

A PREDICAMENT OF WOMEN UNDER-TRIAL PRISONERS AND ITS IMPACT ON THEIR BASIC HUMAN RIGHTS

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Abstract

According to 78th Law commission report of India (1979), “under-trial is a person who is in a judicial custody or remand during investigation”. Some of the underlying factors include lack of speedy trial, lack of free legal aid etc. These factors are responsible for prison overcrowding and this overcrowding is having a detrimental impact on prison administration which further leads to infringement of their basic human rights. Hence, a dire need is there to check the rapid increase in number of under-trial in general and woman under-trial in particular as the behaviour of Indian society towards woman is enigmatic as though we call her the Goddess but in reality is vulnerable. The rights of women prisoners are non-existing mainly because of 3 reasons: they are very few in number, we are male centric society and no to minimal representation in policy making.

Through this paper the authors intent to identify the factors behind the ascending numbers, the issues faced by the, their basic human right and the collateral damage their violation is causing to them. To address the mentioned issue, the paper would be divided into 4 parts; the 1st part would be dealing with the background and the relevance of the study by taking into consideration the present scenario of under-trial prisoners. In the 2nd part the focus would be on the plight of women under-trial prisoners in India. In 3rd part the authors would explore the legal rights available to them and to what extent those rights are being realized and if there any violation what impact it is having on their basic human rights. The 4th part would conclude the analysis and put forth the suggestions to address the concerned issue.

Keywords: *Woman, Under-trials, Human rights, Overcrowding, Speedy trial*

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Introduction

The lamentable truth about India's prison system is that there is no distinction between those who have been accused and those who have been found guilty. Both of these inmates are languishing in jails and receiving nearly identical treatment. As a consequence, there is overcrowding in Indian prisons. The vast majority of convicts are of under-trial prisoners.¹ An under-trial in the 78th Indian Law Commission report is defined as, “a person who is in judicial custody or remand during investigation”.² The definition is further improved by the Model Prison Manual 2016, under-trial is “*A person who has been committed to judicial custody pending investigation or trial by a competent authority.*”³ It is clear from the combined reading of the Prison Manual, 2016, the 78th Indian Law Commission Report, Sections 428 and 436A of the CrPC that an under-trial prisoner means a person yet to be convicted but imprisoned during the period of investigation; inquiry or trial for the offence the person is accused of having committed, under any law. Generally speaking, under-trial prisoners are those who are imprisoned while the investigation, inquiry, or trial of the crime for which they were arrested is underway. Under-trial prisoners are persons accused of a non-bailable offence, denied bail, or bailable offences but failed to furnish the bail bond.

The objective of imprisoning or detaining an alleged person in a prison is not to chastise, but to keep the him/her imprisoned until the actual penalty can be carried out, as well as to prohibit him/her from fiddle with evidence or accomplishing another offence. Nonetheless, the presence of an ample number of captivated, under-trials, and other unconvicted inmates in jails has heightened public and professional apprehensions about their basic human rights in the institutions. This is notably because of the prolonged detention during the pendency of inquiry and the trial. Taking note of the Report of the NCRB⁴, one can voice worry over the distressing and unreasonable dimensions in the current years regarding the number of under-trial and unconvicted prisoners. In the last 20 years, the universal share of Under-trial prisoners has been relatively constant, fluctuating between 29 and 31 percent. This shows that worldwide advancement towards the Sustainable Development Goals has been slow, 16.3 on

¹ Mehndi Jain, “Undertrial Prisoners in India: Victims of Long Incarceration”, Vol. 5 Iss 1, *IJLMH*268 (2022).

²78th Report of the Law Commission of India (1979).

³Model Prison Manual, 2016.

⁴Prison Statistics, Published by National Crime Report Bureau, 2019.

access to justice.⁵ India's under-trial population has moved from the 18th highest in the world in 2015 to the 6th highest in 2021. Furthermore, it has moved from the third-highest, in Asia, as per 2015 reports, to the second-highest position in 2021^{6&7}. As of 2021, the overall prison population in India is 488511 in which 4,58,687 were male and 19,913 were female prisoners out of which 76.1% are under-trials,⁸ which includes, 13,550 female under-trials.

Another aspect is that prison life is very isolating and different from the outside world, which has a momentous negative impact on mental health. This factor, along with the possibility that an under-trial prisoner is innocent and is being dishonestly accused, makes it all the more important to look into the plight of under-trial prisoners.⁹

It is quite concerning that the number of prisoners awaiting trial has not significantly declined despite the laws and judicial pronouncements being in place. It is agitating to watch these detainees still awaiting trial enduring severe physical and emotional abuse as well as serious violations of their human and fundamental rights. Mr Justice Marshall had stated that “a prisoner does not shed his basic constitutional rights at the prison gate”. This assertion is extremely crucial because it is past time for the rights of under-trial prisoners to receive more attention.¹⁰

Underlying Cause of ascending trend:

Lately, the problem of Under-trial imprisonment has grown significantly. Thousands are being held in jails though their act and the surrounding facts do not warrant their detention. Many of them are law-abiding citizens who are anxiously awaiting their trial day, and a lot of them are even willing to confess their offence and accept the punishment. The 268th Law Commission report accentuated that more than 60% of the arrests are unwarranted.

⁵“Unsentenced Detainees as a Proportion of Overall Prison Population” *Global SDG Indicator Platform*, 29 Jan., 2019, available at: <https://sdg.tracking-progress.org/indicator/16-3-2-unsentenced-detainees-as-a-proportion-of-overall-prison-population/>. (Visited on September 14, 2022).

⁶“Highest to Lowest - Pre-Trial Detainees / Remand Prisoners.” Highest to Lowest - Pre-Trial Detainees / Remand Prisoners | World Prison Brief, World Prison Brief, 14 June, 2014, available at: https://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All. (Visited on September 5, 2022).

⁷Justice Under Trial: A Study of Pre-Trial Detention in India, Amnesty International India, Bengaluru, Karnataka, (2017).

⁸*Supra*

⁹Sanidhya Bajpai, “Deprivation of Freedom”, Vol. 5 Iss 3, *IJLMH* 1305 (2022).

¹⁰*Supra* note 1 at 269.

Despite the government's Executive and Judicial Departments introducing different programmes and pronouncing some vows to ameliorate the status in the post-colonial period, little has changed in the present-day scenario of the under-trials in the prisons of India and their numbers are increasing. Ultimately, various aspects are working successively which results in creating the problem of the immense population of under-trials in Indian Prison, such as,

- Indiscriminate and Unaccountable arrest
- Catastrophe in the Justice System
- Delayed Investigation
- Defective Prosecution System
- Problem with the Bail System
- Delayed trial

But we can say that the 4 major hurdles, which are obstructing the motto of depletion of the under-trials' are:

1. **Arresting by Police:** The arresting power of the police is quite extensive and at times has the glimpses of the colonial era in their working, sometimes they arrest those people who are ready to assist in the investigation and are unlikely to escape trial. As a result, the already overburdened jails are injected with more inmates resulting into overcrowding.
2. **Quality legal aid in our justice system** for under-trial prisoners who cannot hire competent lawyers to represent themselves in court. Through the district legal services authority, the state offers free legal assistance to low-income individuals; the calibre and regularity of these services are frequently debated. A vast number of complaints have been filed against these lawyers, including inconsistent court attendance and nil to very minimal communication with their clients.
3. **Bail System:** in the case of bail through payment of security, the accused must either make the payment in the court or find a surety who can ensure that he will pay the said amount if the accused escapes. This creates a kind of disparity between people who are financially and socially competent and those who are not. As we can see from

the data above, it has becoming more challenging for under-trials to get out of the prison, notwithstanding the replacement of Section 436A of the Crpc.

4. **Delayed Trial:** There are a lot of reasons which contributes to the delay in the trial, one such reason is the poor judge–population ratio, which stands at 19 judges per million people¹¹, as compared to between 35 and 50 judges per million populations in other progressive countries. Other causes contributing to the delay in trial include the absence of witnesses, the failure of the accused to appear in court, and the methods used by the lawyers to prolong the case.

Status, Concerns and Human Rights of Women Under-Trial Prisoners

Human Rights Watch report on the Prison’s Condition in India states, “*We suspected they'd be bad, if only because life is tough for most Indians outside the institutions. As a result, if incarceration is intended to punish, life within the jails should be even harsher. What has startled us, though, is how much worse it is for the vast majority of prisoners.*” Some more conspicuous issues pertinent to the Indian jails include: A person who commits a crime that puts him behind bars is excruciated to obey the rules of the society for his own and fellow countrymen’s benefit. Furthermore, because money is a key motivator for most crimes, the onus is on the jail authorities to guarantee that the inmates are provided sufficient skills to ensure his financial security outside prison. But lack of funds coupled with overcrowding and other challenges, proper rehabilitation is not that efficacious usually.¹²

Status of Women Prisoners in India

Men and women, both are negatively impacted by imprisonment, but women are typically more adversely affected than males. Even at home, women in Indian society face danger. When a prisoner's freedom and mobility are restricted, they become more vulnerable. To be referred to be a prisoner, they put aside their gender roles. Because females cannot bear to be apart from their family and loved ones, they experience more agony and trauma than male convicts.¹³ Women offenders often originate from socially and economically underprivileged areas of society. They are typically young, jobless, under-educated, and parents of dependent

¹¹PTI New Delhi, “India has 19 Judges per 10 Lakh People: Data”, *The HinduBusiness Line*, 2018, available at: <https://www.thehindubusinessline.com/news/india-has-19-judges-per-10-lakh-people-data/article25030009.ece>. (Visited on August 25, 2022).

¹²AkshayGoel, “Indian Prison System: Case Study of Tihar Jail”, June 14,2014.

¹³ManikaKantham, “Women Prisoners: An unaddressed entity in the Penal History of India”, available at: https://www.academia.edu/26947128/WOMEN_PRISONERS_AN_UNADDRESSED_ENTITY_IN_THE_PENAL_HISTORY_OF_INDIA. (Visited on September 5, 2022).

children. Women who are imprisoned while awaiting trial make up a unique category of women who are forced to live in jail while having no proof of guilt. In comparison to those who have been sentenced, women on trial find jail to be more difficult. Trial process takes a long time and is expensive. The prolonged and uncertain incarceration during their trial makes their condition miserable.¹⁴

A study found that women make up 4.3% of the nearly 4 lakh inmates, which means that more than 17000 women are currently imprisoned in India. In the year 2016, almost 3 lakh women were detained under the IPC and other legislations. The majority of them, or around 50.5 percent of the total, were between the ages of 30 and 50, with the remaining individuals falling in the 18 to 30 age group.¹⁵ As of 31st December, 2018, there were only 24 female prisons in the nation, housing 3243 female detainees out of 19242 total female inmates. There were no separate prisons for women in 21 States and Union Territories. The highest rate of overcrowding in female prisons was reported in Maharashtra at 159.2%, then in West Bengal at 142% and Bihar at 107.9%. The Modern Prison Manual, 2016, however, specifies the following four types of living arrangements: 1. There are two barracks that can house twenty female convicts, 2. Housing in dormitories for four to six prisoners, 3. For female convicts who require privacy to pursue their studies, single rooms to be available, and 4. Women convicts to be housed in separate cells for security and punitive reasons.¹⁶

Women in the country's criminal penitentiary system are incessantly ignored, which is the source of their pathetic conditions as prisoners. Criminologists have disregarded the issue of women criminality. There may be a variety of causes for this neglect, including the patriarchal study methodology that views women as a secondary concern rather than the main object of inquiry. Fewer women commit crimes, so they are frequently overlooked. The low numbers, as noted by Justice J.S. Verma, contribute to the lack of sufficient concern for the women prisoners.¹⁷

A few women who have served time in prison have complained of abuse and inhumane treatment in Tamil Nadu prisons. They claim they were stripped naked, verbally and

¹⁴Shereen Sadiq, "Women under-trials: An empirical probe into the functioning of the mechanism of bail", available at: <https://www.semanticscholar.org/>. (Visited on September 5, 2022).

¹⁵ National Crime Records Bureau (NCRB) reports.

¹⁶Mordhwaj, Rights and Conditions of Undertrial Women and their children in India, available at: <https://rru.ac.in/rights-and-conditions-of-undertrial-women-and-their-children-in-india/>. (Visited on August 30, 2022).

¹⁷Lakkaraju, Jayasree, *Women Prisoners in Custody*, pp. 1-2, (Kaveri Books, Delhi, 2008).

physically mistreated, and denied access to even essential facilities. They spoke at a meeting organised by the Society for Integrated Rural Development for the campaign for custodial justice and elimination of torment in the jails.¹⁸

A lady prisoner in Tihar Jail, who was facing charges of fraud and cheating, accused the prison warden for tormenting her with the assistance of an HIV-positive female prisoner in order to extort money from her. She claimed that she was assaulted for an hour in front of the deputy superintendent and other prison employees, who stood by and watched.¹⁹

After the age of six, women in prison are not permitted to frequently see their kids. If no one can care for them, their kids are placed in government homes. It has been observed that these kids frequently become prey to the local petty gangs.

As delineated by Mrs. Bedi: *“It's Always Possible”, “Here, women prisoners were subjected to the most humiliating experiences, which robbed them of what little dignity and self-respect they reached the prison with. It must be considered some sort of miracle that these women managed to cling on to their sanity, despite the overwhelming odds they faced”*.²⁰

An exclusive chapter of Surendra Kumar Pachauri's book *“Prisoners & Human Rights”* is devoted to women prisoners. He claims that many jails imprison female inmates in enclosures that are locked by male staff members. He further writes, *“Training and treatment of women prisoners is often badly neglected. During its visits to different jails in the country, the NHRC has noted with dismay there is no scheme for gainful vocational training, and not even elementary education for women. In a 'Nari Bandi Niketan' of U.P. a number of women prisoners undergoing long periods of imprisonment told me that they have not heard anything from their family and children”*.²¹

Concerns of Women Under-trials

Women in our Indian society hold respected positions in the culture; she is having the status of goddess. The role of a woman in ancient Indian religious texts like Vedas and the Upanishads. Moreover, government has implemented different development programmes and welfare schemes in our country for women, she continues to suffer and remains vulnerable in

¹⁸Ex- women prisoners say conditions bad, inmates tortured, *The Times of India*, Mar. 8, 2011, available at: <http://timesofindia.indiatimes.com/city/chennai/Ex-womenprisoners-say-conditions-badinmates-tortured/articleshow/7650943.cms>. (Visited on September 5, 2022).

¹⁹Jail Warden Tihar Jail Staff, *The Times of India*, available at: http://articles.timesofindia.indiatimes.com/2012-04-22/delhi/31381841_1_jail-wardentihar-jail-jailstaff. (Visited on September 5, 2022).

²⁰ Kiran Bedi, *It's Always Possible*, 88, (Sterling Publishers Pvt. Ltd, Delhi, 1998).

²¹ S.K. Pachauri, *Prisoners and Human Rights*, 91-92, (Aph Publishing Corporation, New Delhi).

our prison system as none of these programmes are prepared exclusively with women prisoners in mind.

One of the main issues of female prisoners is that they don't know the law, i.e., *lack of legal aid*, which is one of their largest concerns. One example of the advantages provided to the accused women is Section 437 of the Criminal Procedure Code. Women who lack education is unaware of this option and do not avail it. Regardless of the earnestness of the crime, the clause states that a woman is permitted to get bail even for non-bailable offences.²²The Constitution mandates the protection of legal rights of the poor who are awaiting trial. In actuality, legal assistance is given at time of trial, and that also to tick all the boxes.²³Further, the Legal Aid Boards have been set up under the Legal Aid Services Authorities Act, 1987, in the Centre as well as the States, to provide free legal assistance to the poor and underprivileged. However, handling the escalating numbers, these boards have been largely ineffective. Hence, there are significant gaps between what the law requires and what accused receive in reality, which is mainly due to want of information on the part of the accused, as well as a lack of intent and coordination between the police and legal aid institutions.

Female prisoners have different physical and biological needs which require specific treatment which necessitate redundant consideration in comparison to male. There are issues of overcrowding, unhygienic conditions, a lack of sanitary napkins, etc. Around 81 percent of female convicts are between the ages of 18 and 50. Due to the fact that these prisoners are still in the menstruation age range, suitable *sanitation facilities* and menstrual supplies must be provided. They should be given free sanitary pads. However, it has been observed that female convicts are either provided a set quantity of sanitary pads each month or charged for such basic necessities. Thus, women are made to use materials like newspapers and garments that are exceedingly unhygienic and also have a detrimental impact on their health.²⁴

One of the biggest challenges that both male and female offenders have in jail is *overcrowding*. The dimensions of the cells and barracks, as well as the number of prisoners, who should be permitted in them, are specified in the National Prison Manual. Prisoner overcrowding has made hygienic conditions worse and led to a lot of health issues among the inmates. All individuals present in the cells are affected by minor infections that spread

²²*Supra* note 20.

²³Srivastav A, "Women in India – Problems and Prospects", Indian Publishers Distributors, Delhi, (2004).

²⁴*Supra* at 2081.

swiftly. The situation has gotten worse because there are fewer bathrooms and restrooms. Prisoners are impacted by overcrowding both physically and mentally.²⁵

All those whose liberties are restricted must be treated with empathy and reverence. Everyone have the right to a reasonable standard of living, which includes *adequate food*, clean water to drink, a proper place to live, clothes to wear, and bedding. As required by law, all prisoners must have a medical examination as soon as they are admitted to a jail or other detention institution and every necessary *medical care* should be provided without charge.

Prison is, “A place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or for punishments”²⁶ as defined by the Oxford English Dictionary. The interpretation emphasises one of the most fundamental functions of jail, namely “*safe custody*”. However, during their custody, women experience *sexual harassment*. In *State of Maharashtra v. C.K. Jain*²⁷, a woman was raped in police custody. The Supreme Court ruled that “*in cases of this nature, collaboration is not necessary unless it is clear that the prosecution’s testimony is dubitable. Second, the lady would be presumed to have been raped since, in most cases, no woman would make such a claim if she had not been raped.*” Women prisoners have occasionally been subjected to in-custody torture. Custodial rape is one of the dreadful kind of torment inflicted on women by prison staff. According to the Asian Centre for Human Rights, from 2006 to 2010, there were about 39 documented instances of rape in detention. Police in Bombay abused a female prisoner while she was being held there.²⁸

Humanism, gentleness, sympathy, and affection, which humanity owes to its sisterly half, are defeated by die-hard male chauvinism. So, women face numerous challenges throughout the criminal justice system, particularly when in police custody. The women suffer from a lack of understanding of her basic rights at the time of her detention. It is particularly widespread among the poor and uneducated, and they are frequently the victims of incarceration violence. Our Indian society is being ravaged by prison violence. It should be annihilated from the society.

Human rights of Women Prisoners

²⁵ Ananta Aggarwal, “Rights of Women Prisoner in India”, Vol. 5 Iss 1, *IJLMH* 2080 (2022), available at: <https://www.ijlmh.com/>.

²⁶ <http://oxforddictionaries.com/definition/prison>.

²⁷ AIR 1990 SC 658.

²⁸ *Supra* note 23.

Regardless of race, sex, nationality, ethnicity, language, religion, or any other status, the term “Human Rights” refers to all those rights that are inherent in being human and without which we cannot live as such. Human rights include, among other things, the freedom of thought and speech, the right to life and liberty, the right to a fair trial when charged with a crime, and the freedom from slavery and torture. These rights are fundamental for the sustenance of human dignity and people enjoys these rights from cradle to grave.

Though, the treatment of the under-trials remains a significant challenge from the human rights perspective. Under-trials are left to the mercy of jail staff to a large part due to their inferiority and frailty. The extended use of torture and other inhumane practises or treatment of such people, whose cries are heard only by fellow detainees, is an unacceptable insult to human decency. The environment of jail is proven to expose female convicts to a variety of health risks. The initial shock of imprisonment, separation from families and serious mental problem affects their own mental health. Women in prison, according to *Amnesty International*, are denied crucial medical resources and treatments, particularly during pregnancy. Though the *Clause 3 of Article 46* says about institutional services, it states that employees must be hired on a full-time basis as professional jail officials with civil service status and term security conditioned only on good conduct, effective performance, and physical fitness to fulfil the aforementioned purposes.²⁹

However, international human rights legislation does include clear guidelines for how detainees and prisoners should be treated that are always in effect. The States are required by law to take both legislative and practical measures to put a stop to any actions that contravene these laws.³⁰

The United Nations has adopted the Standard Minimum Rules for the Treatment of Prisoners (1955), also known as the ‘**Nelson Mandela rule**’ in which rules were laid down for Under-trials under Rule 85-92 of the Standard Minimum Rules³¹ which could be briefed as follows:

- a) Untried inmates must sleep alone in separate rooms.
- b) An untried prisoner may wear their own attire as long as it is clean and appropriate
- c) An untried prisoner may also purchase books, newspapers, writing supplies, and other items at their own expense or that of a third party.

²⁹The United Nations Rules for the Treatment of Women Prisoners.

³⁰Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, United Nations, New York and Geneva, 2003.

³¹Aditi Palit, “An Insight into the Psychology and Legal Facet of under trial prisoners”, 10 Pen Acclaims 2(2020).

- d) A prisoner who has not yet been tried may visit and receive treatment from his own doctor or dentist if there is a good justification for it and he can afford the associated costs.

Being a signatory to the prevention of Crime and Treatment of Offenders 1955, India took several steps through various rules, manuals, Acts and commissions to uphold human rights. The National Human Rights Commission is also taking important steps to secure release of inmates who are awaiting trial from different jails across the nation while considering the issues from both a human and prison management standpoint. The NCRB aids the NHRC in evaluating the Conditions of people in custody awaiting trial by providing the government with Annual Prison Statistics. Concerns about the under-trials' prison conditions were shared by the NALSA and SALSA. The Supreme Court *In Re: Inhuman Conditions in 1382 Prisons*³² it mandated the creation of the "Under Trials Review Committee" for the purpose of earliest release of under-trial's by availing the benefits given under Sections 436 and 436A of the Criminal Procedure Code and ensure that those who cannot afford bail bonds do not remain behind bars as a result of poverty.

Protection of rights of Under-trials': A Judicial perspective

The Indian constitution has inherited and given sufficient space to the rights given under the United Declaration of Human Rights but there is no provision explicitly dedicated to the rights of under-trial prisoners, the Supreme Court interprets the golden triangle and Articles 38, 39, 39A and 42 of directive principles of the Indian Constitution.

The Supreme Court, in *DK Basu v State of West Bengal*³³, held that custodial torture is an outright violation of Article 21. A person's personality can be somewhat pulverized by such an atrocious act, which lowers human dignity. The Supreme Court said that it has been noticed that police frequently use force against those who are subject to their authority. For the sake of justice in its broadest sense, this needs to be eliminated. Human dignity, according to **Justice Krishna Iyer**, is a cardinal principle of our Constitution and cannot be traded away by jail staff. A violation of Article 21 has been declared when women prisoners are mistreated. In order to ensure the security of the inmates, especially female inmates, the court handed instructions to the relevant agencies. For female suspects, there should be a separate

³² AIR (2016) SC 993.

³³ *DK Basu v State of West Bengal*, JT 1997 (1) SC 1.

lock-up, and female constables should be on duty to watch the lock-ups. Female suspects shouldn't be detained in the same facility as male suspects. The court also mandated that all accused persons who are indigent, regardless of gender, receive free legal counsel.

The analysis of the rights of the under-trial prisoners, given in post *Maneka Gandhi*³⁴ can be summarized as follows:

(a) Speedy Trial

In *Kartar Singh vs. State of Punjab*³⁵, the court stated: “*The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages till it consummates into finality*”.

(b) Free Legal Aid

In *Hussainara Khatoon's Case*³⁶ the court further laid down that “*Right to free legal aid as given under Art.39A was implicit in Art. 21 because a procedure which does not make available legal services to an accused person, who owing to his poverty cannot afford a lawyer and who would, therefore, have to go through the trial without legal assistance cannot possibly be treated as just, fair and reasonable procedure and is thus, violative of Art. 21*”.

In *Khatri v. State of Bihar*³⁷, court held that “*the legal aid should not be provided at the commencement of the trial only, but it should be provided when the person is brought before the magistrate for the first time. Lastly; in the chain of these cases ensuring justice to the prisoners*”, then in *Suk Das v. Union Territory of Arunachal Pradesh*³⁸, it was observed that “*it was an obligation on the part of the Magistrate or Session Judge to tell the accused of his right to have a lawyer at State's cost*”.

³⁴ *Maneka Gandhi v. Union of India*, AIR. 1978 SC 597.

³⁵ (1994) S.C.C. (3) 569.

³⁶ *Supra* note 30.

³⁷ AIR (1981) SC 928.

³⁸ AIR (1986) SC 991.

(C) Compensation

According to Articles 32 and 226 respectively, the Under-trial Prisoner also has the right to file a claim with the Supreme Court and High Court for damages for the rights violated while they were under police custody. In *D.K Basu v. State of West Bengal*³⁹, the hon'ble Supreme court held that *“The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 21 and 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalizing the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen”*.

In *Rudul Shah v. State of Bihar*⁴⁰, the court held that *“One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffered, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights”*.

Then In *Bhim Singh v. State of J&K*⁴¹, compensation was awarded to Mr. Bhim Singh by the court and an stated that, *“police Officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by*

³⁹AIR (1997) SC 610.

⁴⁰ AIR (1983) SC 1086.

⁴¹AIR (1986) SC 494.

stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct”.

The incarceration of under trial and violation of their basic human rights

In **Moti Ram & Ors. v State of Madhya Pradesh**, the Supreme Court observed:

*“The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family”.*⁴²

Under-trial prisoners constitute (76.1%) of the prison population, which means that all these persons, though incarcerated, are deemed to be innocent as the law says, *“every person is innocent until proven guilty”* and yet incarcerated.

“The Hon’ble supreme court of India in the case of **Rama Murthy v State of karnataka**⁴³ specified nine problems that the Indian prisons are afflicted with. Those being: –

- *80% prisoners are under trials*
- *Delay in trial.*
- *Even though bail is granted, prisoners are not released.*
- *Lack or insufficient provision of medical aid to prisoners*
- *Callous and insensitive attitude of jail authorities*
- *Punishment carried out by jail authorities not coherent with punishment given by court.*
- *Harsh mental and physical torture*
- *Lack of proper legal aid*
- *Corruption and other malpractices”.*

⁴²AIR(1978) SC 1594.

⁴³(1997) 2 S.C.C. 642.

Suggestions:

By analysing the factors behind the increase in numbers and issues of the under-trial prisoners with special reference to women under-trials in India in the Post-independent era it is clear that the problem is quite complex and remedy requires complete participation and coordination from all stakeholders such as police, prison administration, courts and proactiveness from under-trials too.

First and foremost, the government needs to take the appropriate measures to fasten the justice delivery system. Delayed trial process is one of the vital human rights violation which the under-trial prisoners face. In petty cases and for immediate relief alternative dispute settlement through mediation, Lok Adalat, negotiation and Plea bargaining can be sought.

Secondly, the colonial Police system is in use in which power of arrest is too vague and unlimited which needs to be changed and made consistent with the reformative approach of our justice system.

Thirdly, though by Prison Manual, 2016 a lot of positive and forward looking directives have been issued but still a lot needs to be done in this regard as it is high time to ensure the basic human rights of the prisoners and to protect their integrity and dignity.

Fourthly, the use of technology should start from the investigation and used till the court pronounces the judgment. We need to give up the ancient practices which are no more relevant and time taking and substitute them with the modern technology to improve the justice delivery system.

Lastly, we need to involve the women in policy making to look after the issues and specific requirements of the women and the need to rehabilitate women is more than rehabilitating men therefore in the already air tight funds fixed allocation should be made for their rehabilitation and skill development.

Conclusion

The Constitution of India, the Universal Declaration of Human Rights and the Standard Minimum Rules for Treatment of Prisoners certainly mention the criteria of treatment of prisoners but the problem for under-trials does not start from the instance of incarceration rather it starts with the very fact that they are incarcerated even though their guilt is yet to be

proved and it amounts to a sort of contradiction to the rights guaranteed under article 21 of our constitution that is no one shall be deprived his right to life and personal liberty.

It is cause of worry that the number of under-trial prisoners are increasing even after a lot of discussion and work has been done by the governmental organisations and courts. The problem lies within our criminal justice system where its organs are not working coherently, the procedure followed is time taking, inefficient and has not evolved consistently with the ever evolving problems of overcrowding of under-trial prisoners. Corruption, illiteracy and lack awareness of rights among the inmates are other causes of imprisonment and exploitation of under-trial prisoners.

The condition of under-trial in general is not good but when it comes to women under-trial it is disheartening and discouraging. Even though our traditions and religious beliefs considers her to be goddesses and omen of wealth and prosperity but the Indian masculine and anti-feminist attitude which deeply penetrates our fabric has made India being deemed “one of the most dangerous country in the world to be a woman. So, the problem faced by woman prisoners with special reference to under-trial in India is tripartite – as women, as being a law breaker, and within the prison, as a minority. These factors lead to a blind eye from the policy makers towards them which is not good for any society and therefore it high time to take immediate steps to counter the ever increasing numbers of under-trial and to look into the issues exclusively pertaining to women.