

“Detention of Under Trial Prisoners: A Bird's Eye View of the Judiciary”

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ABSTRACT

“No iron curtain can be drawn between the prisoner and the constitution.”²

Rights, Legal Rights, Fundamental Rights and Human Rights are a notion that has been persistently sprouting through human history. Human dignity is the spine and spike of human rights and it is, in fact, the very foundation on which human rights vest. Human Rights are the genes of humanitarian law are a species. Human rights mean in simple language may be categorized as those fundamental rights to which every man and woman living in any part of the world is entitled by virtue of having been born as a human being. Human Rights are those rights available to all human beings irrespective of their caste, religion, sex, race, and place of birth. Any person, who is accused, suspected, under trial prisoner, convicts also have human rights and by virtue of their humanity, these rights ought to be protected against unjust and degrading treatment. Human Rights have been described as touchstone of the development and recognised as the basic essentials for the development of the dignity of the individuals.

In our society, anyone who committed the offence or crime should be punished through the criminal administration system. It is the bounden duty of the state to punish to punish the wrongdoer or offender to maintain peace and harmony in the society. In modern times, the state has undertaken the task of affording adequate protection of the individual and providing reasonable opportunity to every person for development of individual personality. The democracy envisages concept of human rights as one of the basic tenets for individual's growth in the society. This papers aims to explain the plight of under trial prisoners with reference to human rights aspect and efforts of Judiciary.

Key Words: Under Trial Prisoners, Unconvicted in dark cells, Rights of Prisoners, Human Rights and Prisoners

1. Introduction:

Human Rights are the genes of humanitarian law are a species. Human rights mean in simple language may be categorized as those fundamental rights to which every man and woman living in any part of the world is entitled by virtue of having been born as a human being. Human

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² Sunil Batra (II) v Delhi Administration, AIR 1980 SC 1579

Rights are those rights available to all human beings irrespective of their caste, religion, sex, race, and place of birth. The norms and law are clear. Before conviction, pre-trial detention must be minimal and justifiable in each individual case otherwise the authorities are in breach of their duties and have impinged on the fundamental rights of the individual awaiting trial. In theory, trials must begin and proceed speedily and the under trial as a prisoner in custody whose trial is to begin or is underway is commonly known must be offered the possibility of bail at the earliest. 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 lie³.

2. Under trial prisoner:

The person against whom a criminal complaint or case is registered generally treated as an accused, but the guilt or innocence can only be decided by the competent court through the process of law. There is a famous dictum ‘accused is presumed innocent until proven guilty’. A person does not lose all his basic human rights merely on the ground that he is a under trial prisoner or he is an accused of a crime. Under trial prisoners are persons who have not been convicted of the charges for which they have been detained, and are presumed innocent in law⁴. The Majority of under trial prisoners are people from poorer and under privileged sections of society with rural and agricultural back grounds. Because these people neither aware about their rights nor have sufficient means to represent their case⁵.

One of the most critical aspects of criminal justice administration is the detention of the under trial prisoners. Under trial prisoners is one of the categories of prison population that have been found responsible as an important factor behind overcrowding in the jails. They form a major portion of prison inmates among others. These people remain in prison pending trial which may or may not lead to conviction. The purpose of keeping under trial prisoners in the custody is to ensure fair trial so that they cannot be in a position to influence or induce the witnesses. “A huge majority of under-trial prisoners are poor and as well as illiterates. They are denied bail for want of monetary security and thus they continued to stay as under trial prisoners without any voice. “It is high time that the public conscience is awakened and the government as well as the judiciary begins to realize 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

³ http://www.humanrightsinitiative.org/old/publications/prisons/UndertrialsPRCReport_2013.pdf accessed on 10/06/2019.

⁴ Vrinda Bhandari “Denial of a right” accessed through <http://indianexpress.com> on 09/06/2019

⁵ The All India Committee on jail reforms (Mulla Committee) accessed through <http://www.prisonlegalnews.org/news> on 09/06/2019

restructured so that such injustices do not occur and disfigure the fair and otherwise luminous face of our nascent democracy”⁶

3. Legislative frame work:

A just, reasonable and effective administration of justice is the keystone of a civilization and essential components of public confidence. Section 436 of Criminal Procedure Code, 1973 specifies that if an under trial person arrested for minor offences continues to languish in prison for more than a week after his bail order has been passed, he/she can be assumed to be indigent and therefore shall be released on a Personal Release Bond by the trial court.

Section 436A of Criminal Procedure Code, 1973 specifies that in serious offences, if the under trial prisoner has completed more than 50% of the maximum sentence that can be awarded to him/her under the section for which he/she has been charged, he/she shall be released on a Personal Release Bond by the trial court . In the year 2005 Section 436-A was inserted in the Criminal Procedure Code, 1973 with the objective of ensuring that under trial prisoners were not indeterminately detained in jail due to slow progress of their cases. Section 436-A Cr.P.C deals only with under trial prisoners, and there are only two requirements to be satisfied for its operation: first, the prisoner has to be under trial for an offence other than one attracting a sentence of death; and secondly, the prisoner should have remained in detention for a period amounting to half of the maximum sentence of imprisonment specified under the law. Once these conditions are satisfied, the Court is mandated to release the prisoner on personal bond, with or without sureties. The second proviso to the Section further states that no person, under any circumstances, can be detained for a period longer than the maximum period of imprisonment provided for the offence under trial⁷.

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 appearance⁸. 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

⁶ Justice P. N. Bhagwati in Hussainara Khatoon and Others v. Home Secretary, State of Bihar, AIR 1979 SC 1360

⁷ <https://www.livelaw.in/mischief-likely-caused-section-436-a-code-criminal-procedure-1973/> accessed on 09/06/2019

⁸ 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

court is satisfied that it is just and proper for any other special reason to give rather than refuse bail⁹.

The Supreme Court¹⁰ 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 plight. Also, in any case triable 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 released¹¹. If a person accused of a non-bailable offence is in custody after the conclusion of the trial, but before the judgment 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 judgment¹². 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 bail¹³. 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 prisoner 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 than the maximum period of prescribed imprisonment for an offence¹⁴.

Recently, in *Hussain and another v. Union of India*¹⁵, the Hon'ble Supreme Court has directed as under: "As a supplement to Section 436-A of Cr.P.C, but consistent with the spirit thereof, if an under trial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such under trial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time."

"It is a matter of common experience that in many 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 them¹⁶. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression... Even in case of offences punishable for seven years or less with or

⁹ Section 437 (1) of Criminal Procedure Code, 1973

¹⁰ Supra 7

¹¹ Section 437 (6)

¹² Section 437 (7)

¹³ Section 167(2)(a)(i) & (ii)

¹⁴ Section 436 A (Inserted by the Code of Criminal Procedure Amendment Act, 2005 [Section 436]

¹⁵ (2017) 5 SCC 702

¹⁶ Handbook of Human Rights and Criminal Justice in India, by South Asia Human Rights Documentation Centre, Oxford University Press, 2nd edition, 2007, p. 62.

without fine, the prosecutions are kept pending for years and years together in criminal courts. In a majority of these cases, whether instituted by police or private complainants, the accused belong to poorer sections of the society who are unable to afford competent legal advice. Instances have also come before courts where the accused, which are in jail, are not brought to the court on every date of hearing and for that reason, the cases undergo several adjournments. It appears essential to issue appropriate directions to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21 of the Constitution.”¹⁷

4. Judiciary Approach:

The role of the judiciary is primarily to ensure the most effective and proper implementation of the Rule of Law begins from the protection of Rights. In *State of Rajasthan v. Balchand*¹⁸, the court held that, ‘The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner.’ The discriminatory bail system has been criticized by the apex court stating that “it is a travesty of justice that many poor accused are forced into long cellular servitude for little offences because the bail procedure is beyond their meager means.”

In a recent, landmark judgment in *Bhim Singh v. Union of India*¹⁹ the Supreme Court (SC) issued a series of directives to state authorities to facilitate the release of under trial prisoners who have served half of their probable maximum prison term and it is highly significant in that the Apex Court set a deadline of two months-and directed district judges and prison officials to oversee the process. The highest court's extraordinary directive was in response to a criminal justice system that is widely regarded as 'dysfunctional', where under trial prisoners are made to wait for years before their cases are even heard.

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 cases, to furnish bail bonds and get released on bail²⁰.

In *Moti Ram & Others v. State of Madhya Pradesh*²¹ Moti Ram, a mason appealed to the Supreme Court that despite being granted bail by the Court, he was unable to secure his release because the Chief Judicial Magistrate fixed an exorbitant sum of Rs 10,000, as the surety amount. Moti Ram said that the magistrate rejected the surety ship offered by his brother simply because his brother resided in another district and his assets were located there. Moti Ram

¹⁷ Common Cause, A Registered Society through its Director v. Union of India and Others, 1996 AIR 1619

¹⁸ AIR 1977 SC 2477

¹⁹ (2015)15 SCC 605

²⁰ http://humanrightsinitiative.org/old/publications/prisons/liberty_at_the_cost_of_innocence.pdf accessed on 01/06/2019

²¹ AIR 1978 SC 1594

wanted the Supreme Court to either reduce the surety amount or order his release on a personal bond. The Court had to decide, Whether a person can be released on bail under the Cr.P.C., 1973 on a personal bond, without having to get other people to stand as surety for him? The criteria for fixing the bail amount, and whether a surety offered by a person can be rejected because he resides in a different district or state or because his property is situated in a different district or state?.

Supreme Court Observed and held that “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.” The Court acknowledged that many poor persons are forced into cellular servitude for little offences because trials never conclude, and bail amounts are fixed beyond their meager means. The poor are being priced out of their liberty in the justice market. Whenever excessive amounts are fixed as surety for bail, the victims invariably happen to be from disadvantaged sections of society; belonging to linguistic or other minorities; or are from far corners of the country. There is no sanction in any law to make geographical discriminations such as not accepting sureties from another part of the country or not accepting an affirmation in a language other than the one spoken in the region. India is one and not a conglomeration of districts untouchably apart. A person accused of a crime in a place distant from his native residence cannot be expected to produce sureties who own property in the same district as the trial court. The Supreme Court asserted that provincial or linguistic divergence cannot be allowed to obstruct the course of justice. The Court further observed that bail provisions contained in the Cr.P.C. must be liberally interpreted in the interest of social justice, individual freedom and indigent persons. It shocks one’s conscience to ask a mason to furnish a sum as high as Rs 10,000 for release on bail. Apex Court further stated that, an accused person should not be required to produce a surety from the same district especially when he is a native of some other place. ,, Bail covers release on one’s own bond, with or without sureties. Bail should be given liberally to poor people simply on a personal bond, if reasonable conditions are satisfied. The bail amount should be fixed keeping in mind the financial condition of the accused. When dealing with cases of persons belonging to the weak categories in monetary terms indigent young persons, infirm individuals or women courts should be liberal in releasing them on their own recognizance.

In *Hussainara Khatoon & Others (II) v. Home Secretary, Bihar, Patna*²², in January 1979 a habeas corpus was filed in the Supreme Court seeking directions to release a large number of under-trial prisoners languishing in the prisons of Bihar. A number of directions were issued in

²² AIR 1979 SC 1369

the matter and this present case came up pursuant to those directions issued by the Court. In this case, the Court stressed the state's constitutional obligations to assure speedy trial and providing of free legal aid to the accused.

Supreme Court held that 'the right to free legal aid is an unalienable element of 'reasonable, fair and just' procedure. Without it, a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice'. The Court also observed that "speedy trial' is an essential ingredient of 'reasonable, fair and just' procedure guaranteed by Article 21 of the constitution. It is the constitutional obligation of the state to devise such procedures as would ensure speedy trial to the accused. The state cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that it does not have adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus. The state government should provide under-trial prisoners a lawyer at its own cost for the purpose of making an application for bail. The state is under a constitutional mandate to ensure speedy trial. The state must take positive action to enforce the fundamental rights of the accused to speedy trial. Such action may include augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial'.

In *Khatri & Others v. State of Bihar*²³ a number of under-trial prisoners filed a writ in the Supreme Court complaining that after their arrest, they were blinded by police officials whilst under police custody. The Supreme Court also found during the proceedings of the case that no legal representation was provided to the blinded prisoners because none of them asked for it. The judicial magistrates also did not enquire from the blinded prisoners produced before them whether they wanted legal representation at state cost.

Supreme Court reiterated its stance in *Hussainara Khatoon's*²⁴ case, wherein it was held that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and is implicit in Article 21 of the constitution. The Court further observed that legal aid would become merely a paper promise and would fail its purpose if it were left to a poor ignorant and illiterate accused to ask for free legal services. The magistrate or the session's judge, before whom the accused appears, is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the state. The Court also voiced serious concern over the irregularities in the production of accused before the magistrates. Perusal of the records clearly showed that the prisoners had continued to remain in jail without any remand orders being passed by the judicial magistrates. It observed that the provision

²³ AIR 1981 SC 928

²⁴ Supra 22

inhibiting detention without remand was a very healthy provision and it is necessary that the magistrates try to enforce this requirement. The Court asked the state government to inquire into the irregularities and ensure that in future, the administrators of law are not permitted to commit such violations of the law. The Court also expressed its unhappiness at the lack of concern shown by the judicial magistrates in not enquiring from the blinded prisoners, when they were first produced before the judicial magistrates and thereafter from time to time for the purpose of remand to how they had received injuries in the eyes. It directed the High Court to look into these matters closely and ensure that such remissness on the part of the judicial officers does not occur in the future. The state is under a constitutional mandate to provide free legal aid to an accused that is unable to secure legal services because of poverty. This obligation to provide free legal services to the indigent accused arises not only on or after the commencement of trial but also when the accused is for the first time produced before the magistrate and when he is remanded from time to time. „ All magistrates and session judges in the country shall inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence, that he is entitled to free legal services at the cost of the state.

The Supreme Court in a memorable judgment *Common Cause (a registered society) v. Union of India*²⁵ has given the following directions regarding the release of Under Trial prisoners on bail.

- a. Under trial prisoners accused of an offence punishable with imprisonment up to three years and who have been in jail for a period of six months or more and where the trial has been pending for at least a year, shall be released on bail.
- b. Under trial prisoners are accused of an offence punishable with imprisonment up to five years and who have been in jail for a period of six months or more, and where the trial has been pending for at least two years, shall be released on bail.
- c. Under trial prisoners are accused of offences punishable with imprisonment for seven years or less and who have been in jail for a period of one year and where the trial has been pending for two years shall be released on bail.
- d. The accused shall be discharged where the criminal proceedings relating to traffic offence have been pending against them for more than two years.
- e. Where an offence compoundable with the permission of the court has been pending for more than two years, the court shall after hearing public prosecutor discharge or acquit the accused.
- f. Where non-cognizable and bailable offence has been pending for more than two years, without trial being commenced the court shall discharge the accused.

²⁵ (1996)6 SCC 530

- g. Where the accused is discharged of an offence punishable with the fine only and not of recurring nature and the trial has not commenced within a year, the accused shall be discharged.
- h. Where the offence is punishable with imprisonment up to one year and the trial has not commenced within a year, the accused shall be discharged.
- i. Where an offence punishable with an imprisonment up to three years and has been pending for more than two years the criminal courts shall discharge or acquit the accused as the case may be and close the case.

However, the directions of the court shall not apply to cases of offences involving (a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act, 1947 or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, 1985, (c) Essential Commodities Act, 1955, Food Adulteration Act, Acts dealing with environment or any other economic offences, (d) offences under the Arms Act, 1959, Explosive Substances Act, 1908, Terrorists and Disruptive Activities Act, 1987, (e) offences relating to the Army, Navy and Air Force, (f) offences against public tranquility, (g) offences relating to public servants, (h) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice, (k) any other type of offences against the State, (l) offences under the taxing enactments and (m) offences of defamation as defined in Section 499 IPC.

The Supreme Court has given further directions that the High Courts are requested to issue necessary directions in this behalf to all the criminal courts under their control and supervision. These directions of the Supreme Court aim at streamlining the process of grant of bail to the Under trial prisoners and make it time-efficient. The judgment, however, does not provide for suo-moto grant of bail to the petitioners by the trial court. This implies that an application would have to be made to move the court for grant of bail. There is also no mechanism in the courts to automatically dispose of suitable cases. They are dependent upon filing of bail petitions and more important on the production of prisoners in time. Release of Under Trial Prisoners will lessen the congestion in jail and help more efficient prison management. The process thus needs the high degree of coordination between the judiciary, the police and the prison administration which unfortunately is now lacking.

In *Charles Sobraj v. Superintendent Central Jail, Tihar, New Delhi*²⁶ Charles Sobraj, an inmate at Tihar Jail, complained of barbaric and inhuman treatment meted out to him whilst in custody. These allegations led the Supreme Court to examine the limits and purpose of judicial intervention into prisons. Court Observed that “Whenever fundamental rights are flouted or legislative protection ignored, to any prisoner’s prejudice, this Court’s writ will run, breaking

²⁶ AIR 1978 SC 1514

through stone walls and iron bars, to right the wrong and restore the rule of law.” “The criminal judiciary has thus a duty to guardian their sentences and visit prisons when necessary.” Judicial policing of prison practices is implied in the sentencing power, thus the ‘hands off’ theory is rebuffed and the Court must intervene when the constitutional rights and statutory prescriptions are transgressed to the injury of the prisoner. The right to life of a person is more than mere animal existence, or vegetable subsistence. Therefore, the worth of the human person and dignity and divinity of every individual inform Articles 19 and 21 of the constitution even in a prison setting. There must be some correlation between deprivation of freedom and the legitimate functions of a correctional system. Imprisonment does not spell farewell to fundamental rights laid down under part III of the constitution. Prisoners’ retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Therefore, it is a court’s “continuing duty and authority to ensure that the judicial warrant which deprives a person of his life or liberty is not exceeded, subverted or stultified.” Although in its final pronouncement the Court dismissed the petition, however the principles that were laid down are still considered as “having laid bare the constitutional dimension and rights available to a person behind stone walls and iron bars.”²⁷

Supreme Court observed in *Sunil Batra v. Delhi Administration & Others*²⁸ “court has a distinctive duty to reform prison practices and to inject constitutional consciousness into the system.” It must not adopt a ‘hands off’ attitude with regard to the problem of prison administration because a convict is in prison under the order and direction of the court. The Court reiterated the constitutional mandate that no prison law can deny any fundamental right of the prisoner. Disciplinary autonomy in the hands of the jail staff violates human rights and prevents prisoners’ grievances from reaching the judiciary. The rule of law disallows infliction of supplementary sentences under disguises which defeat the primary purpose of imprisonment. Therefore, infliction of additional torture by forced cellular solitude or iron fetters can be struck down as unreasonable, arbitrary and unconstitutional. Rehabilitation is a necessary component of incarceration and this philosophy is often forgotten when justifying harsh treatment of prisoners. Consequently, the disciplinary need of keeping apart a prisoner must not involve inclusion of harsh elements of punishment. The Court opined, “liberal paroles, open jails, frequency of familial meetings, location of convicts in jails nearest to their homes tend to release stress, relieve distress and insure security better than flagellation and fetters.” In addition, solitary confinement is the seclusion of a prisoner, from the sight of and communication with other prisoners. It is a severe and separate punishment, which can be imposed only by the court. Prisoners sentenced to death cannot be kept under solitary confinement. However, their segregation from other prisoners during the normal hours of lockup is legal. Such prisoners shall not be denied any of the community amenities including games, newspapers, books, moving

²⁷ Ramamurthy v State of Karnataka AIR 1997 SC 1739

²⁸ AIR 1978 SC 1675

around and meeting prisoners and visitors, subject to reasonable regulation of prison management. A prisoner shall be considered to be 'under sentence of death' only when his appeals to the High Court and the Supreme Court, and mercy petitions to the Governor and the President have been rejected. ,, Under-trial prisoners shall be deemed to be in custody but not undergoing punitive imprisonment. They shall be accorded relaxed conditions than convicts. Bar fetters shall be shunned as violative of human dignity, within and without prisons. Indiscriminate resort to handcuffs when accused is produced before the court and forcing iron on prison inmates is illegal. It shall be stopped forthwith, save a few exceptions. A prisoner shall be restrained only if there is clear and present danger of violence or likely violation of custody.

The following preconditions should be observed while imposing fetters:

- i. There is an absolute necessity to use fetters,
- ii. There exist special reasons as to why no other alternative but fetters can ensure a secure custody,
- iii. These special reasons must be recorded in detail simultaneously,
- iv. This record must be documented in both the journal of the superintendent and the history ticket of the prisoner,
- v. Before the imposition of fetters, natural justice in its minimal form shall be complied with,
- vi. No fetters shall be kept beyond day time,
- vii. The fetters shall be removed at the earliest opportunity;
- viii. There should be a daily review of the absolute need for the fetters, and
- ix. Any continuance of the fetters beyond a day shall be illegal unless an outside agency like the district magistrate or sessions judge, on materials placed, directs its continuance. ,,

The discretion of imposing fetters or other iron restraints is subject to quasi-judicial oversight, even if imposed for security. ,, Legal aid shall be given to prisoners to seek justice from prison authorities and to challenge the decision in court where they are too poor to secure a lawyer on their own.

*Court on Its Own Motion In Re: Regarding Various Irregularities at Central Jail, Tihar*²⁹, the High Court expressed concern about the huge number of under-trials prisoners and the problem of overcrowding at Central Jail, Tihar. It observed that if the number of inmates is reduced, many of the problems at the jail would get rectified on their own as a consequential measure. The effect of excess number of inmates not only enhances the need for space, but necessities like water etc. get strained as well. Emphasizing the large under-trial population i.e. 65 per cent of the

²⁹ CrI MA No 7030/2007 & CrI Ref 1/2007

total prison population, the Court expressed concern over the incarceration of those who had been admitted to bail but was unable to furnish surety. High Court issued the following directions with regard to persons incarcerated due to proceedings initiated under Section 107 read with Section 151 Cr.P.C: All inmates lodged under these sections due to non-furnishing a surety bond would be released on furnishing a personal bond in sum of Rs. 2000. The bond would be furnished to the satisfaction of the Superintendent Central Jail, Tihar. The personal bond should contain an undertaking in the terms given below. The inmates so released should:

i. report to the local police station within the jurisdiction where proceedings were registered. This should be done daily, twice at 10.00 AM and 6.00 PM, and ii. Mark their attendance on a register maintained in each police station and available with the duty officer in charge. Further High Court issued the following directions with regard to release of under trial prisoners from Central Jail, Tihar: ,, Those under-trial prisoners who have been admitted to bail but have been unable to furnish sureties for more than 2 months, shall be released on their furnishing personal bond to the satisfaction of the trial court. ,, As regards the under-trial prisoners, who are reported terminally ill and suffering from ‘incurable disease’, the jail authority shall consider their case for early release on humanitarian grounds. ,, In case of under-trial prisoners who are from states other than Delhi, local surety shall not be insisted upon while granting bail. It shall be sufficient to verify the identities and actual places of residence outside Delhi of the under-trials and their sureties to release them on personal bonds, with or without sureties, as the case may be. In case of under-trial prisoners who are senior citizens, the courts should take up their cases on day to day basis as far as possible, if they are not found fit to be admitted to bail. The jail authorities before the visiting judge shall put up those cases where the maximum prescribed punishment for the offence committed is up to 7 years every 3 months for review and release on bail. The jail authorities shall sensitize and inform all jail inmates of the provision of ‘plea bargain’ and also benefits thereof. The jail authorities shall also take special care to place these cases before the special court/judge who visits the jail every month.

Failure to provide legal assistance to the poor and impoverished persons violates constitutional guarantees. Article 39A of the constitution casts a duty on the state to secure the operation of a legal system that promotes justice based on equal opportunity. The right to legal aid is also a fundamental right under Articles 14 and 21 of the constitution. The Court expressed serious concern about the plight of prisoners who are unable to afford legal counsel to defend himself or herself. It observed that the lack of access to a lawyer was responsible for individual rights against harassment and torture not being enforced. Stressing the urgent need to provide legal aid not only to women prisoners but also to all prisoners whether they were under-trials or were serving sentences, the Court said that an essential requirement of justice is that a lawyer should

defend every accused person. Denial of adequate legal representation is likely to result in injustice, and every act of injustice corrodes the foundations of democracy and rule of law³⁰.

5. Conclusion:

The prison is a morbid world where sun and light are banished and the crime has neurotic dimensions and liberty is of paramount value and all agencies of the criminal justice system should come together and work harmoniously to ensure the effective realization of legal rights to every individual behind bars and to keep a check on prolonged detention and overstay. . There is an vital need for a judicial agency whose presence is required within the dark cells to deal with grievances effectively. Last, and perhaps most important, the prison departments should create a cadre of trained social workers to work with prisoners, families of prisoners and released prisoners towards promoting their legal rights and rehabilitation. These measures will go a long way in addressing the decade's long issue of under trial prisoners languishing in the prisons of our country. In view of the above circumstances it can be concluded that it is the responsibility of the functionaries or authorities of criminal justice administration to implement the existing provisions as well as guidelines issued by the Judiciary from time to time for the protection of the under trial prisoners. The Judgments and guidelines of Apex Court and High Courts really bring a ray hope to a large number of under trial prisoners languishing in jails.

³⁰ Women Prisoners v. State of Maharashtra, AIR 1983 SC 378