

UNDER-TRIAL PRISONERS IN INDIA: ISSUES, CHALLENGES, AND LEGAL PERSPECTIVES

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BEST CITATION – SAMIKSHA JAYASWAL & DR. USMAN ULLAH KHAN, UNDER-TRIAL PRISONERS IN INDIA: ISSUES, CHALLENGES, AND LEGAL PERSPECTIVES, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (4) OF 2026, PG. 616-621, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

Under-trial prisoners comprise the majority of the prison population in India, which is a matter of grave concern about the delivery of justice, the protection of human rights, and the inefficiency of the system. Despite the constitutional protection of the right to individual liberty and the presumption of the innocence of every individual, the majority of the population remains behind bars without conviction. This paper is a critical analysis of the socio-legal issues related to the detention of under-trial prisoners in India. It also includes the legal provisions and the judicial attitude towards the issue. Finally, the paper concludes with suggestions to ensure the delivery of justice at the earliest and the protection of the fundamental rights of the people.

1. Introduction

The administration of criminal justice in India is fundamentally governed by the principle of assuming every accused to be innocent until he is proven guilty. This is not just a mere principle; rather, it is a guiding value based on the constitutional guarantee of “life and personal liberty” as embodied in Article 21 of the Constitution of India.¹²¹⁶ However, in reality, a large number of people are in custody as under-trial prisoners for a long time without the conclusion of their trials.

Under-trial prisoners form a majority of the total prison population in India, which is a pointer towards structural inefficiency in the criminal justice system in India. According to official data available in the National Crime Records Bureau (NCRB) report, more than three-fourths of the total prison population in India comprises under-trial prisoners.¹²¹⁷ This is a highly alarming

figure and points towards a situation in India where a person is imprisoned not due to any guilt, but due to a lack of access to legal representation and socio-economic disadvantage.

The issue of under-trial detention has given rise to serious concerns about the violation of basic human rights, which include the right to a speedy trial, which has been held to be an essential aspect of Article 21 of the Constitution by the judiciary.¹²¹⁸ The long period of detention in jail prior to conviction not only violates the presumption of innocence but also leads to preventive detention becoming equivalent to punitive detention. In many cases, under-trial prisoners have to undergo detention for a longer period than the maximum punishment prescribed for the committed offense, which points to a serious miscarriage of justice.

¹²¹⁶ INDIA CONST. art. 21.

¹²¹⁷ National Crime Records Bureau, Prison Statistics India 2023 (2023).

¹²¹⁸ Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1360.

The problem of under-trial prisoners is also closely related to the socio-economic scenario. A large number of under-trial prisoners belong to the marginalized and weaker sections of society, who are unable to secure bail because of economic constraints or lack of awareness. This points to a serious bias in the system, which results in poverty becoming an important criterion in the administration of justice. The poor infrastructure and living conditions in jails have added to the woes of under-trial prisoners.

In the recent past, the judiciary has played an important role in addressing these issues by laying greater emphasis on bail reform, trial reform, and the protection of individual liberties. Landmark judgments such as *Hussainara Khatoon v. State of Bihar* and recent judgments like *Satender Kumar Antil v. CBI* have once again emphasized the importance of avoiding the punishment without trial.¹²¹⁹ Yet, the issue remains unresolved despite the efforts of the judiciary and the existence of the legal provisions.

In this context, the current study is intended to address the issues, challenges, and legal perspectives related to under-trial prisoners in India. It is also important to understand the extent to which the current legal provisions address these issues and the possible reforms required to achieve the objectives.

2. Research Objectives

- To study the legal framework regarding under-trial prisoners in India.
- To identify the major problems and challenges faced by under-trial prisoners.
- To assess the role of the judiciary and the judicial reforms made in this regard.
- To suggest how the justice system could be made better.
- To analyze the socio-economic conditions that lead to prolonged detention of prisoners.

3. Research Methodology

The methodology of this research is based on a doctrinal and analytical methodology, which is largely dependent on the study and analysis of existing laws, principles, and provisions. The doctrinal methodology will help in a thorough analysis of the laws relating to under-trial prisoners in India, while the analytical methodology will help in critically analyzing these laws.¹²²⁰

This research is based on secondary data, as it is focused on legal analysis and not on empirical research. The data has been collected from a wide variety of reliable and authentic sources, which include:

Statutes: Important statutes such as the Constitution of India and the Code of Criminal Procedure, 1973, which are basic laws relating to personal liberty, bail, and detention.

Government Reports: The reports brought out by the National Crime Records Bureau, especially the Prison Statistics India report, which offers empirical data about the under-trial prisoners in Indian jails.¹²²¹

Judicial Decisions (Case Law): The landmark and recent judicial decisions of the Supreme Court and High Courts, which have expanded and interpreted the rights of under-trial prisoners, especially in the context of Article 21 and the right to a speedy trial.¹²²²

Research Articles and Policy Reports: Scholarly writings and law articles, which offer critical insights into the criminal justice system and the reforms in the Indian prison system.

Books: Scholarly writings and commentaries, which offer an understanding of the theoretical and conceptual aspects of the law.

The methodology adopted in the study is based on a comparison and analysis of the existing law and its implementation, which offers an understanding of the gaps and problems in the existing system. It also offers an opportunity to identify the major issues and problems in the

¹²²⁰ INDIA CONST.; Code of Criminal Procedure, 1973 (India).

¹²²¹ Nat'l Crime Records Bureau, supra note 2.

¹²²² *Hussainara Khatoon*, AIR 1979 SC 1360.

¹²¹⁹ *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

existing system, which can then be used to suggest recommendations.

4. Concept of Under-Trial Prisoners

An under-trial prisoner is defined as an individual who has been charged with the commission of a criminal offense, but his guilt is yet to be established by the relevant law courts. Such individuals are held in judicial custody. The main aim of holding them in custody is preventive custody. It is important to note that the main aim is not punitive custody.¹²²³

The idea of under-trial detention is directly related to the main idea of criminal jurisprudence, which is the presumption of innocence. It is important to note that the law presumes every individual to be innocent until he is proven guilty. It is because of this idea that under-trial prisoners can be referred to as non-convicts. They should not be treated as convicted prisoners. They are held in custody because it is a procedural requirement.¹²²⁴

However, in the Indian context, there is a blurring of the line between under-trial detention and punishment, inasmuch as there are systemic issues in the investigation process, judicial delays, and inefficiencies in the legal system, which result in under-trial prisoners serving long periods of detention. In many instances, the duration of detention far exceeds the maximum punishment provided for in the alleged crime, which transforms preventive detention into a punitive measure.

Additionally, there are issues of human rights, justice, and equality before the law, which are implicated in the concept of under-trial prisoners. It has been found that a large number of under-trial prisoners are from economically and socially disadvantaged groups, who are unable to obtain bail or legal representation. This underlines the inequalities in the criminal justice system and highlights the necessity for reforms to ensure that detention

before conviction is merely an exception and not a norm.

Thus, while under-trial detention is provided for in law, its practical application in India needs to be critically examined to ensure that it does not violate constitutional provisions on personal liberty and a fair trial.

5. Legal Framework

The legal framework for the protection of under-trial prisoners is based on constitutional provisions and legislative enactments. The framework aims to strike a balance between the need for an efficient criminal justice system and the protection of individual liberties and human rights.

5.1 Constitutional Provisions

The Constitution of India provides the basic framework for the protection of under-trial prisoners. The constitutional provisions are as follows:

Article 21 of the Constitution of India provides for the right to life and liberty. The article says that no person shall be deprived of these rights except according to the procedure established by law. The right to life includes the right to live with dignity and protection against arbitrary detention.¹²²⁵

The right to a speedy trial is an integral part of Article 21 of the Constitution of India. In *Hussainara Khatoon v. State of Bihar*, the Supreme Court held that a long delay in trial violates a person's fundamental rights. This is an important provision for addressing the problem of detention of under-trial prisoners for a long period of time.¹²²⁶

Article 39A, a Directive Principle of State Policy, directs the State to ensure equal justice and provide free legal aid to economically weaker sections of society.³ This provision seeks to address issues of inequality in access to justice

¹²²³ Id

¹²²⁴ Id

¹²²⁵ INDIA CONST. art. 21.

¹²²⁶ *Hussainara Khatoon*, AIR 1979 SC 1360.

and protect the rights of under-trial prisoners who cannot afford legal representation.¹²²⁷

5.2 Statutory Provisions

The principal statute relating to under-trial detention and bail in India is contained in the Code of Criminal Procedure, 1973.¹²²⁸ as amended (“CrPC”):

- Section 436 grants bail in bailable offenses as a matter of right.
- Sections 437 and 439 address the grant of bail in non-bailable offenses, granting discretionary power to courts.
- Section 167(2) limits the period of detention during investigation and grants “default bail” if a charge sheet is not filed within a prescribed time period.
- Section 436A grants release to under-trial prisoners who have undergone detention for half of the maximum prescribed sentence for the alleged offense.

These provisions are intended to avoid unnecessary detention and ensure that under-trial prisoners are not deprived of their liberty without any cause. Their efficacy, however, depends on the implementation of these provisions by the law enforcement agencies.¹²²⁹

6. Issues Faced by Under-Trial Prisoners

Under-trial prisoners in India face a wide range of structural, legal, and socio-economic challenges. These issues not only affect their personal liberty but also raise serious concerns regarding the fairness and effectiveness of the criminal justice system.

6.1 Delay in Trials

One of the most important problems is the delay in the judicial process. The high number of cases, the lack of judges, and the complexities involved lead to a longer period of detention for the prisoners who are on trial. In some cases,

the period of detention is longer than the actual period of the trial. The right to a speedy trial is violated in such cases. The period of detention is longer than the actual period of the trial for which the person is detained. Such a process of preventive detention is equivalent to punishing the person, which is against the principles of natural justice.¹²³⁰

6.2 Overcrowding in Prisons

The problem of overcrowding has been a persistent concern in Indian prisons, mainly because of the large number of under-trial prisoners. The prisons are functioning at more than their sanctioned capacities, thereby leading to inhumane living conditions. This has resulted in a lack of access to basic amenities such as sanitation, food, and health facilities, thereby making the living conditions in prisons more difficult for the prisoners.¹²³¹

6.3 Lack of Legal Aid

Despite the Constitution promising free legal aid to the economically weaker sections of the population, implementation is lacking. Many under-trial prisoners are not aware of their legal rights, nor do they get proper legal advice. Therefore, they are not able to apply for bail, nor can they properly defend themselves in the courts.¹²³²

6.4 Socio-Economic Inequality

It has been observed that a large number of under-trial prisoners belong to marginalized and poor sections of society. Poverty, illiteracy, and poor social standing make it difficult for them to deal with the judicial process. The poor economic condition of these under-trial prisoners does not allow them to provide the necessary bail bonds or seek the help of a lawyer, which results in their prolonged stay in jail. This, in itself, is an example of inequality in

¹²²⁷ INDIA CONST. art. 39A.

¹²²⁸ Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

¹²²⁹ Id: 167, 436, 437, 439, 436A.

¹²³⁰ Law Comm’n of India, 268th Report on Bail Reforms (2017).

¹²³¹ Nat’l Crime Records Bureau, supra note 2.

¹²³² INDIA CONST. art. 39A.

the judicial system, which should provide equal justice to all.¹²³³

6.5 Health Issues

Long periods of confinement have serious health implications for the mental and physical health of prisoners. Under-trial prisoners suffer from mental health problems such as stress, anxiety, depression, and other mental health issues due to uncertainty about their future. Overcrowding of prisons and poor living conditions also contribute to the spread of infectious diseases, affecting the physical health of prisoners. Lack of medical facilities in prisons is a serious human rights violation.¹²³⁴

7. Challenges in the Criminal Justice System

The recurring problem of under-trial prisoners in India is inextricably related to the larger structural problems in the criminal justice system. Such problems have hindered the effective implementation of legal safeguards.

7.1 Judicial Backlog

One of the most important challenges is the judicial backlog of cases. The Indian judiciary is facing a huge number of pending cases at different levels of courts. This is causing a significant delay in the disposal of criminal cases. The lack of judges and adjournments is also contributing to the problem. Therefore, the under-trial prisoners are being forced to stay in custody for a longer period of time before the conclusion of the trial. This is not only affecting the efficiency of the justice delivery system but also denying the right to a speedy trial guaranteed by the Constitution.¹²³⁵

7.2 Inefficient Investigation

One of the biggest challenges is the inefficiency of the investigation process. The delay in the registration of FIRs, the collection of evidence, and the filing of charge sheets also leads to the prolonged detention of the accused. Often, the investigative agencies are not able to complete

the investigation within the prescribed time frame provided by the law. This is a clear case of inefficiency in the investigation process and also a violation of the rights of the accused by keeping them incarcerated without any trial.¹²³⁶

7.3 Bail System Issues

The bail system in India is also an issue, especially for the economically weaker section of the population. The “bail rather than jail” policy is often emphasized, but the actual implementation is not satisfactory. The bail conditions are often strict, with high surety amounts set, which the economically weaker section is not able to afford. Furthermore, the lack of awareness among the under-trial prisoners also acts as an impediment for them to attain bail. This is where the prisoners are behind bars, not because of the severity of the crime committed, but because of the inability to afford bail.¹²³⁷

8. Judicial Approach and Case Laws

The Indian judiciary has played a crucial role in protecting the rights of under-trial prisoners.

- In *Hussainara Khatoon v. State of Bihar*, the Supreme Court recognized the right to speedy trial as a fundamental right.¹²³⁸
- In *Moti Ram v. State of Madhya Pradesh*, the Court emphasized that bail conditions must be reasonable.¹²³⁹
- In *Supreme Court Legal Aid Committee v. Union of India*, the Court ordered the release of long-detained under-trials.¹²⁴⁰

9. Socio-Legal Impact

Under-trial detention has serious consequences:

- Loss of employment and livelihood
- Social stigma and family hardship
- Psychological trauma

¹²³³ Legal Servs. Auth. Act, No. 39 of 1987 (India).

¹²³⁴ Nat'l Human Rights Comm'n, *Report on Prison Conditions in India* (2020).

¹²³⁵ law Comm'n of India, *245th Report on Judicial Backlog* (2014).

¹²³⁶ Code of Criminal Procedure, 1973, S.167 (India).

¹²³⁷ Satender Kumar Antil v. CBI, (2022) 10 SCC 51.

¹²³⁸ Hussainara Khatoon v. State of Bihar

¹²³⁹ Moti Ram v. State of Madhya Pradesh

¹²⁴⁰ Supreme Court Legal Aid Committee v. Union of India,

These impacts weaken trust in the justice system and violate human rights principles.

10. Conclusion

The issue of under-trial prisoners in India is an outcome of the structural deficiencies in the criminal justice system. The legal regime, including the constitutional provisions and legal enactments, is aimed at protecting the liberty of an individual while ensuring the right to a fair trial. The reality, however, is far from the desired outcome, as the issue of under-trial prisoners reveals an enormous gap between the legal regime and its implementation. The prevalence of under-trial prisoners in the prison population is an outcome of systemic failures, including judicial delay, ineffective investigation, lack of legal aid, and socio-economic inequalities.

This not only violates the basic premise of the presumption of innocence, which is the very essence of the criminal justice system, but also constitutes a violation of the right to life and liberty, which is explicitly provided under Article 21 of the Constitution. Moreover, the lack of speedy trials and availability of bail facilities turns preventive detention into punitive detention, which is detrimental to the public perception of the criminal justice system.¹²⁴¹

Although the judiciary has been at the forefront in protecting the rights of under-trial prisoners through its progressive judgments and guidelines, the success of these efforts depends on their effective implementation at the ground level.

In such a scenario, what is urgently called for is a series of reforms to strengthen the criminal justice system. This includes addressing issues such as reducing judicial backlog, making bail procedures simpler, providing greater access to legal aid, and making greater use of technology to manage cases more efficiently. Along with this, a rights-based approach also has to be adopted to ensure that under-trial detention is an exception, not a rule.¹²⁴²

In conclusion, the plight of under-trial prisoners is not merely a legal necessity; it is a moral and constitutional imperative to ensure timely justice, fairness, and dignity, which is fundamental to a rule of law and a strengthened democracy in India.

¹²⁴¹ INDIA CONST. art. 21.

¹²⁴² Hussainara Khatoon, AIR 1979 SC 1360.