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**LEGAL FRAMEWORK OF THE UNDERTRIAL PRISON
POPULATION**

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INTRODUCTION

The Indian Constitution ensures that the fundamental human rights of every individual and every person are protected. In addition to this, it ensures that the state will protect these fundamental liberties and protect its residents from any form of arbitrary infringement on their privacy, security, or liberty. There have been numerous instances over the course of the years in which the Supreme Court has stressed the role of the judiciary as a "guardian of their sentences." As a means of providing support for this, the court has established a variety of rules and directives that the states are required to respect.

In the Seventh Schedule of the Constitution of India, the subject of law pertaining to prisons has been positioned under Entry 4 of List-II, which is referred to as the State list. Because of this, the organization, rules, and models of jails in various states are distinct from one another. The Prisons Act of 1894, which is a major piece of legislation, serves as the basis for the manuals that are generated by each of the states. Because there is a dearth of political will in independent India to pass legislation regarding prisons, it is the pronouncements of the judiciary that have brought the constitutional rights of individuals who are incarcerated into the attention of the public. It is not true that incarceration is synonymous with the loss of fundamental rights.³

A person who has been committed to judicial custody pending investigation or trial by competent authority is referred to as an undertrial, according to the definition provided by the Model Prison Manual. When it comes to dealing with individuals who have committed criminal offenses, the courts frequently have the option of imposing imprisonment as one of the common forms of punishment. The purpose of prisons is to confine criminals in order to limit their personal freedom. Prisons are buildings that are used for this purpose. The length

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³ Charles Sobraj vs Superintendent Central Jail, Tihar, New Delhi, AIR 1978 SC 1514.

of time spent in confinement is linked to the seriousness of the offense that was committed. The prisons house a wide variety of inmates, including those who have been convicted of a crime, those who are awaiting trial, males, women, foreign nationals, internal detainees, and civil prisoners. A significant number of them are addicted to drugs, repeat offenders, professional criminals, sexual perverts, and other such individuals. According to Srivastava and Srivastava (2023), there is not a proper classification and segregation of correctional facility inmates.

Undertrials are those incarcerated without a conviction for the charges against them, currently undergoing legal proceedings in a competent court, and are legally deemed innocent. They are intended to be maintained under 'judicial custody,' however they are typically confined in prisons. The objective of detaining undertrials is to provide an equitable hearing, preventing them from influencing witnesses. The delay in case trials constitutes the fundamental human rights concern and the primary reason for the prevalence of undertrial detainees. A preliminary investigation by the National Human Rights Commission has shown the alarming issue of the overwhelming number of undertrial prisoners in Indian jails and the excessive delays in trial proceedings. These individuals ultimately remain incarcerated for a far longer duration than if they had been convicted of the identical charges. The majority of undertrial detainees are impoverished and uninformed about their entitlements, while the prevailing administrative structure is marred by corruption, hindering this demographic from accessing their constitutional rights (Sharma, 2023).

PROBLEM OF OVERCROWDING: Judicial interpretation

To explain the legal status of the overcrowding problem in Indian prisons, the Supreme Court in *Rama Murthy vs State of Karnataka*⁴ indicated that Indian Courts have yet to render a conclusion on the matter, whereas the American Supreme Court has addressed the issue of overcrowding in two significant rulings. The first of these is *Wolff v. Mc Donnell*⁵, involving pretrial detainees. The Court determined that the notion of 'one man, one cell' is not encompassed within the Due Process Clause of the Fifth Amendment. The court additionally determined that the practice of housing two inmates in a cell designed for one individual was not illegal. This perspective was adopted based on the specifics of the case, which revealed that detainees at the federal Metropolitan Correctional Centre were mandated to remain in

⁴Ramamurthy v. State of Karnataka, AIR 1997 SC 1739.

⁵418 US 539 (1974).

their cells for only 7 or 8 hours daily. Moreover, their exposure to overpopulation was brief, with an average duration of 60 days.

The second decision was in *Rhodes v. Chapman*⁶, The Court addressed a convicted prisoner and evaluated whether overcrowding amounted to cruel and unusual punishment. No violation of the Eighth Amendment was identified, since there was no proof that double-celling caused "unnecessary or wanton pain" or was substantially disproportionate to the seriousness of the crimes justifying imprisonment⁷. The Supreme Court went on to reach the conclusion that "the Constitution does not mandate comfortable prison." The aforementioned two decisions have been mentioned, despite the fact that there is no exact parallel to the Due Process Clause of the Fifth Amendment of the American Constitution or to the guarantee against cruel and unusual punishments mentioned in their Eighth Amendment.

The Constitution of India, specifically Article 21, does prohibit cruel punishments, which is evident from the decision of a three-judge bench on the case of *Deena vs. Union of India*. In this case, the execution of the death sentence by hanging was challenged on the grounds that it was cruel and barbaric. In contrast, the Indian law does not prohibit cruel punishments. In spite of the fact that overcrowding is not prohibited by the Constitution, there is no question that it has a negative impact on the health of individuals as well as the overall hygienic state within their respective jails. Taking advantage of alternatives to jail, such as fines, civil commitment, probation, and parole, is one of the ways that congestion can be addressed. Other potential solutions include alternatives to incarceration.

There are primarily two groups of convicts who are now awaiting trial: the first category includes individuals who were denied bail by the courts due to their involvement in significant offenses, and the second category includes individuals who were unable to provide bail for a variety of reasons. The problem of overcrowding had reached unsustainable proportions, and these convicts who were awaiting trial were packed together in cells where they were living in conditions that were truly awful. Despite the fact that the actual number of inmates ranges from 2300 to 2500, the normal capacity of the facility is at 1273. There is no proper classification of different groups of prisoners based on the nature and type of criminals, such as for those who are currently awaiting trial, females, habitual offenders, casual offenders, adolescents, first offenders, political prisoners, and so on.

⁶452 US 337(1981)

⁷Richard Hawkins ad Geoffery, "American Prison System," p.420 of 1989 edition.

In addition to this, the penal facilities in the majority of states, with a few notable exceptions, are in a condition of disarray and disarray. There, individuals who are awaiting trial as well as those who have been convicted, including children, are confined and crammed together in buildings that are in a state of disrepair and are sometimes older than a century. These buildings are not suitable for holding human beings. It is not uncommon for them to contain six or seven times the number of inmates for whom they were initially constructed, and there is not enough space for the prisoners to even stretch out or sleep at night. They are so crowded that they are beyond capacity. In many so-called jails, the convicts are forced to sleep in cells where they are denied even the most fundamental conveniences that are essential for human beings. They take turns sleeping in these cells at night. The fact that prisoners are herded together in conditions that are sometimes worse than animals is something that must be seen in order to be believed.⁸

In addition to the unscientific negativity and expensive futility of the jail administration, the events that have occurred in Tihar Jail and the occurrences of blinding of prisoners who are awaiting trial that have occurred in Bhagalpur Jail are a reflection of the explosion of criminal activity, the slow motion of the judicial system, and the mechanical actions of the police. It is estimated that there are more innocent people being held captive in the country than there are people who have been found guilty of committing crimes. Things are made even worse by the fact that jail conditions are deplorable, and those who are being held in prisons while they are awaiting trial are frequently subjected to a variety of forms of torture, which can range from handcuffing to maiming. The four walls of a prison are a place where justice is not very prevalent⁹.

For the purpose of providing assistance, under-trial convicts who are between the ages of ten and eighteen are employed. In order to assist the men who are employed to perform these tasks, they take care of the cooking, washing of utensils, cleaning of rooms, retrieval of water, and other laborious tasks. They are required to remain confined within a ward that does not have a fan and does not have enough sanitary amenities. For the longest period of time feasible, the lads are held in custody since, in the absence of them, the individuals who are engaged to perform menial tasks would have no time to chill out. They are transferred from one court to another in order to face trials for a variety of charges, and they remain incarcerated throughout the entire process.

⁸Anurag Baitha v. State of Bihar AIR 1987 Pat.274 at p.283

⁹ K D Gaur, Human Rights of Detainees and Prisoners: Suggestions for Prison Reform, Cochin University Law Review 1982 p.393 at p.408

4.3 PUBLIC INTEREST LITIGATION AND UNDERTRIAL PRISONERS

The mechanism known as Public Interest Litigation (PIL) has been the most significant and "activist" move that the higher judiciary has taken. The most important means by which the underprivileged are able to gain access to the judicial system is through the use of public interest litigation, which is a landmark achievement in the field of constitutional interpretation in India. The Indian judiciary has made major improvements to the characteristics of public law litigation through the process of developing this instrument. In order to hear cases that would otherwise be brought before them by parties who do not have the knowledge about their legal rights or the material resources to approach them, the Constitutional Courts have expanded their writ jurisdiction to include their ability to hear cases. In a similar vein, the courts have the ability to take notice of matters on their own, without it being necessary to comply with any procedural procedures. When the first cases were brought before them, individual judges would take notice of the situation after receiving letters from parties who felt wronged. On the other hand, over the course of time, this method of Public Interest Litigation (PIL) has developed into a significant correction.¹⁰

One of the earliest cases of public interest litigation considered by the Indian Supreme Court was the case of Hussainara Khatoon (I) V. State of Bihar.¹¹ This case was concerned with a series of articles that were published in a famous newspaper (i.e. the Indian Express) that exposed the suffering of inmates who were "undertrial" and were languishing in jails in the state of Bihar. An lawyer for the Supreme Court submitted a writ petition in order to bring the Court's attention to the dreadful situation that these convicts are currently facing. A significant number of them had already served jail periods that were longer than the maximum punishment that the court could legally impose. In order to sustain the writ petition, the Supreme Court recognized that the advocate had the legal authority to do so.

The right to a quick trial was subsequently found to be an important and vital component of the right to "life and liberty" that is outlined in Article 21 of the Constitution. This was reached as a result of a series of cases that were brought before the Supreme Court, which resulted in the Court issuing a number of directives. On the other hand, it is essential to keep in mind that Public Interest Litigation (PIL) is characterized by three fundamental deviations from the conventional understanding of public law adjudication. –

¹⁰ K.G. Balakrishnan (CJI), Growth of Public Interest Litigation in India, Singapore Academy of Law, Fifteenth Annual Lecture October 8,2008

¹¹(1980) 1 see 81

To begin, there is a weakening of the condition of "locus standi" under common law, which means that the only party that is able to initiate a legal process in relation to a specific act is one that has been negatively affected by the act in question. A judicial case (in the form of a writ under Article 32) can be brought by any individual on behalf of an aggrieved group of individuals in the context of Public Interest Litigation (PIL). Additionally, judges are free to take notice of a matter on their own if it is deemed to be of public interest¹².

Furthermore, in accordance with the common-law standard, the nature of proceedings in Public Interest Litigation (PIL) is not purely adversarial. Argumentation, the presentation of evidence, and cross-examination are all activities that are carried out by the respective parties in an adversarial system. On the other hand, the judges take on a more passive role in the decision-making process for conflicts. On the other hand, the pattern that has emerged in public interest litigation (PILs) is that courts are taking on a more active role by soliciting additional information on the subject issue and providing directions to public authorities over the same. Public interest lawsuits (PILs) have evolved into a method of maintaining judicial oversight over the operations of the government in many different ways¹³

In *Charles Shobraj v. Supt. Central Jail, Tihar*¹⁴, The Supreme Court made the observation that whenever the constitutional rights or statutory rights of undertrial prisoners are flagrantly violated by the Jail authority and causing injury to them, then the Court does not hesitate to intervene even in prison administration, provided that the same is brought to the knowledge of the Court through a letter or Public Interest Litigation when it is brought to the attention of the Court. The Court also made the observation that the act of tying shackles around the legs of inmates who are awaiting trial would constitute a breach of their fundamental right to life and liberty, which is guaranteed by the Constitution. At this time, the Supreme Court has acknowledged a number of rights that are available to prisoners in the same manner that they are available to any other individual. For instance, in *PrabhakerPanduranga v. State of Maharashtra*¹⁵ The Court has made the observation that if any prisoner were to be barred from reading and writing while they were incarcerated, this would likewise constitute a breach of the fundamental right that is granted to them by Article 21 of the Constitution on the Constitution.

¹² Also See, *New India Assurance Co. Ltd. V. Consumer Education and Research Society* AIR 2009 SC 446

¹³ Abhinav Ashwin, PIL: bane or boon? *Sakaal Times* Wednesday, October 15th, 2008.

¹⁴ *Prem Shankar v. Delhi Administration*, AIR 1980 SC 153 5; *Kadar Pahadiya V. State of Bihar*. AIR 1981 SC 939: (1981) 3 SCC 671.

¹⁵ AIR 1966 SC 424.

In *Shaheen Welfare Association v Union of India*¹⁶ The issue of a fast trial in accordance with Article 21 was brought up by the Shaheen Welfare Association, which is a registered corporation. There is a perceptible shift in the trend of decisions in the PIL cases in later years, according to the Supreme Court's ruling, which was issued in the year 2000. Instead of concentrating on the rights of the convicts, attention was switched to the rights of the victim of the crime and, more crucially, to the issues that are plaguing the judicial system. Therefore, the right of an accused person to a quick trial must be viewed from the perspective of the legitimacy of the institution in the eyes of the victim, as well as the level of manageability of the situation from the standpoint of the institution.

When it comes to the mandate of "right to life," each citizen of India who is entitled to the "right to life" under Article 21 of the Constitution is also entitled to a fair and timely trial. This is an essential component of the legal right to life. Because of the delay in the courts' ability to conduct the trials, there are a great number of inmates who are currently awaiting trial who have been languishing in a variety of jails for a number of years. A constitutional duty requires the state to ensure that a trial is conducted in a timely manner, and the state is obligated to take whatever steps are required to accomplish this goal. It is also the constitutional obligation of the Supreme Court, in its capacity as the guardian of the "fundamental rights of the people" and as a sentinel on the qui vive, to enforce the fundamental right of the accused to a speedy trial. This can be accomplished by issuing the necessary directions to the state, which may include the taking of positive action, such as increasing and strengthening the investigation machinery, establishing new courts, appointing additional judges, and other measures calculated to ensure a speedy trial.¹⁷

- “Release of Undertrial Prisoners- Court on Its Own Motion In Re: Regarding Various Irregularities at Central Jail, Tihar”¹⁸

The High Court has voiced its worry with the significant number of convicts who are awaiting trial as well as the issue of overcrowding at the Central Jail in Tihar County. The report made the observation that if the number of inmates at the jail were to be reduced, a significant percentage of the issues that have been occurring there would be resolved on their own as a consequence. The consequence of having an excessive number of inmates not only

¹⁶(1996) 2 see 616.

¹⁷*Hussainara Khatoon v. Home Secretary, State of Bihar* AIR 1979 SC 1369; also see, *Delhi Villagers Development v. Govt, of India*, Kanoon, Browse Judgments, Delhi High Court, Cites 04 decided on 04 January, 2008

¹⁸Crl. MA No 7030/2007 and Crl Ref 1/2007.

increases the demand for space, but it also puts a pressure on essential resources such as water and other facilities. Putting an emphasis on the vast population of individuals who are awaiting trial, which accounts for sixty-five percent of the entire jail population, the court voiced concern regarding the detention of individuals who had been granted bail but were unable to provide sufficient surety”.¹⁹

High Court Directives- Dated 22 August 2007

The Court issued the following directions with regard to release of undertrial prisoners from Central Jail, Tihar:

- i. “Those under-trial prisoners, who have been admitted to bail but have been unable to furnish sureties for more than 2 months, shall be released on their furnishing personal bond to the satisfaction of the trial court.
- ii. As regards the 20 under-trials, who are reported terminally ill and suffering from „incurable disease“, the jail authority shall consider their case for early release on humanitarian grounds.
- iii. In case of under-trial prisoners who are from states other than Delhi, local surety shall not be insisted upon while granting bail. It shall be sufficient to verify the identities and actual places of residence outside Delhi of the under-trials and their sureties to release them on personal bonds, with or without sureties, as the case may be.
- iv. In case of under-trial prisoners who are senior citizens, the courts should take up their cases on day to day basis as far as possible, if they are not found fit to be admitted to bail.
- v. Those cases where the maximum prescribed punishment for the offence committed is upto 7 years shall be put up by the jail authorities before the visiting judge every 3 months for review and release on bail.
- vi. The jail authorities shall sensitize and inform all jail inmates of the provision of „plea bargain“ and also benefits thereof.
- vii. The jail authorities shall also take special care to place these cases before the special court/judge who visits the jail every month.
- viii. Sheela Barse, a journalist and activist for prisoners“ rights, wrote to the Supreme Court saying that of the 15 women prisoners interviewed by her in Bombay Central Jail, five admitted that they had been assaulted in police lock-up.

¹⁹CrI. MA No 7030/2007 and CrI Ref 1/2007.

ix. Given the seriousness of the allegations, the Court admitted a writ petition on the basis of the letter and asked the College of Social Work, Bombay to visit the Central Jail to find out whether the allegations were true. The College submitted a detailed report which, in addition to admitting that excesses against women were taking place, pointed out that the arrangements for providing legal assistance to prisoners were inadequate”²⁰

- “Fast Tracking All Types of Criminal Cases to Deliver Justice Timely and Expeditiously - Bhim Singh vs Union of India”²¹

Recently, on September 5, 2014, the Supreme Court issued a directive about the implementation of positive measures by the Central Government, in conjunction with the State Governments, to expedite the processing of all types of criminal cases. This is done with the intention of ensuring that criminal justice is provided in a timely and professional manner. As a matter of fact, it has been discovered that more than fifty percent of the inmates in the various jails are waiting to be tried for their crimes. It is possible that a significant number of them have already served the maximum sentence that is mandated by the law for the offenses that they have been charged with. By identifying the under-trial prisoners who have completed half of the maximum period or maximum period of imprisonment provided for the said offence under the law, the Court was of the opinion that such a step was necessary in the interest of criminal justice. This is because by doing so, appropriate orders could be passed in jail itself for the release of such under-trial prisoners who fulfill the requirement of Section 436A of the Criminal Procedure Code for their immediate release. The following is the text of Section 436-A: The maximum amount of time that a prisoner who is under trial can be held in custody Where a person has been detained for a period of time that extends up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties if he has been subjected to detention during the period of investigation, inquiry, or trial under this Code for an offence under any law (with the exception of an offence for which the punishment of death has been specified as one of the punishments under that law): With the proviso that the court may, after hearing the Public Prosecutor and for reasons that will be recorded by it in writing, order the continuing imprisonment of such a person for a

²⁰CrI. MA No 7030/2007 and CrI Ref 1/2007.

²¹ 2014 (4) RCR(Cri) 234.

term that is more than one-half of the aforementioned period, or release him on bail instead of the personal bond with or without sureties: With the additional provision that no such individual shall, under any circumstances, be held in custody during the course of the investigation, inquiry, or trial for a period of time that exceeds the maximum period of imprisonment that is stipulated for the offense in question according to that legislation. Detailed explanation: Regarding the computation of the duration of detention in accordance with this provision for the purpose of granting bail, the duration of detention that has been elapsed as a result of the accused's delay in the procedure shall be excluded.

➤ Right to Bail

In *Rasiklal v. Kishor Khanchand Wadhvani*²², the Supreme court held that the right to claim bail is absolute and infeasible. In bailable offences, there is no question of discretion in granting bail as the words of section 436 of the CrPC²⁵³ are imperative. In the State of Haryana *v. Mohinder Singh*,²³ the Supreme Court explained the term bail as provided in criminal jurisprudence. Provisions of bail are contained in Chapter XXXIII of the Code.

It is possible for it to be issued by an officer in charge of a police station or by the court at any stage of the case when a person who is accused of an offense that is not a non-bailable offense is arrested or detained without a warrant. In situations where a person is apprehended for a non-bailable offense or is arrested for a non-bailable offense, the court may decide to give bail to the individual. After a person has been found guilty of committing a crime, the appellate court has the authority to release them on bail until the outcome of their appeal is determined. In the event that he is found not guilty, his bail bonds will be released, and if the appeal is rejected, he will be put into immediate jail. Bail may be given, but only under certain circumstances.

An unsatisfactory and unreasonable set of bail conditions that require financial security from the accused and their sureties has been identified by the Supreme Court as the primary reason for prolonged pre-trial imprisonment. This diagnosis was made based on the practical application of the situation. A significant number of inmates who are awaiting trial are discovered to be impoverished, and as a result, they are unable to provide financial security. As a consequence of this, they are required to remain incarcerated while they wait for their trial.

²²AIR 2009 SC 1341

²³ State of Haryana & Others vs Mohinder Singh on 7 February, 2000

➤ “Delay in Trial –

Directions for Release on Bail- Supreme Court Legal Aid Committee vs Union of India & Others²⁴ -

A writ petition was submitted by the Supreme Court Legal Aid Committee, which expressed its dissatisfaction with the undue delay in the resolution of cases that were registered under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). It pleaded that all convicts who were awaiting trial and had been incarcerated for the commission of any offense under the Act for a period of time that exceeded two years due to the delay in the disposal of their case should be released from jail and their future incarceration should be declared to be illegal and void.

"It is unequivocally unfair and unreasonable, as well as in violation of the Act, the Code, and the Constitution, to refuse bail on the one hand and to delay the trial of cases on the other," "The Court made the observation that in cases that were brought under the NDPS Act, it was impossible to avoid avoiding a certain amount of loss of liberty. On the other hand, the fairness that is guaranteed by Article 21 is jolted if the period of deprivation that occurs prior to the trial turns out to be excessively long. Therefore, any further deprivation would be a violation of the right to liberty that is established in the constitution for all accused individuals who have already been sentenced to imprisonment, which is equivalent to thirty-five percent of the maximum punishment that is imposed for the offense"²⁵.

➤ Right against delay in the release of prisoners after getting bail.

In Re Policy Strategy for Grant of Bail²⁶, In response to the issue of undertrial convicts who continue to be held in custody despite having been granted bail, the Supreme Court has issued the following recommendations. There are a number of different routes that are being investigated and replicated with some alterations in order to alleviate the concerns:

- (i) In the event that a court decides to issue bail to an undertrial prisoner or convicted individual, the court is obligated to furnish the prisoner with a digital copy of the bail order via electronic mail, either on the same day or the following day, through the Jail Superintendent. It would be necessary for the Jail Superintendent to enter

²⁴ 1994(3) Crimes 644 (SC).

²⁵ 1994(3) Crimes 644 (SC).

²⁶ SMWP (CrL.) No.4/2021.

the date that bail was granted into the e-prisons software or any other software that is being utilized by the Department of Corrections.

- (ii) It would be the responsibility of the Superintendent of Jail to inform the Secretary of the Department of Local and State Affairs (DLSA) if the accused is not released within a period of seven days from the date that bail was granted. The Secretary may dispatch a paralegal volunteer or a jail visiting advocate to interact with the prisoner and provide assistance to the prisoner in any way that is possible for his release.
- (iii) NIC would make an effort to develop the appropriate fields in the e-prison software so that the date of release and the date of bail are entered by the Prison Department. Additionally, in the event that the prisoner is not freed within seven days, an automatic email may be sent to the Secretary of the Department of Social Services and the Administration of Rehabilitation.
- (iv) A report on the socio-economic conditions of the inmate may be prepared with the assistance of the Probation Officers or the Para Legal Volunteers by the Secretary of the Department of Legal Services and Administration (DLSA) in order to ascertain the economic condition of the accused. This report may then be presented to the court that is responsible for the matter, along with a request to relax the condition(s) of bail or surety.
- (v) In situations where the accused person requests that he be allowed to post bail bond or sureties once he is freed from custody, the court may, in the event that it is deemed appropriate, consider granting temporary bail to the accused person for a certain amount of time so that he can post bail bond or sureties.

➤ Right to free legal Services

The Supreme Court has clearly explained the right to free legal service in the —Bhagalpur blinding case²⁷. The Supreme Court of the United States ruled in this particular case that the state is required by the Constitution to offer free legal services to those who are accused of a crime. The court also emphasized that state governments cannot justify their constitutional duties by claiming that they are unable to do so due to budgetary or administrative constraints. When it comes to the stage, the obligation can be exercised either before the trial begins, after the trial begins, or when he is presented before the magistrate for the first time.

²⁷Khatri v. State of Bihar, 1981 AIR 1068: 1981 SCALE (1) 531.

It can even be exercised after he has been condemned by a court, but he has the right to appeal against the result.

Regarding the responsibility of the state government, the Court stated that every other state in the country should make provisions for the grant of free legal services to an accused person who is unable to engage a lawyer due to reasons such as poverty, indigence, or incommunicado situation. This is the case unless the state government is not willing to take advantage of the situation. The only need for a person to be eligible for free legal representation is that they would be sentenced to jail if they were found guilty of the crime. Due to the severity of the offense, he ought to be provided with free legal representation in order to ensure social justice. It should be brought to your attention, however, that situations involving socio-economic offenses, prostitution, child abuse, and other similar offenses do not need the provision of such free legal services.

➤ Right to be informed about prisoners' rights

The High Court of Patna initiated a PIL suo motu to effectively implement the provisions of Section 436-A of CrPC²⁸ tasked the Jail Superintendent with the primary responsibility of informing the undertrial prisoners about the benefits of Section 436-A and directed the Inspector General of Prisons to oversee the entire process of releasing undertrial prisoners in accordance with the provisions of the Criminal Procedure Code. In the case of Surendra Singh Sandhu, the Supreme Court made reference to the widespread incidence of legal illiteracy, including among lawyers, with regard to prisoners' rights. This was in reference to the issue of legal literacy for inmates. It is necessary to have an awareness of the law in order to have access to the law, and the criterion for pursuing justice in court is to have an activist understanding of legal rights. Therefore, the first requirement in the judicial twilight is for the state to establish and update a handbook on prison justice that is clear, readable by the general public, accurate, thorough, and, most importantly, practical in terms of addressing the felt necessities and day-to-day challenges of existence in a correctional facility.

POWER OF THE SUPREME COURT UNDER ARTICLE 142 TO RELEASE PRISONERS

²⁸ The Code of Criminal Procedure, 1973 (2 of 1974).

Article 142 of the Constitution of India stipulates those decrees and decisions issued by the Supreme Court, as well as orders concerning discovery, are to be taken into consideration and carried out etc.-

- (1) It is within the purview of the Supreme Court to issue whatever order or decree is required to ensure that all parties involved in a case before it receive a fair trial. Once issued, these orders and decrees will be binding across India according to the procedures laid out by law and, if none are available, by presidential decree.
- (2) Subject to the provisions of any law made in this regard by parliament, the Supreme Court shall, with regard to the entirety of the territory of India, have the authority to issue any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself. Furthermore, the Supreme Court shall have the authority to make any order for any specific purpose.

The unprecedented power that the Supreme Court possesses was employed on November 11, 2022, when it issued a ruling that immediately released six convicted individuals who had been serving life terms for more than three decades in connection with the death of Rajiv Gandhi. In this particular instance, the Tamil Nadu State Cabinet had suggested that they be released early to the Governor; however, the Governor did not follow through with the recommendation and instead forwarded their files to the Central Government. During the process of rendering its decision, the Court decided that the recommendation of the State Cabinet is obligatory for the Governor to follow in situations concerning the commutation or remission of penalties in accordance with Article 161. There has been no provision in the Constitution that has been brought to our attention, nor has there been any response that has been satisfactory on the origin of the Governor's authority to send a recommendation that has been made by the State Cabinet to the President of India on many occasions. The Governor's inability to make a decision regarding the pardon for more than two years obliged the Court to exercise the extraordinary powers granted to it by Article 142 of the Constitution in order to ensure that justice was served.²⁹

➤ Judicial Review of Prison Rules

²⁹ 3 Rajiv Gandhi assassination case / Supreme Court orders release of all six convicts, available at: [https://www.thehindu.com/news/national/tamil-nadu/sc-orders-release-of-rajiv-gandhi-assasination case-convicts/article66123732.ece/amp/](https://www.thehindu.com/news/national/tamil-nadu/sc-orders-release-of-rajiv-gandhi-assasination-case-convicts/article66123732.ece/amp/)

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In Prem Shankar³⁰, The court declares that the Punjab Police Manual is unconstitutional and arbitrary in the sense that it places the common Indian below the better class breed (paragraphs 26.21A and 26.22 of Chapter XXVI). The court also declares that Indian humans should not be dichotomized, and that the common run should not be discriminated against in relation to handcuffs. The rule that states that any under-trial individual who is suspected of a non-bailable offense that is punishable with a jail term of more than three years will be routinely handcuffed is a violation of Articles 14, 19, and 21.

PROTECTION OF PRISONERS UNDER THE POWER TO PUNISH FOR CONTEMPT OF COURT

A summary jurisdiction is granted to the Supreme Court of India, which allows it to punish anyone who disobey its authority. The Supreme Court is granted this authority by Article 129, and the High Courts of the States are granted the same authority by Article 215. "The Supreme Court shall have all the powers of such a court, including the power to punish for contempt of itself," declares Article 129 of the Constitution, which states that the Supreme Court would be a court of record. High courts are to be courts of record, according to Article 215: Each and every High Court is required to be a court of record and to possess all of the authorities that are associated with such a court, including the authority to punish those who are in contempt of themselves. It is vital, according to the Supreme Court, to have such power in order to prevent interference with the progress of justice, to preserve the authority of law as it is administered in the court, and to safeguard the public interest in the integrity of the administration of justice. Because of the unusual nature of this power, it must be used relatively infrequently. If, however, the public interest requires it, the court will not hesitate to exercise its authority and may even impose imprisonment as a form of punishment in situations when a simple monetary fine might not be sufficient. The Supreme Court was also given the authority to issue any order necessary to punish any contempt of itself, as stated in Article 142.

In Hanuman AnandraoPendram³¹, In accordance with Article 215 of the Constitution of India, the Nagpur Bench of the Bombay High Court exercised its authority. The Superintendent of Prisons at Central Prison in Nagpur was found to be guilty of contempt for committing intentional disobedience. This was due to the fact that he refused to release 35 criminals on

³⁰Prem Shankar v. Delhi Administration, 1980 AIR 1535, 1980 SCR (3) 855.

³¹Hanuman AnandraoPendram v. State of Maharashtra & the Superintendent, Criminal Writ Petition No. 537/2021.

emergency parole despite the fact that they were eligible for it, while at the same time granting emergency parole to six prisoners who were not eligible for it.

CONCLUSION

The prison is the guard of the criminal judicial agency. The prisons were deployed, both for the imprisonment of convicted people, as well as providing child care services. Therefore, prisons created legal effects on the work of investigating, prosecuting and referees performed by police, prosecutors and corresponding courts. Delay in testing; torture and mistreatment; negligence of health and hygiene; Prevented incomplete food and clothes; Questions of prison; Lack of communication; Rationalize prison visits and manage outdoor prisons; Lack of appropriate prisoners; Not often; Minor and political prisoners, etc are some of the challenges faced by the prison authorities.³²

In addition to the inactivity to fill the middle of social expectations and actual activities, the prison government must operate with the premise that its rehabilitation function can only be performed in the atmosphere that promotes human rights to be detained and created the desire to improve their quality of life. The intervention when prisoners' rights was found in distress, stated three basic principles:

(i), one detained person did not become "uninhabited"; . As a result, the Apex has published a certain number of instructions for prison agencies to allow prisoners of all therapeutic facilities and improve themselves under their imprisonment conditions.(ii) a prisoner is entitled to all human rights within the limitations of imprisonment, and, (iii) there is no justification for aggravating the suffering which is already inherent in the process of incarceration. Therefore, the apex court has issued many guidelines to prison authorities that can afford all such facilities for self-improvement and correctional therapy to accommodate prisoners. In addition to detailed interpretations of the relevant constitutional provisions, principles included in the various measures of the United Nations, where India is the party, have also been appointed to administer this process.

Important constitutional rights to protection measures for Strilia and prisoners are included in Articles 20, 21, 22 and 23 of the Constitution. Article 20 prohibits prior fact laws and

³² R.K. Raghavan, The Hell that is Prison, Frontline, Volume 21 - Issue 26,

provides immunity against double risk and protection against self-inflict. Article 21, realized with the decision made in Maneka Gandhi against the Union of India, provides that no one has been deprived of his life and freedom, except for the statutory process. Article 22 is carried out in certain cases to issue protection against arrest and detention. The Clause(1) of the article stipulates that no one will stop being detained without being notified, as soon as possible, about the reason for such arrest, and it will not have the right to refer and be chosen by a legal practitioner, and the clause (2) has done that each person is not arrested and arrested in the authority of a magician. clause (4) to (7) provides certain guarantee in case of preventive detention and Article 23 providing certain rights to activities.

After Maneka Gandhi's case³³ the entire constitutional jurisprudence has been humanised by judicial interpretation of Article 21. The supreme court, for the first time, has estimated that Article 21 expands the protection not only against the actions of the executives, but also the ordinance and no law can deprive a person in his life or personal freedom unless it is prescribed by a reasonable, fair and fair procedure. From now on, the associations of subtitles and prisoners are also provided in accordance with Article 21 in the form of deposits, quick trial rights, legal support, etc.

A glimpse of the Constitutional point of view of subtitles and prisoners on the one hand and the needs of defense, on the other hand, ending in a question:the reciprocity between the benefits of independence and prisoners and the concern of social defense? In this context, the goal of the researcher is to ask the answer to this question and point out that the interests of society and the benefits of subtitles and prisoners are really identical and in fact they should be done. If this research can make a less change in the attitude of some people who constantly criticize either of them, meaning that the government of criminal justice is not knowing its limits, or better protection requirements for insured guarantees, because the injustice to a form is a threat to justice.

In one of the previous parts of this research, an effort was made to study certain preliminary points on this topic. To achieve the ultimate goal is to establish a fair society, different components of the criminal judicial system, specifically. Police services, bars, judicial and improving should work in harmony and coherent. The success of a component may not last unless other components also reach the success of an almost similar level. For example, in a case, the police may succeed in arresting a defendant and send an accusation of crimes with

³³ AIR 1978 SC 597

sufficient evidence, however, if the allegation is unable to give the case effectively before the Court, or if the Court does not evaluate evidence in an appropriate point of view, the defendant will be made and police efforts are defeated.

Even if all the three components perform their part well and the defendant is condemned and convicted to undergo a prison sentence, he will not be effective unless the sentence is executed properly. The prison government, instead of reforming the convicted person, may accidentally worsen criminals by harassing him. They can also make the penalty ineffective by giving it such settings and comfort that it does not enjoy. Therefore, as in a relay race, all the components of the criminal judicial system must play their role by completing each other's efforts.

The Constitution of India in Parts III and IV dealing with the Fundamental Rights and Directive Principles do cover safeguards for undertrials and prisoners in the form of certain vital protections. Yet there are hardly any people to advocate for the new laws to help the poor, there are practically none to pressurise the government and the legislature to amend the laws to protect the weak and the poor undertrials. Even after six decades of independence, no serious efforts have been made to redraft penal norms, radicalise punitive processes, humanise prison houses.

The criminal justice system is costly, time-consuming, and ultimately destructive. Due to the high expense of admission and the enigma surrounding legal ethos, the impoverished and laypeople can never afford to handle their defense at the temples of justice. The impoverished are unable to obtain legal justice because to the court system's hierarchy and the number of appeals. Indirectly denying people justice by making the judicial system more expensive strikes at the lowest echelons of society. For the weaker segments of society, such as impoverished and economically disadvantaged inmates and undertrials, the legal system has actually lost its legitimacy.

In order to protect the younger prisoners from sex-starved lepers who would turn them into "homosexual offerings with nocturnal dog-fights," the court also issued orders separating them and denounced the practice of pairing young offenders with seasoned criminals. Third-degree tactics are now prohibited in prison environments, handcuffs are no longer used, and bar fetters are broken. The court further emphasized that no additional punishment can be imposed by the jail administration without the court's approval, and that the discretion

granted to the administration must be used fairly and sensibly without infringing on the rights of inmates.

Due to bailable offenses, a number of undertrials were incarcerated. Due to their poverty and ignorance of the law, they were unable to submit a single application for release on bond. This "unfortunate situation cries a loud for introduction of an adequate and comprehensive legal service program, but the cry has so far fallen on deaf ears," said Justice Bhagwati. The Indian and Bihar governments were reminded of their duty to implement a comprehensive legal services program, which is required by the constitutional directive embodied in Article 39-A as well as the implicit mandate of equal justice in Article 15 and the right to life and liberty granted by Article 21. The Court ruled that if the process does not offer the impoverished inmates free legal representation, it will not be equitable, reasonable, or fair.

Alternatives must be developed if the legal system is slow to administer justice, endangering the precious rights of an accused person involved in criminal procedures. In certain legal systems, there are ways to discriminate against someone by depriving him of his constitutional and legal rights during a criminal trial, such as civil rights actions, damages, police policing, quashing convictions, and similar measures.

It may be proposed that in criminal trials, the relevant agency—the police, prosecutor, or trial court—be held accountable to the Supreme Court when it is brought to light that a person's fundamental right to a speedy trial is being denied or has been denied, as these alternatives are not currently available in our nation and are unlikely to develop and expand anytime soon. Courts trying the accused must provide an explanation for the delay in case resolution. It would be naive on the part of anyone to leave this right to the nursing care of the millions to executive authority or to be handled by the supine and somnolent judges and magistrates. Strict directives and strictures alone are insufficient tools for implementing this right. Therefore, appropriate legislation should be implemented to compel the executive and judicial branches to make decisions quickly. Since most undertrials are impoverished, the financial tag of sureties shouldn't deny them their freedom, thus if the cases go on, the undertrials should be released on bail on personal bonds. Olga Kazireva³⁴ is an excellent precedent in this regard. Should an undertrial turn out to be innocent, the state ought to reimburse him for his incarceration and postponed trial.

³⁴ 2004 sec (Cri) 1126

In addition, frequent training on the fundamental human rights of inmates should be provided to prison staff. They should be informed that detention alone does not deprive a prisoner of their fundamental human rights. The primary source of jail injustice is the pervasive lack of legal literacy among prison authorities regarding inmate rights.

SUGGESTIONS

Many people believe that prisons are among the most coercive institutional or hierarchical settings. The societal and political response to crime has been worse over the last few decades: more behaviors are being made crimes, more people are being sentenced to prison, jail sentences are getting longer, and it is getting harder to get out of jail. The harshest criminal justice procedures are only sometimes—and obviously not always—considered to be immoral. Prison officials have authority over nearly every element of a prisoner's life. Decisions and regulations made by prison officials on these and other issues are frequently final and occasionally capricious.

From this point of view, following are some relevant suggestions to make prison justice more effective and dynamic:

- (1) In general, prison officials, particularly security personnel, anticipate that inmates would promptly obey their orders and strictly follow the rules without question. Inmates who disobey these directives may anticipate prompt disciplinary action or punishment, frequently in the form of more restrictive imprisonment or the loss of certain privileges (such as preferred housing, employment placement, visitation, or access to vocational or training programs). Humanitarian precautions must be taken to safeguard the wide and unrestricted authority of prison officials to behave arbitrarily and unjustly against inmates.
- (2) The courts may be able to become involved in a lot more areas to protect prisoners' rights to a respectable life. Prisoners should be given employment possibilities, and special measures should be taken to ensure the health of incarcerated individuals in order to avoid situations that could spark controversy. One of the goals of the prison sentence is to reintegrate the convicts into society.
- (3) The discussion of training and treatment in jails is not merely rhetoric; with sufficient fervor and resolve, it may become a reality. Given the significant rise in the number of

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convicts, both in terms of their sorts and social backgrounds, a strong prison system is desperately needed in our day and age. Our jail system should be improved by implementing new management strategies and teaching prison employees about their constitutional duties to inmates.

- (4) Even though there have been a number of initiatives to enhance jail conditions, more work remains. Effective jail centralization should result from giving the Union government control over prison management, and a draft All India Jail Manual is required for consistent enforcement across the nation. By establishing a central statutory agency to oversee prisons and ensure the best possible use of resources, the uniformity of standards so established may be preserved across all jurisdictions.
- (5) The involvement of the media is equally significant. Regardless of the identity of the torturer, it may not raise community awareness but rather foster anti-torture sentiment. Only then can law enforcement agencies and other professionals who work directly or indirectly in the administration of justice contribute to the development of a transparent and accountable culture.
- (6) Another crucial issue that needs consideration is the rehabilitation of torture victims. Torture victims typically come from weaker segments of society, such as women, children, or those from underprivileged or marginalized groups. Therefore, public awareness of these victims' predicament and rehabilitation activities is essential.
- (7) With the compounding powers granted to the police officers in charge of enforcing the law, it is believed that many small offenses under the Motor Vehicles Act, Police Act, and similar laws can be readily changed into compoundable offenses. This will significantly speed up disposal, cut down on pendency, and eliminate the massive amount of paperwork needed to create chargesheets and challans against the accused.
- (8) To lessen jail overcrowding and accomplish the intended outcome of modern correctional philosophy, several alternatives to incarceration must be taken into consideration. Attempts are underway to establish a community service order program following the enactment of new criminal statutes. An opportunity to make amends for their wrongdoings by performing community service is provided under this system to convicted offenders who have committed minor offenses. It's a way to deal with criminals who would otherwise receive jail sentences. Although this approach is punishing in that it restricts personal freedom, its main goal is to provide the offender a worthwhile chance to change. Such programs have been implemented by numerous

countries worldwide, including the UK, New Zealand, Sri Lanka, Hong Kong, Fiji, Zimbabwe, Canada, France, Czechoslovakia, Kenya, and Uganda.

In recent years, the prison system has been the subject of unprecedented scrutiny, research, and debate from the standpoint of its social defense function. Prison administration now has several obstacles to overcome in the course of its public safety and reformative responsibilities. Due to competing objectives, it is difficult to secure sufficient funding to carry out the intended systemic changes. The necessary infrastructure must be provided, inmates must be categorized logically, prisons must be diversified to house various kinds of offenders, correctional facilities must be provided, and staff members must be suitably qualified and professionally trained to perform custodial and correctional tasks. To ensure that the discrepancy between practical realities and societal ambitions is addressed, it is also essential to establish appropriate links between institutional programs and community-based welfare resources. What is most urgently required is the establishment of a national policy and the introduction of fundamental uniformity in jail laws.