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The Human Rights of the Under Trial Prisoners in India

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Abstract: ***The main important purpose of Criminal Justice is that victims, prisoners and also those prisoners who are Under Trial, they can not deny their Human Rights. Those days has gone where prisoners do any offence then they were lodged to pass their days in dark cells. Now a day's prisons just like a reformative centre where they live, earn and changing their behavior and after come out prison they can collaborate with society. Here prison knows that it is a rehabilitation centre, it is a punishment not that place where there human right are violated and where extra punishment will be held. The open prison has come as a modern and effective system of closed imprisonment. This is helping in changing the traditional outlook of the Indian prison system and helps the prison to become more responsible, creative citizen.***
A basic and main factor that is necessary to understand high imprisonment rates is the way in which the system is liable to breaches of order like parole, probation or other sentences. In many countries parole is the contribution to overcrowding in prison.

I. INTRODUCTION

Under trial Prisoners are those Prisoners who have to face the trial stage. After being a prisoner he will be called an accused. They have to face the trial procedure at the time of prisoner period before the competent court.

A person who commits any offence, called accused and whenever the acquittal will be done then he will be called under trial Prisoner. Under Trial Prisoner means whenever before trial he or she becomes an accused and he is not out of jail on behalf of bail then here law shows that in this situation there must be Speedy Trial because accused has a right to get speedy trial. We see that a lot of cases are pending before the court for years and the Supreme Court came to the rescue of such under trial prisoners by pronouncing their temperature release and to face trial by remaining free.

It has been also seen that under trial prisoners are those, where it happens that the charge sheet has been filled or not but the trial is going on before the competent court. It is not finished, it cannot say whether he is in prison or on bail.

The original meaning of prison is 'Jail'. It is a place which is properly arranged for that person who has legally committed a crime and tries to get him and present him before court. And for presenting before court there is some time to take him safely to that place called prison.

According to sec 3 of Prison Act, 1894 defined prison means jail or places that are used permanently or for some time live freely but it does not include those places that are totally in the custody of police.

Prison is that place where prisoners are kept before facing court. In ancient times the situation was not the same. At that time detention was not that place where he came for punishment.

When we became an independent period, law, order police and prisoners were included in the state list in the 7th schedule of Indian constitution. The Indian government wants to make several changes in prisons. If we look at the condition of prisons then we see there are a lot of laws passed to improve prison conditions. Now at the present time, prison is treated as a place where prisoners come and the main aim of prison is reformation of prisoners who are in imprisonment. Our Central and State Government is doing well work for the prisoners and children prisoners.

II. HUMAN RIGHTS OF UNDER TRIAL PRISONERS

Generally the Human Rights of Under Trial Prisoners are violated. These are the basic rights that are available to every human by birth. The facilities of Under Trial Prisoners are not given as seen above. These rights are very basic and natural for those but they are not achieving. There are not any discrimination based on Sex, Caste, Language etc. Every person has a Right to produce before a Magistrate within 24 hours of his arrest. This right came for Article 22 (2) of India Constitution of India and Section 57 of Criminal Penal Code.

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These safeguards should be provided for the safety of the person under custody or from the torture by the Police. This right is very important as it ensures that police cannot keep the person in custody.

Case- Khatri V/S State of Bihar[2]

In this case police had blinded 80 suspected criminals by needles and causing them by acid.

These violence violates the rules for the treatment of prisons.

Case- State of Rajasthan V/S Balchand Allas Ballay[3]

The Supreme Court held that it is not necessary to detain the Accused Person in Court, if the appearance of the accused can be secured by others. The Court stated that Bail and not Jail should be the norm.

Article 22(1) of Indian Constitution says that the Arrested Person has the right to Consult and defend by a Legal Practitioner of their wish, but may Under Trial be poor, they are not able to hire lawyers or take legal aid or not able to furnish Bail Bond for release. According to Article 39 (A) of Indian Constitution provides for the force of legal aid. This Article shows that access to justice is not denied because of his monetary or other disability.

Case- M.H. Hoskot V/S State Of Maharastra[4]

In this case Supreme Court decided to interpret part 3rd of Indian Constitution in widest term. It has been decided that the scope of article 21 is very wide and the protection of it, will be available for safeguarding the prisoner's fundamental right and for effecting the prison reform supreme court develop the human right jurisprudence for the protection of prisoner's right from human dignity. In upper cases Supreme Court decided to divide the development of prison jurisprudence in India.

Case- Hussainara Khatoon V/S State Of Bihar AIR 1979 SC 1369, SC In this case Supreme Court has passed the judgment regarding free legal aid, when court deal with under trial who had suffered long incarceration held that a procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as reasonable just or fair so as to be in conformity with the requirement of Article 21.

Criminal Justice System based on the principle that "A person is presumed innocent unless proven guilty by the Court". An Under Trial Prisoner or Arrested Person shall not be subject to Handcuffing.

Case- Prem Shankar Sharma V/S Delhi Administration 1980 AIR 1535, 1980 SCR (3) 855

In this Case questions have come out that handcuffing is valid or not? This case comes with P.I.L. Urguing the court to satisfy the validity of handcuffing under Article 21 of the Indian Constitution. In this case the court banned handcuffing of prisoners. Courts consider that handcuffing is prima-facie in human and unreasonable and totally adverse to Article 21 of Indian Constitution.

III. AN UNDER TRIAL PRISONERS MAY BE WARRANTED ON SOME GROUNDS

There are following grounds-

1) If offenses are related to Very Grave Offenses.
2) If the person is arrested and interferes with Witnesses or prevents the Court of Justice.
3) If the person becomes arrested for the same offense or any other offense.
4) If he will deny the appearance of Trial.

The main two Basic Principles of Criminal Justice System are-

a) A person arrested is presumed innocent until proven guilty.
b) It is the duty of the State or Court to see that Justice should be done with the People and the Victim.

For the achievement of these Principles it is most important to do Trial or Investigation as soon as possible without any Delay. But generally it does not happen due to delay in Trial or Investigation, people have to face long years in Jail. Almost all prisoners have problems in prisons, when liberty has been restrained and when they are placed under the authority of another group, which has largely closed to public scrutiny, the abuse of power has been proven to be widespread. That's why international instruments have been adopted by United Nations to ensure that the fundamental human rights are protected. Just because of this they have to stay in Jail, the time has not come up for Trial before the Court, leading to Grave Consequences such as-

- That fact which they assumed was innocent; they exposed the Mental and Actual Privacy of Jail life.
- Pre-Trial Detention generally disturbs the family of the Victim and economically destroys the family life.

IV. PROBLEMS OF UNDER TRIAL PRISONERS

Indian Jails during Under Trial force their huge part of the Prison Administration. Due to Overcrowding the Prisoners has to face lot of Problem in Jail, overcrowded jail there are many problems for the Under Trial Prisoners-

1) There is no separate Prison for the different types of Prisoners. All types of Prisoners stay in one place with each other. There is no scientific classification. Due to this a Circumstantial Offender turns into Criminals. According to the Model Prison Manual State, no Convicted Prisoners shall be kept in the same place in which Under Trial Prisoners are kept.
2) That prisoners who are mentally ill cannot stay in the same place who are ignored by both the outside world and the inside.
3) Prison is generally a dangerous place for first time Prisoners who are involved in violence or by the police mishandling. The Bhagalpur Building Case is an example of it for cruelty with prisoners and misbehavior with the prisoners. In this Case the Apex Court dealt with the blinding of Under Trial Prisoners by the Police with the small hole in their eyeballs with needle and pouring acid in them[6].
4) Due to Overcrowding in Jail, Prisoners have to face a lot of problems. They do not have Hygienic Areas that face problems to keep them in safe and healthy condition. Many Prisoners suffer offense. They suffer many diseases, a lot of infections and when they interact with each other in prison all prisoners have to face those problems which they have because of the absence of Medical Service[7]. If we see the National Human Right Commission Report then it seems 76 % Prisoners are dead due to the unhealthy prison atmosphere in India.
5) Under Trial Prisoners also have to face Homosexual Abuse in Prison where same sex people are staying. People want to fulfill our sexual need that is why they intercourse with same sex person. Often they target young prisoners. Sometimes it seems, gang rape has been held with people that is why suffer people commit suicide.

V. ROLE OF JUDICIARY IN PROTECTING THE HUMAN RIGHTS OF PRISONERS

Almost all prisoners have problems in prisons, when liberty has been restrained and when they are placed under the authority of another group, which has largely closed to public scrutiny, the abuse of power has been proven to be widespread. That's why international instruments have been adopted by United Nations to ensure that the fundamental human rights are protected.

There are certain groups who need additional care and protection. Some people may be habitual of inadequate facilities and lack of special care, which they want in prison. The prison environment speeds up their existing problems. This includes mental health care of prisoners and with disabilities of older prisoners. In prisons, some prisoners are covered with the risk of abuse from the other prisoners and staff also. These groups may suffer from the humiliation, physical and psychological abuse due to their may be gender nationality, sexual orientation. Those prisoners who are under sentence of death suffer a special category. They suffered with psychological effects often for years or decades.

To know and understand their human rights, some of the special categories and their needs.

Case- Sheela Barse V/S State Of Maharashtra[8]

The Supreme Court held an interview of prisoners is very necessary for collection of information but such access has got to be controlled and regulated.

Case- Sunil Batra V/S Delhi Administration AIR 1978 SC 1675

In this case the Supreme Court speaks about the value of the Supreme Court. The court observed that continuously keeping a prisoner in captivity day on night reduced the prisoners from human beings to an animal and this is very cruel and unusual.

Case- Bhim Singh V/S Union of India S.C. 2014

In this case the Attorney General informed the Supreme Court that estimated 50% of prisoners Under Trial may have served the maximum sentence for the offense for which they have been charged. On this point the Court passed the directions for the implementation of Section 436 A Criminal Procedure Code, the Under Trial Prisoners will not be detained in Prison beyond the maximum period provided according to Criminal Procedure Code rule.

The Court passed the following directions for the effective implementation of Section 436 A Criminal Procedure Code. Those directions will be followed by all the States of Review Committees in Jail Manuals. The concerned Judicial Officer has to submit the Report of the Court to the Registrar General of the High Court, who turns the report to the Secretary General of the Supreme Court. Then in 2013 R.C.Lahoti who was a Farmer Chief Justice, showed over the inhuman condition of Prisoners. This letter was taken out as Public Interest Litigation by the Apex Court. The Court directed the Authorities to take out the information regarding under crowding in prisons and the living conditions of the prisoners[9].

The Court passed the order in 2016 that there be no changes in the condition of prisoners even though Article 21 of the Indian Constitution dealt with Human Rights. They have to deal with the issue regarding Prison Reform.

Then in 2017 the Union Minister of Law wrote to the Chief Justice of all High Courts that all Stakeholders have to take their own responsibility for the improvement of the Condition of Under Trial Prisoners, who do work effortlessly so that they cannot be denied access to Justice.

Thus in 2017 law commission of India recommended that provisions regarding 'Bail in Criminal Procedure Code are to be amended so that the reduction of Under Trial Prisoners can be held in prison[10].

VI. RIGHTS OF WOMEN PRISONERS

In India we see women as got so much respect. She plays a important role in India. If we see our Indian Constitution we see there are a lot of provisions relating to women. It imposes provisions in the Indian Constitution for the welfare of women and to fulfill the requirements of International Convention regarding the Rights of the situation of women. Then it seems that there is a lot of problem with women, in which they survive, and her basic right has been ignored by the Supreme Court and High Court and by Committees. There are a lot of difficulties that have been done in prison, they do not get special attention and there are no special provisions for removing it. If we see the Jail condition then there is a sufficient space for male prison but for female prison there is not much jail, women is less. Here we can see eat there is a lot of violation of Human Right of women in prisoner. There should be lot of changes has been done in Indian Prison Act, 1894. In this Act there is no provision for Women Welfare because it's too old. Deputy Director, Institute of Correctional Administration Chandigarh, Dr. Puneet Lalli mentioned the Prison Act 1894 focused only on prison security, Offense, Punishment not on reformation. She feels a lot of problems in delayed Trials, Legal Aid, Hygienic Food, Mobile Security issues, and lack of Modernization. If we see the Jail for Women there is 94.1 % Women Prison, the problem has been mentioned due to lack of care.

VII. PROBLEMS OF UNDER TRIAL WOMEN PRISONERS

In 2016 estimated 3 Lakhs of women prisoners were deprived by the Indian Penal Code, Special Laws. In them the age of most of the Female Prisoners in between 30-50 years, which constituted 50.5% of the proportion that was followed by the age of 18-30 years which constituted 31.3% of the total of 1401 female Under Trial Prisoners.

If we see the condition of those Under Trial at the National or International Level, the Administration of Prisons is different from Nation to Nation. There are some rules dealing with the Rights and Duties of Prisoners that should be known to the prisoners at the time of the admission in the Prison.

VIII. DELAY IN ACCESS TO JUSTICE

Many International on National instruments establish principles for the administration of justice and guidelines to ensure equal justice for all those who come in contract with the Criminal Justice. Socially and economically groups to develop the countries has experience multiple layers of discrimination just like minority groups and women are much effected.

Problems belonging to access to justice are usually most pronounced. The Criminal Justice System reduced in capacity because of destruction and personal leaving. Key positions in vacant police and judicial institutions may be mistrusted due to abuses. Corruption, judicial guarantees and procedural safeguards are not respected. Law enforcement activities are uncoordinated.

To access Justice for people is an important part for fair and equality before the Court of Law in all cases. Trust, faith and belief is the important part of each and every people's life to reduce crime. A legal system whose procedure has been experienced as a fair may be compiled by the people because the system felt with.

IX. UNFIXED IMPRISONMENT

In many jurisdictions people are imprisoned for committing Criminal Offenses. On a global level its impact may be relatively slow, such as the influence level of overcrowding in some jurisdictions.

Example- Here one example we can see if a person who is not mental fit, commits any offense, he becomes imprisoned. Due to a lack of fit mental health institutions[11].

In some places or countries all defaulters become imprisoned to their individual circumstances. Those offenders who are not given a prison sentence may contribute to overcrowding in some places in other countries. Debt defaulters are also imprisoned and contribute to prison numbers.

X. CONCLUSION

Bail is very important provision for prisoners and it can be repeat many times. No person will be depriving unless or until he has not proven guilty in the eyes of law. No person shall be depriving without any reason until or unless his or her offence has not proved, it is the basic principle of criminal justice system for every person. There should be effective implication of the existing provision of the Criminal Procedure Code. Every person have a legal and human right, there should not be any violation regarding it.

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A basic and main factor that is necessary to understand high imprisonment rates is the way in which the system is liable to breaches of order like parole, probation or other sentences. In many countries parole is the contribution to overcrowding in prison.

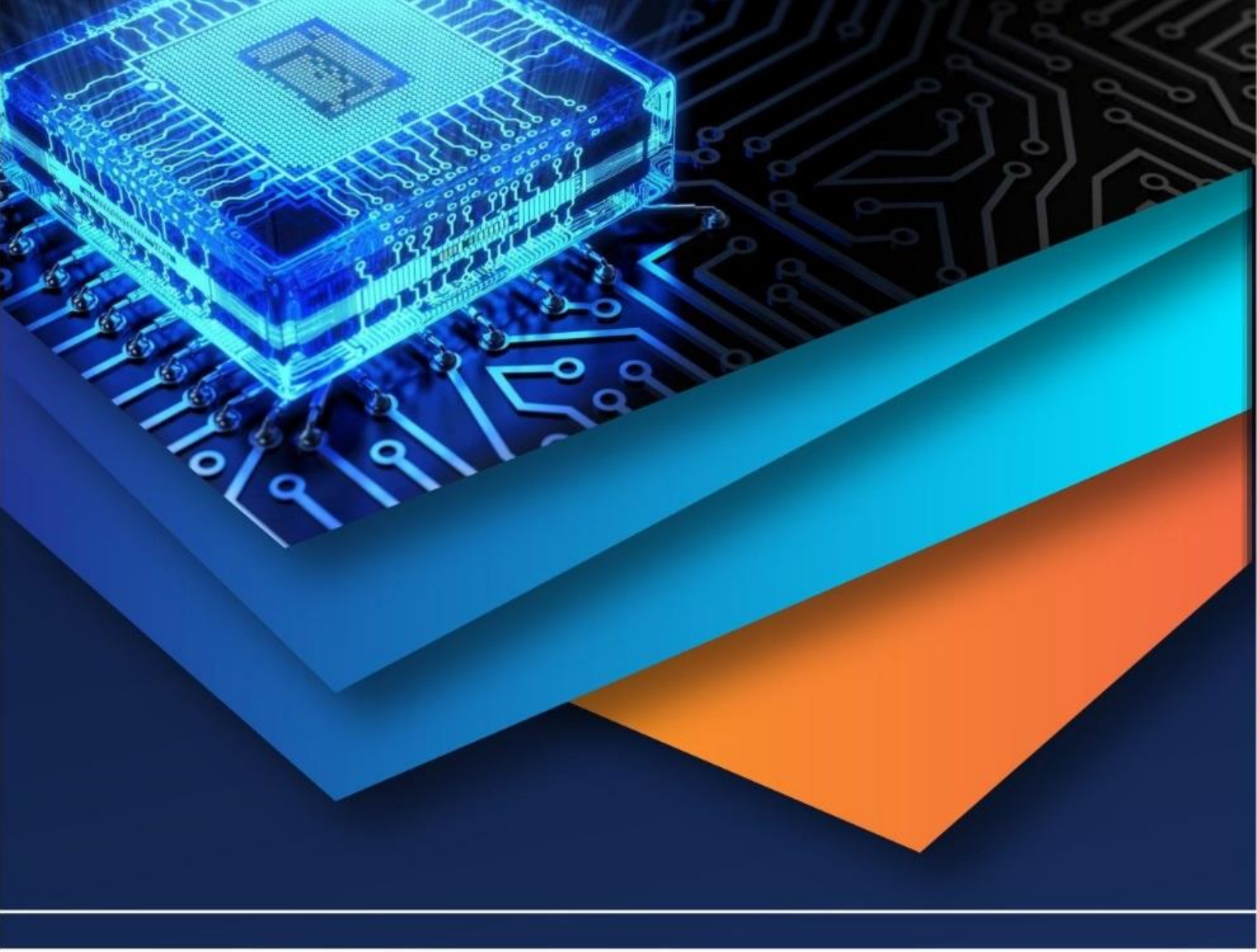
Many times breaches are the reason for failing to comply with the condition of orders like the condition of reporting.

The increasing number of offenders returned to prisons due to incomplete periods of condition release, it not only depends on the size of the prison's population, but also depends on the credibility of the condition release system.

There are certain groups who need additional care and protection. Some people may be habitual of inadequate facilities and lack of special care, which they want in prison. The prison environment speeds up their existing problems. This includes mental health care of prisoners and with disabilities of older prisoners. In prisons, some prisoners are covered with the risk of abuse from the other prisoners and staff also. These groups may suffer from the humiliation, physical and psychological abuse due to their may be gender nationality, sexual orientation. Those prisoners who are under sentence of death suffer a special category. They suffered with psychological effects often for years or decades.

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[11] Sometimes referred to as "Lunatic".



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