

SCOPE FOR GRANTING RELIEF TO THE POOR UNDERTRIAL PRISONERS THROUGH “PLEA BARGAINING- SECTION 265 OF CODE OF CRIMINAL PROCEDURE, 1973”

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Abstract

Government of India has proposed a scheme “**Support for Poor Prisoners**” to provide financial support to states in order to extend relief to those prisoners who are unable to avail bail or get released from prisons due to non-payment of fine on account of financial constraints. This article analyses the present critical state of Indian Prisons filled with undertrial prisoners, especially those who might have otherwise got bail but for their inability to afford the penalty or the bail amount are still languishing in the jails. The data available in the public domain through National Crime Records Bureau has been discussed for profiling the correlation between acts of crimes and the social, economic and educational background of people indulging in criminal acts. Another very important factor discussed here is the age profile of prisoners which clearly reflects that major chunk of prison inmates belonged to the age group of 18-30 years. The provisions of Plea Bargaining given at Chapter XXIA, Section 265 of Code of Criminal Procedure 1973, has been dwelt upon for exploring its existing provisions for finding a durable solution by the Central Government for decongesting the Indian prisons by granting bails to those inmates whose are not accused of heinous crime.

I. Preamble

Recently, there was a newspaper report that the Govt. of India, Ministry of Home Affairs (MHA) has decided to launch a special scheme to achieve the desired purpose of decongestion of Indian Prisons by providing financial support to poor undertrials who continue to be in jails because of their inability to afford the penalty or the bail amount. It has been contemplated by the Government of India in the proposed scheme of “**Support for Poor Prisoners**” to provide financial support to states in order to extend relief to those prisoners who are unable to avail bail or get released from prisons due to non-payment of fine on account of financial constraints. This scheme will certainly help the poor undertrial prisoners, especially those who might have otherwise got bail but for their

inability to afford the penalty or the bail amount are still languishing in the jails. Nonetheless, the proposed scheme to achieve the desired purpose of decongestion of Indian Prisons may turn out to be another addition in the existing long list of welfare schemes for the poor without creating any desired impact and making the justice system an enabler for upliftment of poor as there are already various existing schemes under the aegis of Legal services authority. There were 14,159 Legal Services clinics in 2020 which has dropped to 4,742 in 2022 resulting in the reduction of 9,417 (66%) Legal Services Clinics across the country.

II. State of Indian Prisons

A. **The** India Justice Report (IJR) 2022 remains the only comprehensive quantitative

index using the government's own statistics to rank the capacity of the formal justice system operating in various states. It continues to track improvements and persisting deficits in each state's structural and financial capacity to deliver justice based on quantitative measurements of budgets, human resources, infrastructure, workload, and diversity across police, judiciary, prisons and legal aid for all states and UTs. The annual increase is particularly worrying as the year 2021 was the second Covid year when a slew of decongestion efforts was being implemented across the country. The total number of individuals entering and leaving jails in the course of the year also increased by 10.8 per cent from 16.3 lakhs in 2020 to a total of 18.1 lakh in 2021.

B. A yearly review brought out by the National Crime Records Bureau (NCRB) on India's jails, released in the Prison Statistics India (PSI) 2021, mentioned that 1.47 crore people were arrested in 2021 as compared to 1.39 crore arrested in 2020. According to India Justice Report 2022, the National Prison Occupancy Rate has reached a critical level with 130.2%. The United Nations Office on Drugs and Crime (UNODC) classifies 120% overcrowding of prisons as "Critical" and 150% as "Extreme". There were 5,54,034 prisoners confined as on 31st December, 2021 in various jails across India, out of which 4,27,165 were Undertrial inmates, accounting for 77 % undertrial prisoners at the end of 2021.

C. In its analysis, India Justice Report (IJR), an independent annual study that analyses government data to rank states on their ability to deliver justice, compiled by organizations working towards reforming the justice sector, found that except Andaman and Nicobar Islands, Arunachal Pradesh, Mizoram and Tripura, the under-trial population in all other states increased by 60 per cent. In Delhi, nine out of 10 prisoners were under-trials. The IJR also reported that most prisoners came from economically-backward backgrounds while

25.2 per cent were illiterate. Across India, 24,003 under-trials have been in for 3 to 5 years and 11,490 for more than 5 years of which Uttar Pradesh and Maharashtra formed the major chunk.

D. The India Justice Report (IJR), which include the Centre for Social Justice, Common Cause, the Commonwealth Human Rights Initiative, DAKSH, TISS-Prayas, Vidhi Centre for Legal Policy and How India Lives, also reported about an overall decline in medical staff such as doctors, compounders, pharmacists and lab technicians. While 14 states have more than 40 per cent vacancies, Karnataka, West Bengal and Goa topped the list. Further, the report stated that the Model Prison Manual required one doctor for every 300 prisoners, however, one doctor served 842 prisoners which is almost 300% on the national average reflecting the pathetic condition of prison inmates.

E. The overall Prisons capacity in India for keeping inmates is 4,25,609 but with ever increasing prison population, the occupancy level has already reached 554034 with no sign of dwindling in future. Thus, with an increase of 7.7 lakh in the number of people arrested in 2021 as compared to 2020, the population of inmates in 1,319 prisons across India grew by 13 per cent from 488,511 in December 2020 to 554,034 in December 2021 leading to an alarming situation. Therefore, it is so important to address this critical issue of decongestion of Indian Prisons with alacrity with active support of Judiciary within the framework of our existing laws. The provision of Plea Bargaining, given in Chapter XXIA at Section 265 of the Code of Criminal Procedure (CrPC) can be leveraged for grant of bail to give relief to prisoners who are financially and educationally poor.

III. Plea Bargaining (Section 265, CrPC) for Grant of Bail

A. The existing provision of Plea Bargaining under Section 265, given in Chapter XXIA of The Code of Criminal Procedure (CrPC), mandates for providing relief to poor prisoners who are

otherwise not charged with an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or has been committed against a woman, or a child below the age of fourteen years. The various provisions mentioned as under could be utilized for providing relief to such poor prisoners.

1. **Section 265A (1)** applies in respect of an accused against whom— (a) the report has been forwarded by the officer in charge of the police station under section 173 of CrPC or (b) a Magistrate has taken cognizance of an offence on complaint, alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law, but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

2. **Section 265A (2)** states that for the purposes of sub-section (1) of Section 265A, the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country. Accordingly, this enabling provision can be utilized in formulating the scheme by the Central Government for making suitable amendments in the CrPC for granting relief to the undertrial poor prisoners resulting in decongestion of prisons.

3. **Section 265B (1)** states that an accused of an offence may file an application for plea bargaining in the Court for an offence pending for trial. The State governments, in consultation with their respective High Courts, can work on the available data of undertrial prisoners to provide relief to the genuine and deserving cases for decongestion of prisons.

4. **Section 265C** provides guidelines for mutually satisfactory disposition, however, the effective implementation on ground by the courts across the country will help in achieving the desired purpose of decongestion of prisons.

5. **Section 265D** mandates submission of Report of the mutually satisfactory disposition before the Court and requires active collaboration of the home departments at state level, Legal Services Authorities and the NGOs working in the field of social welfare to identify such deserving cases for bail.

6. **Section 265E** provides for Disposal of those cases where a satisfactory disposition of the case has been worked out and the Court shall dispose of such cases as per the existing law by awarding compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 (20 of 1958).

7. **Section 265F** provides for delivering Judgment in the open Court in terms of section 265E and same shall be signed by the presiding officer of the Court.

8. **Section 265G** mandates that the judgment delivered by the Court shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.

9. **Section 265H** grants Power to the Court in plea bargaining for the purposes of discharging its functions with powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Code.

10. **Section 265I** grants power to the Courts for setting off the sentence of imprisonment against the period of detention undergone by the accused. However, the provisions of section

428 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed, in the same manner as they apply in respect of the imprisonment under other provisions of CrPC.

11. **Section 265L** works as a safeguard for applying against any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).

IV. Education & Age Profile of Prisoners

A. To understand the crime and the criminal mind it is essential to delve into the literacy profile of the prisoners accused of committing crime. As per the available data, among the 5,54,034 prisoners, the literacy profile of 2,22,513 (40.2%) prisoners was Below Class X, 1,33,131 (24.0%) prisoners were Class X & above but below Graduation, 41,565 (7.5%) prisoners were having a Degree, 10,082 (1.8%) prisoners were Post Graduates and 7,052 (1.3%) prisoners were Technical Degree/Diploma holders. A substantial number of 1,39,691 (25.2%) prisoners were found to be illiterate.

B. The age has a direct bearing on the undesirable activities of people in any society as youth provides vigor to act or react violently. As per the available data for India, the Executive Summary of Prison Statistics India 2021 reflects that the maximum number of inmates 2,41,320 (43.6%) belonged to the age group of 18-30 years followed by the age group of 30-50 years, numbering 2,39,814 (43.3%). Only 72,893 (13.2%) inmates belonged to the age group of above 50 years. This data clearly reflects that the tendency to rebel against the existing norms or violate law is maximum in the youth.

V. Recommendations

A. The provisions of Section 265 of CrPC dealing with Plea Bargaining should be utilized for decongestion of prisons as it provides for the Central Government, State Governments and the Judiciary to leverage its provisions in granting bail to the undertrials. Further, Section

265 A (2) of CrPC provides scope to the Central Government for notifying and determining such offences affecting the socio-economic condition of the country and providing relief to the poor undertrial prisoners languishing in prisons for long time due to their poor socio-economic conditions.

B. Moreover, it is incumbent upon the Judiciary to take note of the financial background of the accused while imposing penal sentences in the Court, as if the person is financially incapable, he will never be in a position to comply with the Court's order and hence will keep languishing in the prison. Therefore, the Courts, in its greater wisdom, should pronounce the sentences without penalties restricting to imprisonment or; should make the term of imprisonment inclusive of penal sentences, if any.

VI. Conclusion

Of the total number of inmates in 2021, under-trials were 77 percent, which is a one per cent increase from 2020. The figures doubled in one decade from 2.4 lakh in 2010 to 4.3 lakh in 2021. The figure itself conveys the magnitude of the prevailing situation in prisons across the country mandating an urgent need for implementation of effective remedial measures to not only decongest the prisons but also ensure an equitable justice system for the people belonging to poor and the marginalized sections of the society of India. The growing number of under-trial prisoners continue to be a massive challenge for our justice system hence fast-tracking the trial process and streamlining the bail procedures may be of a great help. In this regard, the provision of Plea Bargaining given at Chapter XXIA, Section 265 of Code of Criminal Procedure 1973, can be explored by the Central Government for finding a durable solution to decongest the Indian prisons by granting bails to undertrial prisoners who are not accused of offences warranting punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, or has not committed crime against a



woman, or a child below the age of fourteen years.

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