

THE CHRONICLE OF THE AFFLICTION OF UNDER-TRIALS IN INDIA:
BEHIND BARS, BEYOND JUSTICE

*GAURAV SINGH BHATTI

1.1 Introduction:

“If the judges are dynamic they can give new dimensions to the constitutional protection of individual rights”

-Hon’ble Mr Justice Krishna Iyer¹

One of the most neglected aspects of Criminal Justice System is the delay caused in the disposal of cases and detention of the accused pending trial. These under-trial prisoners are detenus put in prison mainly under non-bailable offences and persons who are unable to produce sufficient sureties in cases of bailable offences. It is the result of an arrest for an alleged offence not followed by grant of bail.² They are separated from their family for the best part of their life even though they may be innocent³. In different Indian prisons they are found in a sizeable number. In certain cases they have to live in prison for a longer period than the period of imprisonment which would be awarded to them if they were found guilty⁴. In India, the violation of the basic human rights of the suspect or the accused is most prevalent at the under-trial stage.⁵

In India, eighty percent of the inmates in the jails are under-trials. There are various statutes such as the Prisoners Act, 1894; the Model Manual Prison India, etc. and various precedents which have been laid down in landmark cases which provide for the rights which these prisoners are entitled to. However, the problem today lies not in the availability of these rights but in the implementation of these rights and precedents.⁶

* The Author is a IIInd Year student and a Member of the Army Institute of Law Research Society (AILRS), presently pursuing B.A., LL.B. at the prestigious Army Institute of Law, Sector 68, Mohali (Punjab)- (Affiliated to Punjabi University, Patiala). Email: Bhatti.legal@gmail.com

¹ Sunil Batra v. Delhi Administration, AIR 1980 SC 1579

² Manjula Batra, Protection of Human Rights in Criminal Justice Administration (1989Ed) p. 90

³ The 78th Report of the Law commission, 1979, says that 57.6% of prisoners in India were Under-trials.

⁴ S.K Sharma, “Distributive Justice in Prisons” in K.D. Gaur, Criminal Law- Criminology and Criminal Administration (1992 Ed.) p. 261.

⁵ Manjula Batra, Protection of Human Rights in Criminal Justice Administration (1989Ed)

*Research Scholar, Dept. of Laws, PU, Chd

⁶ Prisoner Rights, Human Rights Law Network, <http://www.hrln.org/hrln/prisoners-rights.html> (retrieved on 6 March 2016)

The problem of under-trials is not confined to India and has been reported even from countries like USA and England⁷. In certain countries, the feeling has been growing that the decision of the court on the merits may sometimes itself depend on the detention or release of the accused pending trial. The problem of persons in prison has received attention at length even in United Nations.⁸

1.2 Article 21 as the Harbinger of the Under-trial Prisoners:

“The poor, illiterate and weaker sections in our society in our country suffer day in and day out in their struggle for survival and look to those who have promised them equality- social, political and economic...a very large number of under-trial prisoners suffer prolonged incarceration even in petty criminal matters merely for the reason that they are not in a position, even in bailable offences, to furnish bail bonds and get released on bail.”

-Hon’ble Mr. Justice Adarsh Sein Anand, Former Chief Justice of India

Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. If a person is deprived of his liberty under a procedure which is not reasonable, fair or just such deprivation would be violative of his fundamental right and in such a case, he can enforce such fundamental right and secure his release. This article can be invoked against the authorities who unnecessarily detain his person.⁹

Speedy trial is not specifically enumerated as a fundamental right. But the broad interpretations given to Article 21 in **Maneka Gandhi v. Union of India**¹⁰ include it also within the purview of Article 21. So a procedure which does not ensure a reasonably quick trial cannot be regarded as reasonable, fair and just and it falls within the ambit and scope of Article 21.

1.3 Reasons for Prolonged Detention:

“How cruel would it be if one went to a hospital for a check up and by being kept along with contagious cases came home with a new disease?”

-Hon’ble Mr Justice Krishna Iyer¹¹

The National Crime Records Bureau of the Government of India, in Chapter VI of its report dealing with the number of prisoners under-trial in various prisons across the country published in 2013, has released some shocking details. It reported that thousands of under-

⁷ 78th Report of the Law Commission on Congestion of Undertrial Prisoners in Jails (1979) p. 2

⁸ Id p. 3

⁹ Madhav Hatawaimarao v. State of Maharashtra, AIR 1979 SC 1583

¹⁰ Maneka Gandhi v. Union of India, (1978) 1 SCC 248, Bhagwati J.

¹¹ Sunil Batra v. Delhi Administration, AIR 1980 SC 1579

trials had been incarcerated for a period of five years or more, and in fact in states including developed states like Punjab and Delhi, a large number of prisoners were under-trials. In Bihar, 30.4 % of the prisoners incarcerated had not been convicted and yet they languished in jails for years, sometimes for periods longer than the period for which they would have to serve, if convicted.¹²

The familiar dicta “justice delayed is justice denied” and “bail not jail” are often held out as the bulwarks of fair trial, but the profile of the prison population gives it the lie.¹³ The grant of bail is one important remedy available to reduce pre-trial detention. Because they are considered to be less likely to abscond or interfere with the investigation, bail provisions in non-bailable offences are more liberal if the accused is under sixteen, a woman, sick or infirm¹⁴.

There are a large number of prisoners who are undergoing incarceration even before a trial¹⁵. Various reasons are attributed for this detention¹⁶. One of the reasons of this long pre-trial detention is our highly unsatisfactory bail system¹⁷. Persons who are undergoing imprisonment for lack of furnishing proper bail are mostly poor and illiterate. The bail system here is controlled by the financial capacity of the accused. It is based on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice. This system of bails operates very harshly against the poor.¹⁸

1.3.1 Position in England:

The plight of under-trial prisoners is highly satisfactory in countries like England and USA in comparison to India. In England un-convicted prisoners are kept out of contact with convicted prisoners as far as this can be reasonably be done¹⁹. If this practice is adopted it will prevent the innocent under-trial prisoners coming into contact with hardened criminals as

¹² Under-trials in India: Their rights and their plight, Vakil search, <https://vakilsearch.wordpress.com/2011/01/15/under-trials-in-india-their-rights-and-their-plight/> (Retrieved on 6 March 2016)

¹³ Handbook of Human Rights and Criminal Justice in India by South Asia Human Rights Documentation Centre, Oxford University Press, 2nd edition, 2007, p. 62.

¹⁴ Under-trials, a long wait to justice, Commonwealth Human Rights Initiative, CHRI 2011.

¹⁵ Manjula Batra, Protection of Human Rights in Criminal Justice Administration (1989Ed) p. 142

¹⁶ The 78th Report of the Law Commission on Congestion of Undertrial Prisoners in Jails, 1979

¹⁷ Manjula Batra, Protection of Human Rights in Criminal Justice Administration (1989Ed) p. 142

¹⁸ Hussainara Khatoon v. Delhi Administration, (1980) 1 SCC 80, p. 85, 86.

¹⁹ Halsbury's Laws of England (1982), Vol. 37, p.815.

the seeds of criminality will develop easily at this stage in the mind of under-trial prisoners²⁰. Un-convicted prisoners are entitled to certain special facilities also.²¹

1.4 Hussainara Khatoon Cases- A Milestone for Prisoner Rights in India:

The general apathy of the criminal justice administration towards the inhumane conditions of the under-trials lodged in jails was brought to the notice of the Supreme Court for the first time by a public spirited lady lawyer in Hussainara Khatoon Cases²².

Hussainara I²³ disclosed a shocking state of affairs in regard to the prison in the State of Bihar. A large number of people including women and children were put behind bars for years for trivial offences for period ranging from three to ten years. The Supreme Court issued notice to the State of Bihar to furnish details regarding the allegations of illegal detention. No one appeared on behalf of the State. The court then proceeded on the basis of the allegations contained in the Indian Express. Some of the under-trial prisoners whose names were mentioned in the newspaper cuttings have been in jail for as many as nine years and a few of them, even more than ten years without their trial having begun.

The court made an impassioned plea in exceptionally strong terms for the administration of social justice through a 'revamped and restructured legal and judicial system to remedy the inequality and injustice of indefinite pre-trial incarceration²⁴. The Court ordered the immediate release of the under-trials on their personal bond, without sureties and without any monetary obligation. While disposing of the petitions Justice Bhagwathi has vehemently criticised the existing system of bail in India.²⁵

The Supreme Court has given a free hand to the lower court to a certain extent within limited area. The Supreme Court held²⁶:

"If the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is no substantial risk of non appearance, the accused may, as far as possible, be released on his personal bond".

In **Hussainara II**²⁷ the court reviewed and clarified orders passed in Hussainara I. The court also ordered withdrawal of cases against under-trials held for more than two years.

²⁰ *Ibid*

²¹ *Id.*, p. 815, 816

²² Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1360; Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1369; Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1377.

²³ Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1360

²⁴ *Id.*, p. 84.

²⁵ *Id.*, p 1362.

²⁶ *Id.*, p. 1364.

²⁷ Hussainara Khatoon & Ors. v. State of Bihar, (1980) 1 SCC 91.

Women and children were released on personal bond and the jail authorities were directed to make suitable arrangements for their care.

The Supreme Court in **Hussainara III**²⁸ held that this so called 'protective custody' is nothing short of a blatant violation of personal liberty guaranteed under Article 21 of the Constitution, because there is no provision of law under which a women can be kept in jail by way of 'protective custody' or merely because she is required for the purpose of giving evidence.²⁹ The court also directed the state government to release such persons against whom no charge sheet has been filed within the period of limitation³⁰.

Several under-trials have been kept imprisoned for periods longer than the maximum sentence that can be imposed on them if they were convicted for the charge for which they are being held³¹. The Supreme Court ordered the Bihar Government to provide revised charts showing year wise break-up of the particulars of the under-trial prisoners in the jails after dividing them broadly into two categories, one of minor offences and the other of major offences.³²

In **Hussainara IV**³³ the Supreme Court issued directions for supplying free legal aid service to enable under-trials to secure their release on bail. The Supreme Court said:³⁴

"The right to free legal services to the poor and the needy is the essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the state is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer".

²⁸ Hussainara Khartoon & Ors. v. State of Bihar, (1980) 1 SCC 91., p. 92.

²⁹ *Id.*, p. 96.

³⁰ Section 468 of the Criminal Procedure Code reads:- "(1) Except as otherwise provided elsewhere in this Code, no court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation. (2) The period of limitation shall be— (a) Six months, if the offence is punishable with fine only: (b) One year, if the offence is punishable with imprisonment for a term not exceeding one year: (c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years".

³¹ Hussainara Khartoon & Ors. v. State of Bihar, (1980) 1 SCC 91., p. 97.

³² *Ibid.*

³³ Hussainara Khartoon v. State of Bihar, (1980) 1 SCC 98.

³⁴ *Id.*, p. 105.

It was further held that a State cannot avoid its constitutional duty to provide Speedy trial to the accused³⁵ and if it is not provided then this it would not amount to 'reasonable, fair and just'.³⁶

In **Hussainara V**³⁷ the court considered the extent to which directions in Hussainara IV³⁸ had been complied with. The court passed further directions and gave more time where necessary. In **Hussainara VI**³⁹ the Supreme Court requested further details from the High Court and also directed the State Government to file affidavit in reply.

The Hussainara Cases⁴⁰ have revealed that the plight of under-trial prisoners is pathetic and thousands of them remain imprisoned in jails just because of the bottleneck of formed procedures which are in turn choking the Criminal Justice System and most of them have spent more time in jail than their sentences they will get if they were convicted.

1.4.1 Impact of the landmark Hussainara Judgements:

In the Hussainara Cases, for the first time the plight of under-trials was subject to the Judicial Scrutiny and these cases have made some impact upon the fate of under-trial prisoners in Indian jails. At the time of the decision of these cases Bihar State in its sixty five jails, contained twenty two thousand under-trial prisoners.⁴¹

In **Sunil Batra v. Delhi Admn**⁴², Justice Krishna Iyer expressed the view that, legal aid shall be provided to the under-trial prisoners who are poor to defend their cases in courts of laws. If the lawyer's service is not available to them, the decisional process becomes unfair and unreasonable. If the chains of communication between the undertrial prisoners and the courts are not kept open, all of their other rights become valueless.

Further in **Khadra Paharia v. State of Bihar**,⁴³ it was held that where the right to a speedy trial had been denied to a person, the court could use its inherent powers in discharge of its constitutional obligations to give necessary directions to State and Central Governments for the enforcement of these obligations.

1.5 Standards for Pre-Trial Release Of Prisoners

1.5.1 Possibilities of bail for an undertrial:

³⁵ *Id.*, p. 107, Bhagwati J.

³⁶ *Id.*, p. 107

³⁷ Hussainara Khartoon and Others v. Home Secretary, State of Bihar (Patna), (1980) 1 SCC 108.

³⁸ Hussainara Khartoon v. State of Bihar, (1980) 1 SCC 98.

³⁹ Hussainara V, (1980) 1 SCC 115.

⁴⁰ Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1360; Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1369; Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1377.

⁴¹ Upendra Baxi, The Crisis of the Indian Legal System (1982), p. 236.

⁴² Sunil Batra v. Delhi Administration, AIR 1980 SC 1579

⁴³ Khadra Paharia v. State of Bihar, AIR 1981 SC 939 b.

The main bail and bonds provisions are provided in Chapter XXXIII of the Criminal Procedure Code (Cr.P.C.). :

- A person accused of a bailable offence has the right to be granted bail. Bail can be granted either by the police or the courts. If the accused is unable to furnish surety within a week of arrest, the person is to be considered “indigent” and should be released on a personal bond without sureties for his appearance⁴⁴ [Section 436].
- If a person is accused of a non-bailable offence, he cannot claim the grant of bail as a matter of right. But the law gives special consideration in favour of granting bail where the accused is under sixteen, a woman, sick or infirm, or if the court is satisfied that it is just and proper for any other special reason to give rather than refuse bail [Section 437 (1)]. The Supreme Court has laid down that when applying its discretion in non-bailable matters, the judge must take account of several factors, most particularly, the gravity of the crime, previous convictions, possibility of tampering with evidence or intimidating witnesses, and the risk of flight.
- Also, in any case tried by a Magistrate if trial cannot be completed within sixty days after the first date fixed for taking evidence, then if the accused has been in custody during the whole period, he may be released [Section 437 (6)].
- If a person accused of a non-bailable offence is in custody after the conclusion of the trial, but before the judgement is delivered, and the court has reasonable grounds to believe that the person is not guilty of the offence, the person should be released on a bond without sureties for his appearance to hear judgement [Section 437 (7)].

1.5.2 Other Circumstances Where Bail must be granted:

- The right to be granted bail also exists if the investigation could not be completed or if the charge sheet could not be filed within sixty or ninety days, as the case may be; then even in cases of serious crimes the accused is entitled to be released on bail [Section 167(2)(a)(i) & (ii)].
- If the person has undergone one-half of the maximum prescribed imprisonment for an offence (other than an offence punishable with death) as an under-trial in custody, he should be released by the court on his personal bond with or without sureties. No person can be detained during the period of investigation, inquiry or trial for more

⁴⁴ Codified by Section 436 by the Code of Criminal Procedure Amendment Act, 2005 after the holding in Moti Ram v State of M.P. 1979 SCR (1) 335.

than the maximum period of prescribed imprisonment for an offence [Section 436 A]⁴⁵

- The National Human Rights Commission has repeatedly detailed guidance notes regarding the release of under-trials on bail⁴⁶.

1.6 Under-trials viz-a-viz Legal Services Authority and Free Legal Aid:

1.6.1 Legal Aid: The long forgotten need of the Under-trial Prisoners:

Under-trials form more than 65% of India's prison population. The Prison Statistics (NCRB) show that a large proportion of India's prison population is illiterate and 64% is from scheduled castes, scheduled tribes and OBC backgrounds. The period of their detention in prison has been rising over the years, particularly for under-trials whose cases are pending for more than one year.

The proportion of prisoners who have spent less than three months in prison has decreased from 40% in 2001 to 34% in 2014, indicating that under-trials are spending longer periods in jail. The proportion of prisoners who have spent more than one year in prison has increased from 19% in 2001 to 25% of the total under-trial population in 2014. At the same time, the number of under-trials in prisons in the detention period of 1-3 months, 3-6 months and 6-12 months continues to remain high. CHRI believes that access to effective access to counsel at the early stages of one's trial can prevent prolonged and unnecessary detention and thus bring down the average time spent by an undertrial in prison.⁴⁷

In 1976, the 42nd Constitutional Amendment inserted Article 39-A obligating the State to "provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability". It is in this context Legal Services Authorities Act, 1987 was enacted. This has led to the setting up of Legal Services Authorities at the National, State and District levels.⁴⁸

1.6.2 Legal Services Authority and Under-trial Prisoners:

The legal aid delivery system in India is stratified into the National Legal Services Authority as the apex body, the State Legal Services Authority heading the legal aid

⁴⁵ Inserted by the Code of Criminal Procedure Amendment Act, 2005.

⁴⁶ Under-trials, a long wait to justice, Commonwealth Human Rights Initiative, CHRI 2011, See Annexure D – letter dated 29 April 1999 to all Inspectors General, Prisons, by the Special Rapporteur.

⁴⁷ Sana Das, Remembering Prisoners, Commonwealth Human Rights Initiative, [http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Legal%20Services%20Day%20\(07.11.15\)%20\(English\).pdf](http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Legal%20Services%20Day%20(07.11.15)%20(English).pdf) (retrieved on 12th March 2015)

⁴⁸ Shailja Chander, Justice V.R Krishna Iyer on Fundamental Rights and Directive Principles, 2003 Ed, p 243.

machinery of District Legal Services Authority and Taluka/Sub Divisional Legal Services Committee in each state. These bodies are responsible for the formulation, implementation and monitoring of various legal aid schemes. In addition, the High Court Legal Services Committee and Supreme Court Legal Services Committee too have been constituted to deal with appeals or cases arising under the original jurisdiction of the High Court and Supreme Court respectively.

In India, prisoners form less than 3% of the persons benefited through legal aid schemes⁴⁹.

1.6.3 Role of Legal Services Authority in fulfilling the goal of 'Access to Justice' for the Under-trials:

Proper Reporting and Monitoring:

- Monitor the regularity of visits by jail visiting lawyers, the work of paralegals, the maintenance of work registers, seek timely work reports, and ensure effective reporting mechanisms are set in place
- Review the work of jail visiting lawyers and paralegals on a quarterly basis and seek feedback from prisoners and prison staff in order to monitor their performance
- To constitute Monitoring Committees as per NALSA Regulations 2010 to ensure accountability of legal services rendered
- Monitor the implementation of the Supreme Court order in “In Re: inhuman conditions in 1382 prisons” (April 2015) where directives have been issued to National Legal Services Authority (NALSA) and the SLSA’s for the establishment and fruitful functioning of Under-trial Review Committees in every district to prevent long and unnecessary detentions
- To appoint and entrust panel of lawyers to identify and represent in cases where detentions persist due to poverty and inability to pay bail or provide sureties in spite of bail being granted, and in the early disposal of compoundable offences

Constitution of Mandated Bodies and Effective Coordination:

- Mechanisms should be developed for effective co-ordination between the different State Legal Service Authorities, courts, police, prisons and prisoners to eliminate any delay in identifying a person in need of free legal aid

⁴⁹ Sana Das, Remembering Prisoners, Commonwealth Human Rights Initiative, [http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Legal%20Services%20Day%20\(07.11.15\)%20\(English\).pdf](http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Legal%20Services%20Day%20(07.11.15)%20(English).pdf), p. 2 (retrieved on 12th March 2015)

- Legal aid clinics should be constituted and made operational in all central, district and sub-jails and all the law college's across the country
- Representation request should be attended as soon as possible so that no person is deprived the access to justice
- The prisoner and his family should be intimated about the lawyer so that they can easily contact hm.
- Adequate means should be provided to the prisoners to air their grievances against legal services rendered

Appointments, Remuneration and Training:

- Lawyers should be trained and appointed for effective opposition of unnecessary remand at the time of first appearance and subsequent productions and also for the timely applications for bail
- Able and committed jail visiting lawyers along with jail paralegals should be appointed for persons in need of legal aid
- Provide specialised training to the paralegals
- Provide adequate and appropriate remunerate lawyers and paralegals

1.7 The 'Nyaya Bharti' Initiative:⁵⁰

Bharti Enterprises has launched an initiative to provide legal and financial assistance including awareness to underprivileged under-trials under the title '**Nyaya Bharti – Sabka Nyaya**'. It would help underprivileged under-trials languishing in jails across the country for minor offences by assisting them with legal and financial assistance and also create awareness.⁵¹

It is a of its kind national level corporate initiative in India to further every individual's constitutional right to legal defense It is in line with the Prime Minister's Vision of 'Sabka Nyaya' - Access to Justice for all. Bharti Airtel would contribute Rs.10 crores

⁵⁰ 08. Bharti Enterprises to launch initiative to provide legal and financial assistance including awareness to underprivileged under-trials, Bharti Press Release- FY2015-2016, http://www.bharti.com/wps/wcm/connect/bhartiportal/bharti/home/media_centre/press_releases/fy2015-2016/bharti+enterprises+to+launch+initiative+to+provide+legal+and+financial+assistance+including+awareness+to+underprivileged+under-trials (retrieved on 9th March 2016)

⁵¹ Bharti Enterprises to launch Nyaya Bharti to help underprivileged under-trials, Net India News Network, <http://netindian.in/news/2015/11/26/00035786/bharti-enterprises-launch-nyaya-bharti-help-underprivileged-under-trials> (Retrieved on 10th March 2016)

annually on an ongoing basis and Sunil Bharti Mittal would take a voluntary cut of Rs.5 crores from his annual salary towards this cause.⁵²

A Board consisting of eminent persons led by Hon'ble Mr. Justice A.S. Anand, former Chief Justice of India would provide oversight and guidance to the initiative and a panel of young public spirited lawyers to provide pro-bono services towards the initiative. Top tier law firms namely, AZB & Partners would provide legal and administrative support and EY would be the auditors.⁵³

1.8 Conclusion:

An under-trial prisoner is an accused who is assumed to be innocent till proven guilty. He is in custody only to ensure that he appears at court as required or is available to answer questions during investigations. There is no other reason for him to be in prison. At all times while his physical custody is in the hands of prison authorities his physical and legal well-being is in the judiciary's hands. His lawyer, if he has one, is there to assist him in his defence to the best of his ability and to represent him before the court. But that does not diminish the court's responsibility towards the under-trial prisoner. The court has the primary responsibility.⁵⁴

In most of the cases where the persons are accused of minor offences punishable not more than three years or even less with or without fine, the proceedings are kept pending for years together. If they are poor and helpless, they languish in jails for long periods either because there is no one to bail them out or because there is no one to think of them. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression.⁵⁵

It is often seen that prisoners do not know if they have a lawyer or they are not represented in a large number of cases in a wide strata of cases starting from the first production before a magistrate and the subsequent trial proceedings. They are unable to afford a lawyer mid-way due to lack of economic means and thus are forced to remain unrepresented for the rest of their trial. Women prisoners are particularly in the dark regarding the status of representation and stage of their cases and many continue in jail

⁵² Bharti sets up Rs 10cr legal aid fund for 1st-time under-trials stuck in jail for minor offences, The Telegraph, http://www.telegraphindia.com/1151126/jsp/frontpage/story_55207.jsp (retrieved on 10th March 2016)

⁵³ Bharti Airtel Limited Press Release- 26th November 2015, http://www.airtel.in/wps/wcm/connect/49480d50-ea34-41a0-bb7e-28a32abc3b5a/Bharti-Airtel-Limited_Press-Release-dt-November-26-2015.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=49480d50-ea34-41a0-bb7e-28a32abc3b5a (retrieved on 10th March 2016)

⁵⁴ Under-trials, a long wait to justice, Commonwealth Human Rights Initiative, CHRI 2011, p 34.

⁵⁵ Director v. Union of India and Others 1996 AIR 1619.

without bail applications being moved on their behalf. Most lawyers do not meet their clients in jail. Prisoners fall back on the meagre resources of their families and often unaccountable and ineffective private lawyers. Several even forego their right to a lawyer entirely only because of their socio-economic circumstances and lack of legal awareness.⁵⁶

Liberty is of paramount value and all the agencies of the criminal justice system should come together and work harmoniously to ensure the effective realisation of legal rights to every individual behind bars and to keep a check on prolonged detention and overstay. This can only be done when every actor of the justice system is made accountable with checks and balances by other actors, provided all of them recognise their powers and responsibilities in respect to an individual in conflict with law.⁵⁷

1.9 Recommendations:

It is true that Constitution of India confers rights on individuals, but they would be mere paper rights unless the government departments discharge their duties and secure those rights for individuals. When that duty is not discharged by the government departments or the rights are encroached upon or deprived by them, it becomes the duty of the judges to enforce them without fear or favour.

The problem of under-trials languishing in our jails is a problem which we have ignored for too long. In order to tackle the problem, it is the need of the hour to bring out suitable amendments in our Criminal Justice system.

First, we need to relook the entire system by which only people who can afford to furnish the monetary security are released on bail and the poor have to stay behind bars, since this unfairly prejudices the poor.

Second, we need to re-look into the long periods which under-trials serve without being convicted in the context of protective provisions such as Section 468 of the CrPC. Therefore, a time frame has to be put in place so if a person has served more time than he would have if he had been convicted, he should be released. Such a provision should be made, if possible through a constitutional amendment such as they have in the United States in the form of the U.S Tenth Amendment.

⁵⁶ Sana Das, Remembering Prisoners, Commonwealth Human Rights Initiative, [http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Legal%20Services%20Day%20\(07.11.15\)%20\(English\).pdf](http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Legal%20Services%20Day%20(07.11.15)%20(English).pdf) (retrieved on 7th March 2015)

⁵⁷ Under-trials, a long wait to justice, Commonwealth Human Rights Initiative, CHRI 2011, p 35.

Third, a method which reasonably limits the movement of an under-trial that does not subvert the cause of justice should be put into place for all accused persons to avoid the discrimination.

Fourth, our Investigative techniques need to be fool- proof in order to facilitate speedy trial in order to cater to access to justice for the under-trials.

Fifth, Section 309 of the Code of Criminal Procedure should be adhered to in letter and in spirit.

Seventh, in furtherance of improving living conditions of under-trials special and new arrangements should be made in the form of detention homes or open prisons instead of keeping them in prisons in order to reform such individuals. This would also improve the living conditions of convicts as overcrowding of prisons would be tackled to a great extent.

“It is high time that the public conscience is awakened and the government as well as the judiciary begins to realise that in the dark cells of our prisons there are a large number of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice – a commodity which is tragically beyond their reach and grasp. Law has become for them an instrument of injustice and they are helpless and despairing victims of the callousness of the legal and judicial system.

The time has come when the legal and judicial system has to be revamped and restructured so that such injustices do not occur and disfigure the fair and otherwise luminous face of our nascent democracy.”

-Hon’ble Mr. Justice P. N. Bhagwati⁵⁸

⁵⁸ Hussainara Khatoon and Others v. Home Secretary, State of Bihar AIR 1979 SC 1360.