

THE RIGHTS OF UNDERTRIAL: A CRITICAL STUDY

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ABSTRACT

This Article deals with the Introduction and meaning of Undertrial. Various constitutional and statutory rights of undertrial have been discussed, such as fundamental rights which also include right to life and personal liberty and those rights which are crucial during investigation, inquiry and trial. This Article also deals with the reasons for so many undertrials and also with the problems which arise due to large number of undertrials.

Keywords: *Accused, Undertrial, Personal liberty, bail, Human dignity, Fair trial, Speedy trial, Rights, Slef-incrimination.*

Introduction to Undertrial

Under-trial prisoners constitute a significant majority of the prison population (65.7%). All the 2,45,244 persons who are within prisons as under-trials are deemed to be innocent in the eyes of the law. How can a system that calls itself just and fair, justify depriving 2,45,244 “innocent” people of their liberty?

An effective criminal justice system inevitably needs to ensure that accused stands trial for the crimes they are alleged to have committed. Therein lie the historical roots of incarcerating people accused of 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 any further detention must be authorized by the judiciary. Save a few exceptions, all are entitled to be released on bail. The Code of Criminal Procedure 1973 (Cr.P.C.) does not define the term “bail”⁷⁴ although offences are classified as bailable and non-bailable.

Under our constitutional scheme, the presumption of innocence is a fundamental right and liberty, a paramount value. Only the state can deny liberty and this must be for very good reasons, after going through a fair and just procedure mandated by law.

The familiar dicta “justice delayed is justice denied” and “bail not jail” are often held out as the bulwarks of fair trial but the profile of the prison population gives it the lie. The law has several means to ensure that an accused person can be released from jail, pending trial, and also has provisions to ensure that people – especially vulnerable ones like the very poor, disabled, aged, mentally ill, children and women – do not get lost in the system or have to suffer long periods of incarceration while awaiting trial.

Meaning of Undertrial.

The term ‘Under-trial’ denotes an unconvicted prisoner i.e. one who has been detained in prison during the period of investigation, inquiry or trial for the offence he/she is accused to have committed.

According to The ‘Prison Statistics India 2015’ report, which was released by the National Crime Records Bureau (NCRB) in October 2016, Sixty-seven per cent (two-thirds) of the people in Indian jails are undertrials which amounts to over 200,000 under-trial prisoners.

The National Crime Records Bureau of the Government of India has reported that thousands of under-trials had been incarcerated for a period of five years or more.

Undertrial means a situation where the accused is facing a criminal trial but is not released on bail (in prison) and law requires that such accused should get the speedy trial.

The Rights Of Undertrial

There are some rights which are enjoyed by an undertrial during investigation, inquiry and trial which are necessary for him to seek justice.

Following are the Rights of Undertrials.

Right to Fundamental Rights.

Fundamental rights which are provided by part-III of the Indian Constitution are the first and the foremost rights which are enjoyed by the Undertrials during the trials. The most important among which is Article-14 i.e. Equality before Law, which reads as ‘the state shall not deny to any person equality before the law or the equal protection of laws within the territory of India.’

⁷⁴ Section 436 of Code of Criminal Procedure.

Right to life and personal liberty.

This right is provided by Article 21 of the Constitution of India which reads as “No person shall be deprived of his life and personal liberty except according to the procedure established by law”.

Right to live with human dignity.

In new dimension of Article 21, the Hon’ble Supreme Court held that “right to live” does not mean mere confinement to physical existence but it includes within its ambit the right to live with human dignity.⁷⁵

Right to Know the Grounds of Arrest.

Article 22 (1) of the Constitution provides that a person arrested for an offence under ordinary law be informed as soon as may be the grounds of arrest. In addition to the constitutional provision, Section 50 of Criminal Procedure Code also provides for the same.

Right to Consult a Legal Practitioner.

It is one of the fundamental rights enshrined in our Constitution. Article 22 (1) of the Constitution provides, that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. The right of the accused to have a counsel of his choice is fundamental and essential to fair trial. The right is recognized because of the obvious fact that ordinarily an accused person does not have the knowledge of law and the professional skill to defend himself before a court of law wherein the prosecution is conducted by a competent and experienced prosecutor. This also includes right to free legal aid provided by Article 39A of The Constitution of India.

Right to be Examined by a Medical Practitioner.

Another important right which is enjoyed by an undertrial is examination of arrested person by medical officer. This right is provided by section 54 of The Code of Criminal Procedure, 1973.

Right to Bail.

Another important right enjoyed by the undertrial is right to bail which is provided by section 436 of Code of Criminal Procedure, 1973.

Bail means “to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day at a place certain because the party arrested or imprisoned is delivered into the hands of those who laid themselves or become bail for his due appearance when required, in order that he may be safely protected from prison.”

Right to Speedy Trial.

Justice delayed is justice denied. This is all the more true in a criminal trial where the accused is not released on bail during the pendency of the trial and trial is inordinately delayed. However, the code does not in so many words confer any such right on the accused to have his case decided expeditiously. Section 437(6) of Criminal Procedure Code provides that if the accused is in detention and the trial is not completed within 60 days from the first date fixed for hearing he shall be released on bail. But this only mitigates the hardship of the accused person but does not give him speedy trial and secondly this rule is applicable only in case of proceedings before a Magistrate.

RIGHTS PROVIDED BY ARTICLE 20 THE CONSTITUTION OF INDIA.**Protection against ex post facto law.**

Clause (1) of Article 20 of the Indian Constitution says that “no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”

Doctrine of “autrefois acquit” and “autrefois convict”

According to this doctrine, if a person is tried and acquitted or convicted of an offence, he cannot be tried again for the same offence or on the same facts for any other offence. This doctrine has been substantially incorporated in the Article 20(2) of the Constitution and is also embodied in Section 300 of the Criminal Procedure Code, 1973.

Prohibition against self-incrimination.

Clause (3) of Article 20 provides that no person accused of any offence shall be compelled to be a witness against himself. Thus Article 20(3) embodies the general principles of English and American jurisprudence that no one shall be compelled to give testimony which may expose him to prosecution for crime.

Compensation for wrongful arrest.

⁷⁵ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

Section 358 Criminal Procedure Code empowers the court to order a person to pay compensation to another person for causing a police officer to arrest such other person wrongfully. Usually it is the police officer who investigates and makes the arrest and the complainant, if at all can be considered to have a nexus with the arrest, it is rather indirect or remote.

The Right of Appeal.

This right is enjoyed by the undertrial if the conclusion of trial leads him towards the conviction. Provisions relating to appeal has been provided under Section 378-392 of the Code of Criminal Procedure, 1973. Right to appeal is the statutory right of a person and the inherent right.

Right to Fair Trial.

The fair trial is the foremost requirement of criminal proceedings and it is utmost right of an undertrial. Fair Trial is the main object of criminal procedure and such fairness should not be hampered and threatened in any manner. Fair Trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case.

Right to security of life inside the jail.

It is the duty of the State to provide security to undertrial. If it fails and any incident takes place in jail, then the Government has to pay compensation to the dependents of the deceased person.

Right to have the benefit of the presumption of innocence till guilt is proved beyond reasonable doubt.

The above provision has been defined under section 101-105 of the Indian Evidence Act, 1872. In an accusatory system, such as that prevailing in India, it is for the prosecution to prove beyond reasonable doubt that the accused committed the offence, it is not for the Court to speculate as to how the crime has been committed.

Right to be tried by an independent and impartial Judge.

The Scheme of Separate of Judiciary as envisaged in Cr.P.C., also Sees. 479, 327, 191, etc. of Cr.P.C.). No Judge can act in any matter in which he has any pecuniary interest nor where he has an interest though not a pecuniary one sufficient to create a real biasness.

Right to be heard about the sentence upon conviction.

The most important right of the accused is that he should be heard about the Sentence upon conviction.

What is the reason for so many under-trials?

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.

Failure to pay Bail Bond/Surety: Right to bail is denied even in genuine cases due to inability of prisoners to pay the bail amount as many of them are poor.

Slow investigation by police: Investigation by police is slow due to shortage of police personnel and no separation between investigative and law & order functions.

Lack of use of provisions: Even though the provisions to avoid unnecessary detention of prisoners have been in existence for years, they are not implemented because of the following reasons:

- Most prisoners are not only unaware of their right to seek release but also too poor to furnish surety.
- Lack of sympathy by the administration.

Thus, we may conclude that undertrials are the persons who are facing the trial and yet not convicted. Hence, they should be provided with all the rights enshrined in the Constitution of India and other statutes such as CrPC (Code of Criminal Procedure,1973). Though some hindrances has been created in the achievement of the rights which ought to be given to them but state parties and judiciary should try its level best to cater atleast all the fundamental rights which are necessary and incidental during the investigation, inquiry and trial of an undertrial.