranted "*cruelty and expensive custody*" inherent in the case of "*avoidable incarceration makes refusal of bail unreasonable and a policy favoring release justly sensible*."[viii] Following the Supreme Court, this paper argues that pre-trial detention is avoidable and unnecessary in many cases. Indiscriminate arrests by police, ignorance of legal rights, delay in trial, reluctance of the courts to grant bail, and inability to provide surety are some reasons that have led to the unnecessary detention of a large number of under-trial people. The Supreme Court has recognized this for years and has been devising ways and formulae to secure the release of under-trial prisoners on bail.[ix] The union government has also realized the gravity of the situation and amended the Cr.P.C. to incorporate liberal bail provisions. Arguing that the non-implementation of the existing legal provisions is a significant reason for the large undertrial population lodged in prisons, this paper explores the legal dispensation of bail under the Cr.P.C. It further urges the prison authorities and visitors to pay attention to and play a positive role in ameliorating the plight of under-trial prisoners.

2.1 Undertrials and their Release: exploring the legal dispensation

An under-trial prisoner's right against unnecessary detention and the procedure to secure their release is given under the Cr.P.C.

A. Problem: Indiscriminate arrests

The power of the police to arrest people is very wide, and they arrest people even when they cooperate with the investigation and are not likely to evade trial. This results in unnecessary detentions.

Solution: Limiting the powers of arrest as proposed by the Code of Criminal Procedure (Amendment) Bill 2006, passed by both Houses of Parliament in December 2008 and awaiting Presidential assent.

The Code of Criminal Procedure (Amendment) Bill 2006 amends the existing provisions for arrest, i.e., section 41 (and also inserts section 41A into the Cr.P.C). Section 41 limits the indiscriminate powers of arrest of police officers. A person cannot be arrested merely because there is a complaint against them. It must be a "credible" complaint/information, and the police officer must "have reason to believe" that "such person has committed the said offense."[x]A police officer can only arrest someone under certain conditions specified in the law, which applies to offenses that are punishable by imprisonment for up to seven years. The officer must write down the reasons for the arrest. If the required conditions are not met, the officer may issue a notice of appearance instead of arresting the person.[xi] If implemented correctly, this provision could significantly decrease the number of people accused of crimes punishable by up to 7 years who would otherwise be detained in jail while their cases are being investigated, inquired into, or tried.

B. Problem: Detention in bailable cases owing to poverty

Many poor people are detained in prisons for alleged involvement in bailable offenses primarily because they are unable to furnish surety. This is a serious concern because, in such cases, bail is a matter of right, and people end up spending long periods in jail merely because they are poor.

Solution: Amended section 436

Section 436 Cr.P.C., which deals with the right to bail in bailable offenses, was amended in 2005.[xii] It mandates the police or Court to release an indigent person on a personal bond without asking for any surety.[xiii] The amendment allows an indigent person to execute a bond that s/he shall appear before the Court and stand trial. The section states that the Court shall consider any person who is unable to furnish bail within 7 days from the date of their arrest as indigent.[xiv] Therefore, a person accused of a bailable offense can be detained in prison for a maximum period of 7 days.

C. Problem: Delay in investigation

Many prisoners are detained in jail as a result of police failing to complete investigations and file chargesheets promptly. This is a serious issue because these individuals are incarcerated without any indication of a police case against them.

Solution: Section 167

Section 167 (Cr.PC) specifies the maximum period within which the police investigation must be completed, and a charge sheet must be filed before the Court. The duration is 90 days for offenses punishable by death, life imprisonment, or imprisonment for at least ten years, and 60 days for all other offenses. Suppose the investigation still needs to be completed within the stipulated time frame. In that case, it is mandatory for the Magistrate to release the accused on bail, provided that they are willing to furnish bail. This provision ensures that the accused is not unjustly detained due to the investigating agency's failure to wrap up its investigation.

D. Problem: Delay in trial in some instances

Many prisoners are charged with a non-bailable offense, which is not very serious and is triable by a Magistrate. Because of the delay in trial, they remain in prison for an extended period.

Solution: Use section 437(6)

In a case triable by a Magistrate, section 437(6) makes it mandatory for a person to be released on bail where the trial has not concluded within 60 days from the first date fixed for taking evidence. The Magistrate may refuse such release, but only after recording the reasons in writing.

E. Problem: Prolonged detention

Many under-trial prisoners are detained for extended periods, sometimes beyond the maximum sentence for their offense.

Solution: Use section 436 A

Section 436A Cr.P.C.[xv]It lays down the right of an undertrial to apply for bail once they have completed serving one-half of the maximum term of the sentence they would have served if they had been convicted. If an undertrial files a bail application under this section, the Court shall hear the public prosecutor and may order the

bail.1) Release of such person on a personal bond with or without surety; or

2) Release of such person on bail instead of personal bond; or

3) Continued detention of such person.[xvi]

This section further proscribes the detention of an undertrial beyond the maximum period of punishment prescribed for the offense that s/he is alleged to have committed. Therefore, in effect, this section prescribes *the* maximum period an undertrial can be detained in any case.

III. REHABILITATION OF PRISONER WITH SPECIAL ANALYSIS OF UNDERTRIAL PRISONERS AND THEIR COMPENSATION AFTER RELEASE

Prisons are increasingly seen as places for rehabilitation, not just punishment. While awaiting trial, which can be lengthy, inmates have the opportunity to learn valuable skills. This can help them transform from individuals with criminal tendencies into responsible people ready to reintegrate into society.

However, in India, only convicted prisoners with confirmed sentences participate in these programs, as outlined in the Indian Jail Manual. They receive a small monetary incentive for their work, which serves two purposes: motivation to learn and the ability to financially support their families.

Despite the emphasis on rehabilitation, the justice system prioritizes public safety. Security measures aim to protect the community from repeat offenders. Nevertheless, rehabilitation remains crucial for a successful transition back to society. Upon release, former inmates face a world with new challenges and the choice to adapt or struggle.

3.1. Rehabilitation: Reality or Myth?

Criminologists have debated for years whether correctional treatment helps juveniles and adult offenders to readjust back in society. A pessimistic view was expressed by Murton (1976) when he, based on the evaluation of various treatment programs done by himself and his colleagues, concluded that "nothing works." He described rehabilitation as a dark area in the prison system. It is further supported by Carney (1980), who considered rehabilitation as a dead subject. The issue of whether the offender who satisfactorily partakes in work gets satisfactorily re-inserted is also a debate. On the contrary, Nyboer 4(1971) believed that successfully completing a systematic training program helps in continuity even in the post-release period. As said by the Assistant Secretary of the Prisons Officers Association of the UK, "If you approach the rehabilitation of offenders purely, from a prison perspective, then I think it is a bit short-sighted when people leave prison they need to be looked after, and need to continue the rehabilitative process. If that process ends, for whatever reason, if you go back into the same kind of social climate you have come out of, which contributed to or caused your criminal behavior, if your mental health problems cease to be adjusted or corrected at the prison gate, if you cease to take medication for mental health problems, if you cease to get intervention with regard to your personality disorder, or if you go back into a community where hard drugs are normal then one should not be surprised, when you compare those people coming out of prison, that the re-offending rate is not as good as anyone would like." Unquote.

A study on prison impact by Sandhu (1968) revealed that the prison negatively impacted the prisoners when they were not provided adequate treatment. Their delinquency potential increased, their hostility increased, they thought ill of the prison impact, and their adjustment to health was lowered. It reflected adversely on the efficacy of the prison program that hostility and delinquency increase during imprisonment. Besides, the impact of long-term imprisonment has proved negative. The study shows that as inmates spend more and more time in prison, their delinquency potential shows a correspondingly rising trend. Such prisoners become so institutionalized that, for them, the free world becomes a distant dream.

3.2. Undertrial Prisoners and their Compensation

3.2.1 Statistics Related to Under-Trials in Prisons

The National Judicial Data Grid data reveals that currently, there are approximately 30.8 million criminal cases pending in the district courts of India. Out of these cases, 8.05 million cases have been pending for over 5 years. This means that more than **25% of criminal cases are still waiting for resolution at the session's court level for over 5 years**.

According to the latest data by the NCRB (Prison Statistics India, 2020), out of the total of 4,88,511 prisoners in India as of December 2020, 371,848 individuals **(76.1%) were undertrials**.

The **Law Commission's 277th Report (Wrongful Prosecution** (*Miscarriage of Justice*)**: Legal Remedies, 2018)** has deeply examined the issue of wrongful prosecution. The Report reveals that **25.1% of the total undertrials spent more than a year in prison**, based on Prison Statistics India, 2015.

The above statistics only provide an insight into the number of people wrongfully incarcerated during the trial stage. Moreover, some people are **wrongfully convicted by lower courts, but are eventually acquitted by a higher court**. For instance, in February 2022, the High Court of Allahbad acquitted a murder convict 40 years after his conviction by a lower court. The National Judicial Data Grid data also

shows that **approximately 26.55% of appeals against convictions/acquittas** have been pending before the High Courts **for more than ten years**.

It is unfortunate that innocent people are sometimes wrongfully prosecuted, incarcerated, or convicted by the State's wrongful actions. Therefore, it is important for the State to have a legal obligation to recompense for the multiple social, economic, and legal sufferings of innocent people caused by wrongful actions.

In India, there is no law on the grant of compensation (Right to Compensation) to those maliciously prosecuted. However, constitutional courts can sometimes award monetary compensation.

The remedy of a civil suit is also available in law, but it can be time-consuming.

Section 358 of the CrPC (1973) provides for **meager compensation of INR 100** to a person wrongfully arrested. The compensation is to be recovered from the person on whose complaint the victim was wrongly arrested. The award of this compensation is subject to the discretion of the Magistrate.

The **Protection of Human Rights Act of 1993** empowers the National Human Rights Commission to investigate instances of illegal detentions, wrongful convictions, incarcerations, and other human rights violations. After conducting an inquiry, the NHRC can recommend that the State pay compensation and initiate proceedings against erring officials.

However, the *currently available remedies only create an ex-gratia obligation and not a statutory obligation on the State to compensate*, as noted in the Law Commission's 277th Report (2018). Thus, at present, the provision of compensation is subject to the discretion of the Judiciary (or NHRC) rather than a legal obligation of the Executive.

3.2.2 Remedies available to Person against Wrongful Incarceration/ Conviction

Various international covenants have recognized the Right to Compensation for wrongful prosecution, incarceration, and convictions. This right has been enforced by various enactments, statutes, and acts in jurisdictions
worldwide. For instance, the **International Covenant on Civil and Political Rights (1966)** lays down the basic commitments that State parties must adhere to protect the civil and political liberties of individual**s. Article 14(6) of the Covenant provides the right to compensation for wrongful convictions.**

Article 5(5) from the **European Convention for the Protection of Human Rights and Fundamental Freedoms** also discusses compensation for wrongful arrest.

3.2.3 The need for the right to compensation against wrongful

arrest is crucial for various reasons. Firstly, a person experiences extreme physical and mental discomfort while being imprisoned, which undermines Article 21 of the Constitution, i.e., the right to a dignified life. This discomfort is exacerbated by the slow disposal rate of the judicial system. A wrongful arrest also violates Article 22 (protection against arbitrary arrests and illegal detention, etc.).

Secondly, wrongful imprisonment can have a profound psychological impact on the victim. A study undertaken at the University of Cleveland (US) showed that lengthy incarceration in jail leads to feelings of loss of liberty/freedom, loss of identity and dignity, and a sense of rage and anxiety. These effects eventually cause the development of Post-traumatic Stress Disorder (PTSD), depression, and paranoia. The consequences impact the ability of the victim to lead an everyday life even after absolution.

Fourth, a person and his family face social boycotts and harm to their reputation in society owing to the stigma attached to imprisonment. Acquittal at a later stage only partially restores the lost prestige.

Fifth, a Right to Compensation will help reduce the amount of malicious prosecution by the State authorities. For instance, many people are wrongfully booked under **Section 66A** of the IT Act, which the Supreme Court has declared unconstitutional.

Although the State cannot return the lost years, family life, opportunities, etc. to the victim, it can still **help the victim reintegrate into society** by providing pecuniary and non-pecuniary assistance for the same.

Lastly, the incarcerated person suffers from damage to health, loss of income or earnings, loss of property due to costs of legal fees, and other consequential expenses resulting from the wrongful prosecution. There is a loss of family life and a loss of opportunities (like education and future earning abilities).

IV. THE WAY FORWARD

First, it is recommended that the Parliament enact a law based on the various recommendations laid out in the 277th Report of the Law Commission. This law should establish a uniform compensatory framework for innocents. The report recommends creating a statute that specifies the conditions, amounts, procedures, and other relevant details for awarding compensation to innocents. The recommendations highlighted in the report are as follows:

a. To ensure speedy and efficient case disposal, a special court for claims is proposed in each district.

b. The report suggests that the compensation under the statutory framework should include both pecuniary and non-pecuniary compensation.

c. It is imperative to have a more specific provision for clearing disqualifications attached to a prosecution or conviction to remove the social stigma affixed to the victim because of the criminal proceedings.

d. Non-governmental organizations need to play a proactive role in helping victims of wrongful acts reach the appropriate courts/authority and claim their respective rights.

e. The statutory framework enacted by the Parliament must have provisions for providing pecuniary/non-pecuniary awards to the families of victims of such wrongful prosecutions, incarcerations, and convictions.

Second, the country's legal aid system is in dire need of an urgent overhaul. It is an essential state instrument that is very useful for thousands of underprivileged and illiterate undertrials. Therefore, the Union Government and states must strongly endorse it. The Law Commission has proposed that new lawyers should be required to work with the legal aid system for two years, but this proposal is still awaiting enforcement and needs to be implemented immediately. Further, the country needs a public defender system as well. In India, the state public defenders receive meager compensation to defend the accused, whereas, in the United States, the funding comes from both the State and the Federal Government. In fact, India can learn a lot from Latin American countries, especially Colombia and Bolivia, which have impressive legal aid systems that help address their alarmingly high incarceration rates.

Third, the justice delivery system should adopt innovative Alternative Dispute Resolution methods to reduce unnecessary delays, especially in cases involving minor offenses. One such globally recognized method is plea bargaining, which can be quite useful. In a plea bargain, the prosecutor offers the defendant the opportunity to plead guilty, either to charge of lesser punishment or to the original charge with a recommendation for a lighter sentence. In a plea bargain, the prosecutor offers the defendant the opportunity to plead guilty, either to a lesser charge or to same charge with strong recommendation to reduced sentence. As a result, most criminal defendants are offered a plea bargain. This approach provides defendants with an opportunity to avoid sitting through a trial, which could lead to a conviction on the original, more serious charge. Although India introduced plea bargaining in its criminal justice system in 2006 through the Criminal Law Amendment Act, 2005, there has been no significant progress in this regard.

Fourth, there is an urgent need to reform the Criminal Justice System which is out-dated and needs to be updated for the modern era. Lok Adalats, mediation, plea bargaining, and negotiated settlements can be utilized to achieve immediate results. Additionally, innovative tactics such as grouping similar cases together, delegating administrative functions to Court Managers, and introducing modern management tools and systems for docket and case management can all help to alleviate the issues faced by undertrials. The National Human Rights Commission's decision to establish human rights cells in state police headquarters is a step in the right direction. The Cells can be headed by officers of the rank of Additional Directors General/Inspectors General of Police, who act as links between the Commission and the State Police. Also, as suggested by the Supreme Court in the Bhim Singh case, the District Committee system can be of immense help.

Finally, it is important to focus on implementing the existing provisions, such as regularizing the functioning of the Undertrial and Periodic Review Committees. We must ensure that indigent undertrials are not kept in jails for prolonged periods, establish full-fledged e-courts in taluks and higher courts, and utilize technology to analyze and group pending cases in courts. To this end, it is necessary to carry out significant penal reforms that will replace the outdated Prisons Act of 1894 with modern trends in penological thinking. The highest court's ultimatum and plan of action should be strictly followed at the district level to put an end to the inhumanity of punishing those who should be presumed innocent until proven guilty according to universally accepted principles.

Concluding Point: The real, **long-term solution** is not early release of undertrial prisoners (as many of them may be hardened criminals), but **overhauling the trial process**. This requires massive transformation

in the manner in which criminal justice is run in this country. Expeditious investigation and trials of criminal cases would remain farfetched without a massive overhaul of the existing criminal justice administration.

V. Acknowledgment

This dissertation is the result of the pertinent efforts and contributions of many a people around me. I have taken sincere efforts to complete the dissertation, enjoying most of the research works, finding clueless amidst and finally relieved, proud and content to complete it. First, I would like to thank, Dr. Sultanan Sherwani, for her guidance and support. I am deeply indebted for the consistent efforts Mam has taken for widening my perception and improving my work. I would further extend my deep-felt gratitude to all the Professors, ALS for their guidance and support. I would also like to convey my thanks to all the Library Staff and the Technical Staff for their timely assistance to carry out the work. Words fall short to express my love and gratitude to my parents, friends and family members for sticking through my side all the way. I feel blessed to have this circle of well- wishers who have always known ways to keep my spirits high.

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[i] A.K. Gopalan vs. State of Madras A.I.R 1950 827 = 1950 SCR 88,= 1950 CrLJ 138

[ii] W.P No. 4305 of 1978, delivered on 31 August 1978, is in the PRC Report Vol.II Chapter XXXVIII Rights of Prisoner, p.73, para 38.2.

[iii] Sunil Batra vs. Delhi administration (1978) 4 SCC 494 = AIR 1978 SWC 1675 = 1978 CrLJ 1741. Sunil Batra (ii) vs. Delhi Administration (1980) 3 SCC 488 = AIR 1980 SC 1579 = 1980 CrLJ 109.

[iv] Nilabati Behera vs. State of Orissa (1993) 2 SCC 746 = AIR1993 SC 1960 = 1993 (2) SCJ 487.

[v]In this paper, the term 'undertrial' refers to an individual detained in prison during the period of investigation, inquiry, or trial for the offense they are accused

[vi] Section 436 Cr.P.C.

[vii]" *State of Rajasthan vs. Balchand* AIR 1977 SC 2477 where it was held the "basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner." Also see *Gudikanti Narasimhulu and Ors. v. Public Prosecutor, High Court of Andhra Pradesh* AIR 1978 SC 429.

[viii] *Gudikanti Narasimhulu and Ors. v. Public Prosecutor, High Court of Andhra Pradesh* AIR 1978 SC 429.

[ix] See, for example, *State of Rajasthan vs. Balchand* AIR 1977 SC 2477; *Gudikanti Narasimhulu and Ors. v. Public Prosecutor, High Court of Andhra Pradesh* AIR 1978 SC 429; *Moti Ram and Ors. V. State of Madhya Pradesh* AIR 1978 SC 1594; *Hussainara Khatoon and Ors v. Home Secretary, Bihar, Patna* AIR 1979 SC 1360**;** *Supreme Court Legal Aid Committee v. Union of India and Ors* 1994(3) Crimes 644(SC); *Common Cause, A Registered Society Through Its Director v. Union of India and Others* (1996) 4 SCC 33.

[x] Section 41, Cr.P.C.

[xi] Section 41 A, Cr.P.C.

[xii] The Code of Criminal Procedure (Amendment) Act 2005, Act 25 of 2005, w.e.f. June 23, 2006.

[xiii] Proviso to section 436 Cr.P.C.

[xiv] Explanation of the proviso to section 436 Cr.P.C.

[xv]This section was added to the Code of Criminal Procedure (Cr. PC) through the Code of Criminal Procedure (Amendment) Act 2005 under Act 25 of 2005, effective June 23, 2006.

[xvi] In cases pertaining to (2) and (3), the Court is required to record reasons in writing.