



The plight of under-trial prisoners in India- A gap between access to justice and criminal justice administration

Sarbani Sarkar

Assistant Professor, Department of Law, University of Engineering & Management, Kolkata, West Bengal, India

Abstract

The object and purpose of criminal justice administration system is to create a balance between two interests, the interest of the accused at one hand and the interest of the society at large on the other. The provisions of the Code of Criminal Procedure, 1973 (hereinafter called the Cr.P.C) tries to maintain such balance. But is it being implemented at all in reality? The answer is 'no'. The pathetic situation of the under-trial prisoners is a clear evidence of this fact. Because if we see the conditions of the under-trial prisoners in Indian jails, we can realize that access to justice, to be more specific, access to court is a dream to many of them. Though Cr.P.C itself, the Constitution of India and many international Declarations and treaties provides for the rights to the under-trial prisoners, but they are, in fact, deprived of those rights. They suffer from prison violence, police brutalities, health, economic and mental problems etc. Apart from these, they are also deprived of some exclusive rights, e.g., right to be produced in courts, right to speedy trial, access to courts, right to bail etc. The reasons are that they are uneducated, unaware of their own rights, extremely poor and cannot afford bail. Therefore, there is a huge gap between the criminal justice system and right to access to justice. This paper enquires into this issue and tries to find out some effective ways on how to decrease this gap.

Keywords: under-trial prisoners, prisoner's rights, access to justice, criminal justice administration, access to courts

Introduction

Criminal justice administration is intended to offer the maximum security to the general public by dealing with crimes and accused efficiently, expeditiously, and lawfully. At the same time, it also protects the rights of the accused and guarantees fair trial so that a fine balance is maintained between the interests of the accused persons at one hand and society at large on the other. That's why law provides rights to all individuals and protects the interests of victim and accused both.

If we consider the criminal justice administration in Indian context, we find that criminal law in India complies with the above connotation. It has not only guaranteed some rights to the individuals to protect themselves from crimes but also provided the accused with some rights to protect themselves from unnecessary sufferings. Therefore, the under-trial prisoners have got some rights but the reality is that in spite of that, they are still suffering for years.

Who are under-trial prisoners: Under-trial prisoners are those whose trial is going on or who are detained in custody and awaiting trials. The term "under-trial" refers to those persons who are "un-convicted prisoners", i.e. who are detained in prison during the period of investigation, inquiry or trial for the offence the prisoners are accused to have committed.

Rights of under-trial prisoners: The rights of the under-trial prisoners in India can be categorized under 2 separate groups: rights which fall under constitutional safeguards and rights specified under the Code of Criminal Procedure, 1973 (herein after referred to as the Cr.P.C).

Constitutional provisions: The Constitution of India safeguards the basic human rights of the prisoners in India under some of its provisions, which are as follows:

Article 14 provides for equality before the law and equal protection of laws.

Article 20 provides for the protection of rights in respect of conviction of accused for offences, by guaranteeing 3 separate safeguards:

- No conviction except for violation of a law in force at the time of the commission of the act charged as an offence and no penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. [Article 20(1)]
- Right against double jeopardy [Article 20(2)] and
- Right against self-incrimination [Article 20(3)].

Article 21 protects the fundamental right to life and personal liberty of an individual which includes Right to a speedy trial (*Hussainara v. Home Secretary, Bihar*), rights against inhuman treatment of prisoners (*P.V. Kapoor v. Union of India*), right against unnecessary handcuffing (*Prem Shukla v. Delhi Administration*) etc.

Article 22 provides for the rights of arrested and detained persons which are:

- An arrested person shall not be detained in custody without being informed of the grounds for arrest and shall not be denied the right to consult, and to be defended by, a legal practitioner of his choice. [Article 22(1)]
- Every person arrested and detained in custody has a right to be produced before the nearest magistrate within a period of twenty-four hours of such arrest. This time excludes the time necessary for the journey from the place of arrest to the court of the magistrate. If the police officer fails to produce before Magistrate within 24 hours, it will be called wrongful detention. If such person is required to be detained in custody beyond such period, the authority of a magistrate is required. [Article 22(2)]

Article 39A imposes an obligation on the State to provide free legal aid for the purpose of securing justice. In *Khatri (II) v. State of Bihar* and *Sukh Das v. Union Territory of Arunachal Pradesh*, both the cases, it was held that: the right of the accused person cannot be denied even when the accused fails to apply for it. If the state fails to provide legal aid to the indigent accused person, then it will vitiate the whole trial as void.

Rights under the Cr.P.C: The Cr.P.C also provides some safeguards and rights to the arrested and detained persons which are in consonance with the constitutional provisions. These are as follows:

Right to know the grounds of Arrest

- Every police officer or any other person arresting a person without a warrant must inform the arrested person about the particular of offence or other grounds of arrest. [Section 50, Cr.P.C]
- It is an obligation that the police officer or other person making arrest should forthwith inform about the arrest to a nominated person. [Section 50A, Cr.P.C]
- The police officer or any other officer executing the warrant should notify the substance to the person to be arrested and show him the warrant, if required. [Section 75, Cr.P.C]

Right to be produced before the Magistrate without unnecessary delay

- A police officer making an arrest without a warrant should produce the arrested person without unnecessary delay before the Magistrate having jurisdiction or a police officer in charge of the police station, subject to the conditions of the arrest. [Section 57, Cr.PC]
- The police officer executing a warrant of arrest should produce the arrested person before the court before which he is required by law to produce the person within 24 hours of arrest. However, the time which is required for the journey from the place of detaining to the Magistrate Court, has to be excluded while calculating the time period of 24 hours. [Section 76, Cr.P.C]

Rights to be released on Bail

While arresting a person a police officer without a warrant for an offence other than non-cognizable offence; he shall inform him that he has a right to release on bail and to make an arrangement for the sureties on this behalf. [Section 50(2)].

Section 167 Cr.P.C (Default bail): Right to default bail is given under section 167(2) of the Cr.P.C. It lays down that upon the expiry of a specified period, if the charge-sheet is not been filed by the police officer, the accused immediately becomes entitled to seek bail. This type of bail is called default bail or statutory bail. When the legislative criteria of Section 167(2) are met and an application is submitted, either verbally or in writing, the accused is immediately freed. The accused has the right to assert it as a matter of right, and this right is not subject to the Court's discretion because it is expressly provided to him by the legislation. The specified period after which the accused is entitled to default bail is 90 days where the offence is punishable by a minimum sentence of 10 years; or offences punishable by a lower sentence, where punishment is either death or life imprisonment; and 60 days where the offence is punishable by less than 10 years.

Right to consult a lawyer

- Prisoners have a right to consult his lawyer during interrogation. [Section 41D, Cr.P.C]
- A person alleged to have committed an offence has a right to be defended by a legal practitioner of his choice. [Section 303, Cr.P.C]

Right to free Legal Aid

When a trial is conducted before the Court of Session, and the accused is not represented by the legal practitioner, or when it appears that the accused has no sufficient means to appoint a pleader then, the court may appoint a pleader for his defence at the expense of the State. [Section 304, Cr.P.C]

Right to be examined by the medical practitioner

when the arrested person alleges that examination of his body will lead to a fact which will disapprove the fact of commission of an offence by him, or which will lead to commission of an offence by any other person against his body, the court may order for medical examination of such accused person at the request of him (accused) unless the court is satisfied that such a request is made for the purpose of defeating the justice. [Section 54, Cr.P.C]

Other Rights under Cr.P.C

- Section 55A of Cr.P.C states that it shall be the duty of the person, to take reasonable care of the health and safety of the accused.
- Section 358 of Cr.P.C gives rights to the compensation to the arrested person who was groundlessly arrested. Section 41A of Cr.P.C states that the police officer may give the notice to a person suspected of committing a cognizable offence to appear before him at such date and place.
- Section 46 of Cr.P.C prescribes the mode of the arrest. i.e submission to custody, touching the body physically, or to a body. The police officer should not cause death to the person while making an arrest unless the arrestee is charged with an offence punishable with death or life imprisonment.
- Section 49 of Cr.P.C states that the police officer should not make more restrained than is necessary for the escape. Restrain or detention without an arrest is illegal.

In this context, D.K Basu v. State of West Bengal and others is a landmark judgment in respect of the rights of the arrested person and obligations on the police officer to do certain activities that if the police officer fails to perform his duty then he will be liable for contempt of court as well as for the departmental actions. Considering number of instances of custodial deaths and the police atrocities, the Supreme Court issued guidelines for the protection of accused person and some amendments of various sections of Cr.P.C were made with respect to those guidelines of arrest.

Reports on Under-trial prisoners: A picture that shows access to justice is a far reality

Although there are number of legal provisions as the safeguards of rights and interests of the under-trial prisoners, yet the sufferings of under-trial prisoners have not been wiped out yet because, access to justice is still far from reality. Reports show that they are languishing in the jails for years and are not able to exercise their rights rather they are deprived of their minimum basic human rights. According to the National Crime Records Bureau's (NCRB) 2017 Prison Statistics, Indian jails are overcrowded, as they have been in past years. The occupancy ratio was 115.1 percent, which indicates that 115 individuals were crammed into a space that could only hold 100. The imprisonment of under-trials is the primary cause of the overcrowding. Because of delays in court hearings or police officers' investigations, some under-trials are imprisoned for longer periods of time than they should be. The number of under-trials increased by 5.3 percent in 2017 as compared to 2016. Prison Statistics India, 2019 published by National Crime Records Bureau (NCRB) published in 2020 shows: "The number of undertrial prisoners has increased from 3,23,537 in 2018 to 3,30,487 in 2019 (as on 31st December of each year), having increased by 2.15% during this period. Uttar Pradesh has reported the maximum number of undertrials (22.2%, 73,418 undertrials) in the country followed by Bihar (9.5%, 31,275 undertrials) and Maharashtra (8.3%, 27,557 undertrials) at the end of 2019." As regards under-trial prisoners, among 3,30,487 undertrial prisoners, around 74.08% of prisoners were confined for a period up to 1 year (2,44,841 prisoners), as on 31st December, 2019. Out of this, the greatest number of undertrial prisoners (1,22,254 prisoners) were confined for up to 3 months accounting for 36.99% of total Undertrials. This is followed by 68,447 undertrial prisoners who were confined for 3-6 months and 54,140 undertrial prisoners who were confined for 6-12 months. As regards, death and illness of prisoners: "number of un-natural deaths in prisons has increased by 10.74% from 149 in 2018 to 165 in 2019" as per the report.

Conditions of under-trials in India

Over the decades, there has been little attention devoted to jails and convicts, and the situation in many states is extremely frightening. Under-trial inmates are the most impacted groups in these jails since they are un-convicted criminals who are on trial in a court of law yet have to live a terrible existence while in jail. The most prevalent difficulties in Indian prisons include inadequate health and sanitation facilities, a lack of clean food, overcrowding, and prejudice and disparities among convicts based on religion, socioeconomic position, and other factors. In our country, the number of people awaiting trial grows by the hour. Even yet, the rate of increase is far faster. The proportion of undertrial inmates in jail for more than a year has increased rapidly, as has the pending criminal litigation and trials. According to statistics and reports from department authorities, by the end of 2019, there are 3.28 lakhs of under trial inmates in jail, while the number of real convicted by the courts is 1.42 lakhs which is not even half of the count of under trial prisoners. The increase in the number of outstanding cases is a serious concern in criminal proceedings. Over 1.7 crore criminal cases (trial and appeal) are now waiting for more than a year, with over 22 lakhs cases lingering for more than ten years from the date of their inception. The number of inmates awaiting trial is roughly equal to the number of criminal cases pending. In a comment, the Supreme Court stated that the great incidence of under trials in jails is a "crying disgrace on the legal system," since it allows individuals to be imprisoned for lengthy periods of time even without a trial

beginning in many situations. The terrible state of health and sanitary facilities, lack of hygienic food, prejudice and disparities among inmates based on their religion, socioeconomic position, and many other factors combined to make the life of under-trial prisoners disastrous, with little aspiration or desire left in them.

There are many challenges which are faced by the prisoners. They become the victims of prison-violences and tortures by fellow-prisoners. "With hardened criminals being around and in the absence of scientific classification methods to separate them from others, contamination of first time, circumstantial and young offenders into full-fledged criminals occurs very frequently". They suffer from many physical and mental health problems. Those who are imprisoned are unable to care for their family. Moreover, the societal stigma they experience creates circumstances that drive youngsters to misbehavior and exploitation by others.

Reasons for plights of under-trial prisoners and problem of implementation of the right of access to justice

It is seen that most of the prisoners are poor, uneducated and young. Moreover, they do not have awareness of their legal rights. These are the main reasons for those who are under trials. In the report published in India Today (2019) it is written in this manner that "Money, Not Crime Decides Period in Jail" where it has been expressed that most under-trials are economically disadvantaged, the time they spend in jail is decided not by the crime they are accused of committing, but by their capacity, or lack thereof, to pay the bond cost or obtain a decent counsel. Most of the prisoners in India hardly know and understand the legal mechanism to exercise their fundamental right to a speedy trial and freedom from undue detention. As a result, people have been languishing in bars for years, waiting for the day when a judge will hear their case. This initial hearing in the case is frequently scheduled after years of jail.

Access to justice and under trial prisoners

"Access to justice" means having resort to an affordable, quick, satisfactory settlement of disputes from courts. Since most of the under-trial prisoners do not have the means to appoint lawyers or afford bail or they have lack of knowledge about legal remedies which they can seek and thereby they are languishing in jails, they are denied of this right. As discussed above, that the under-trial prisoners have right to speedy trial to get access to justice. But this is far from reality because in India we can see "justice delayed" which results into "justice denied". After the case of Hussainara Khatoon, it can't be said that the picture has changed. If access to justice does not come to the hands of the under-trial prisoners, ensuring speedy trial is not possible. Thus, securing "justice" will be just a goal not a reality.

Suggestions

To bridge between the gap of access to justice and plights of under-trial prisoners: There are some way outs to remove the gap between the sufferings of under-trial prisoners and their access to justice.

1. Under trial prisoners may be released on bail under Section 436A of the Cr.P.C.
2. The provisions of Section 167 of the Cr.P.C have to be followed.
3. Living conditions of the jails must be improved.
4. The jails should not be over-crowded.
5. The physical and mental health of the prisoners should be taken care of in the jails.
6. The under-trial prisoners should not be detained unnecessarily or arbitrarily.
7. It should be ensured that they should not be tortured in the jails.
8. It should be the duty of the persons who are in charge of jails or the under trial prisoners to behave with humanity.
9. The instances of police brutality, custodial deaths should be reduced.
10. There should be more awareness programmes on "free legal aid" which can be organised by legal professionals and even law students.

Conclusion

It can be concluded here that it is true that in India the conditions of under-trial prisoners are very poor. There are various rights exclusively for them but there is lack of implementation and lack of awareness. Not only that, they are also simply denied to exercise these rights reason being poverty, lack of education, poor socio-economic conditions etc. Thus, gap has been created between the sufferings of under-trial prisoners and their access to justice. However, this gap can be removed, and the sufferings can be reduced if above suggestions can be followed. We are hopeful that this will be possible in near future.

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