BLOGS

The Plight of Undertrial Prisoners in India

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Introduction

The criminal justice system's goal is to guarantee that those accused of crimes receive a fair trial. However, there is a sizable population within this system that frequently goes unnoticed and unremembered: undertrials.

These people have not yet been found guilty of any crimes and are awaiting trial. These individuals, accused of crimes but not yet convicted, find themselves trapped in a complex web of legal procedures, prolonged detention, and inadequate access to their fundamental rights.

This post aims to shed light on the challenges faced by undertrial prisoners in India, highlighting the urgent need for reforms and a fairer approach to ensure justice is served.

Plight of Undertrials

Undertrials make up a complex group of individuals coming from different marginalized sections including sexual minorities, women and religious and caste minorities. It also poses a constitutional challenge in terms of procedural application and enforcement.

The conditions in Indian jails are inhumane and violate basic human rights. The facilities are overcrowded, the food is inedible making malnutrition an alarming concern, the beds and bunks are inadequate, lack of medical care and prisoners are kept in poorly ventilated, dark rooms.

The cells are small, dirty, and have open toilets, which can spread diseases. The threat of mass contagion in prisons poses specific challenges to women, children, and gender and sexual minorities in prisons. These prisoners suffer from certain levels of prejudice, deprivation, and abuse in jails established by masculine standards of detention.

They are impacted more adversely than men on account of social, psychological and physical differences. An overemphasis on security and discipline, lack of holistic needs based programmes, inadequate standard of care due to staff shortage are only some of the factors which play a significant role in worsening the conditions of women prisoners. The wretched treatment inflicted upon sexual minorities in places lacking public inspection is still unobtrusive.

Getting Bail for Undertrial Prisoners

Section 436A of the Criminal Procedure Code allows for the release of undertrial prisoners on bail if they have served half of the maximum term prescribed for the offence, addressing the issue of prolonged detention.

The Supreme Court has issued writs of mandamus, ordering the immediate release of undertrial prisoners detained for periods exceeding the maximum prescribed sentence. These measures aim to safeguard the rights of undertrial prisoners and prevent unjustified and extended detention.

An order on default is an acceptable term to describe a section 167 order for release on bail. Indeed, the prosecution's failure to file the charge sheet within the required time resulted in the release on bail.

Under **Section 167(2) proviso (a)**, the right to bail is unassailable. The accused in detention should be freed on bond if the investigating agency does not file a charge-sheet before the passing of **90 or 60 days**, as the case may be. The defendant has no special justification for being released on bail.

The bail granted under the proviso of **Section 167(2)** may be revoked if the inquiry shows that the accused committed a severe offence and a charge sheet is submitted.

Recommendations for Undertrial Prisoners

Despite various recommendations and Supreme Court directives, the number of undertrial prisoners in India continues to rise, with over 500,000 people incarcerated by the end of 2021.

The majority of these prisoners are awaiting trial, highlighting the urgent need for criminal justice reforms. To address this issue, a comprehensive and coordinated approach involving the government, civil society organizations, and the judiciary is required. Reforms should focus on improving the bail system by setting reasonable amounts and exploring alternatives to cash bail.

Other recommendations include liberalizing bail regulations, reviewing arrest laws, strengthening legal aid systems, exploring non-custodial options, and ensuring transparent data dissemination.

Special attention should also be given to the unique needs and vulnerabilities of marginalized groups such as women and transgender individuals in prison. The government should develop a model policy to address their specific needs. Implementation of court guidelines for the protection of undertrials is crucial and should be supported by adequate resources, training for law enforcement and judicial officers, and accountability for violations.

Additionally, establishing legal aid cells in all prisons to raise awareness about available services and standards is necessary. Alternative measures to imprisonment, such as community service or probation, should be considered for non-violent offenders to reduce overcrowding in prisons.

Transparency and accountability are essential for safeguarding the rights of undertrials. Regular monitoring of prison conditions, adherence to court guidelines, and holding accountable those responsible for any violations can contribute to a more just and humane system.

Overall, a holistic approach involving collaboration among government bodies, civil society organizations, and the judiciary is needed to implement these reforms effectively. By prioritizing the rights and well-being of undertrial prisoners, we can strive towards a criminal justice system that upholds justice, fairness, and human rights for all.

By taking these measures, India can work towards a fair and effective criminal justice system that respects the rights of undertrial prisoners.

Conclusion

The plight of undertrial prisoners is a reflection of the fundamental problems with the criminal justice system. Undertrial defendants' rights must be respected, they must be treated fairly, and we must work to make the legal system more effective and just.

We may promote a more fair society where justice is available to all, regardless of their socioeconomic level, by addressing the problems faced by undertrials. Undertrial prisoners are individuals accused of a crime and awaiting their court appearance.

They are not yet convicted, and many of them are unable to afford bail. These undertrials, especially those from impoverished backgrounds, face numerous challenges. They lack awareness of their legal rights, live in poor conditions in jail without access to proper medical care, and often

experience torture and exploitation.

Lengthy detention violates their right to liberty and denies them basic human rights. The legal and judicial system is perceived as oppressive, leading to inequality and potential for turning undertrials into criminals. Speeding up trials, simplifying bail procedures, and periodic case reviews can help reduce the number of undertrial prisoners. Additionally, the establishment of separate prisons for undertrials could address their specific needs.