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PRE-TRIAL DETENTION: UNDER TRIAL REVIEW COMMITEES

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The Indian Constitution upholds the paramount importance of liberty for its citizens, with reasonable restrictions under certain conditions. India is a signatory country to the United Nations Standard Minimum Rules for Treatment of Offenders and the International Covenant on Civil and Political Rights. All the stakeholders in the criminal justice system have a moral duty to accord protection and relevant privileges to prisoners in line with these international covenants. The legal system in India recognises the presumption of innocence as an essential prerequisite of a fair trial. Thus, it is of utmost importance that no person be denied their liberty unless it is the last resort and is set within the due process requirements of the legal framework. Pre-trial detention undermines the chance of a fair trial. Many countries do not have an adequate legal aid system, and many people cannot afford to pay for a lawyer. Even when they can, it is much harder to prepare well for a trial in a prison cell. People in pre-trial detention are particularly likely to suffer violence and abuse. Pre-trial detention has a hugely damaging impact on defendants, their families and communities. So, I believe pre-trial detention should be an exception and not a rule. If there is a risk of the person absconding, then less intrusive methods can be applied, like confiscation of travel docs, etc. Hence, laws regarding this will obviously mean less pre-trial detainees.

Recent amendments in the Code of Criminal Procedure, 1973 have inserted statutory framework, placing restrictions on the police and other law enforcement agencies on arbitrary arrests which often lead to long periods of detention under judicial custody. However, there are no safeguards for undertrials who fail to get bail, or for cases where the investigation of detained persons generally takes years to complete and trials do not conclude within a reasonable time period. As a corollary, it follows that custodial institutions, in particular prisons, should not be used to detain accused persons for prolonged periods of time. This is particularly so, when undertrials don't have much scope of case review, while they await the completion of the investigation, framing of charges and commencement and completion of their trial without any time frame. One could argue that bail provisions provide a pre-trial detainee with the opportunity to seek release from custody. However, a large proportion of the prison population is illiterate and indigent. As such, there is no assurance that every prisoner has an equal opportunity to engage a competent lawyer in order to seek bail. The importance of the undertrial review committees (URCs) can be seen from this perspective. These are crucial monitoring agencies which can ensure that incarceration of each pre-trial detainee is lawful and not a result of lack of oversight, callousness or negligence on the part of any agency of the criminal justice system.

Overcrowding is a major strain on prison resources and infrastructure and one of the main reasons for the abhorrent prison

conditions in our country.[1]The executive has periodically introduced plans to remedy this situation, yet no radical change has been perceived. [2] The Supreme Court too has periodically issued directions for the release of undertrials, [3] and liberal use of bail provisions, [4] but this has not led to any change in the high percentage of undertrials lodged in prisons. However, in the last two years, there were two such decisions of the Supreme Court which are of prime importance in this regard viz. Bhim Singh v Union of India and Re Inhuman Conditions in 1382 Prisons.[5]In the Bhim Singh case the court emphasised the implementation of Section 436A [6] of the Code of Criminal Procedure, 1973 (CrPC) and fast-tracking of courts, to ensure that no undertrial remains in prison beyond half of their maximum sentence. It directed the concerned magistrates to visit the prisons in their district, and hold one sitting every week in prisons for two months, commencing from 1 October 2014. In the meetings, the judicial officers were to identify undertrial prisoners who had spent half of their maximum sentences in jail and provide an order for their release. The court further directed the report of each sitting to be forwarded to the Registrar General of the High Court, and at the end of two months, the Registrar General should submit the report to the Secretary General of the Court without delay. A copy of this order was to be sent to the Registrar General of each High Court, who in turn was to communicate a copy of the order to all sessions judges within the state for necessary compliance. This order introduced the concept of reviews of undertrial cases, by way of judicial pronouncement, into the criminal justice system for the first time. The concept of undertrial review committees is not new; they have been under discussion since April 1979 when a conference of Chief Secretaries, for the first time, recommended the constitution of district and state level review committees. The All India Jail Reforms Committee of 1980-83, popularly known as the Mulla Committee, had also recommended a regular, effective review mechanism at the district level and the state level. In 2013, the Home Minister too sent a letter to all state governments to set up state-level multi-disciplinary committees to review undertrial incarceration. [7] However, till date, the Apex Court had not directed conducting such reviews on a pan-India basis.

The need to set up an undertrial review committee in every district is evident. With

[1]Monika Saroha, "Amendments in CrPC", (2006) 2 SCC (Cri) J-9.

[2] On 26 January 2010, the Ministry of Law & Justice, Government of India, introduced the "Mission Mode Programme for Delivery of Justice & Legal Reforms – Undertrial Programme" to reduce two-thirds of the undertrial cases and to ease congestion in jails by 31 July, 2010.

[3]See Hussainara Khatoon v State of Bihar AIR 1979 SC 1360;, Common Cause v Union of India etc. AIR 1997 SC 1539, Bhim Singh v Union of India & Or WP (Crim) 310 of 2005, Order dated 5 September 2014.

[4]Motiram &Ors v. State of Madhya Pradesh AIR 1978 SC 1594

[5]Writ Petition(s)(Civil) No(s).406/2013.

[6]Section 436A of the CrPC proscribes the detention of undertrials beyond the maximum term of sentence. It also provides an undertrial the right to apply for bail once s/he has served one half of the maximum term of sentence s/he would have served had s/he been convicted.

[7]May 2011, Ministry of Home Affairs' Advisory, vide No. 17011/2/2010-PR, January 2013, Ministry of Home Affairs Advisory, vide No. V-13013/70/2012-IS(VI).

every agency of the criminal justice system being overburdened with their own work, all attempts to reduce the number of undertrials, ensure speedy trials and prevent prolonged pre-trial detention are bound to fail if no specific bodies/mechanisms such as undertrial review committees, which can review cases of undertrial prisoners on a regular basis and recommend for their timely release, are set in place. Undertrial review committees (URC) are an excellent inter-agency coordinating body that allows for all the relevant persons to come together to assist the courts to ensure that there is no unjustifiable infringement of the right to liberty to which we are all entitled. The aim of creating URCs is basically to safeguard individual liberty and to guarantee fair trial rights, especially to the unrepresented and unfortunate. The mandate of such review committees is very clear – to frequently review the cases of every prisoner awaiting trial and apply appropriate correctives to ensure that no undertrial is held for unjustifiably long periods in detention or is simply lost in the files.[8] The data received from correctional homes of West Bengal indicates that the URCs are yet to be set up in most districts, and in places where they have been set up, case review, consideration for release and subsequent release on bail/personal bond has not been prompt. Feedback from the correctional home staff indicates that a number of review meetings were fruitless as the court records were not available or that at most places the superintendent/representative of the correctional home is not part of the review committee meetings. This makes it difficult to provide information or subsequently follow up on the reviews. There is lack of uniformity in conducting reviews in all the CHs. Data reveals that different patterns of review are carried out. In some correctional homes, especially the central correctional homes, inmates from more than one district are detained. In these cases, undertrial review committees should have been set up for each district. The data is not indicative of such a setup. Further, the powers of the committees have not been identified anywhere. Can the committee only give recommendations and if yes, how can they ensure that their recommendations are acted upon? One other concern that emerges is that in a large number of correctional homes the number of prisoners eligible for release under Section 436A of the CrPC is nil. This may lead one to believe that the non-eligibility of inmates under Section 436A negates the purpose of setting up URCs. However, this argument can and must be countered with the argument that inmate population is not stagnant, with inmates being admitted and released from correctional homes at a random pace. Thus, even if in a certain month only one person was eligible under Section 436A, it does not necessarily mean that in the next few months 20 others will not be eligible. And herein lies the reason why there is need for monthly review of cases. It is imperative to note here that all the attention in relation to URCs seems to be based on the review of three types of cases: cases under Section 436A of the CrPC; cases where inmates are unable to furnish bail; and compoundable offences, at this juncture. However, one must be reminded that review of cases need not be restricted to only these categories. In order to ensure that no undertrial prisoners is

[8] "Undertrial and Error", Sugandha Mathur &MadhurimaDhanuka, Governance Now, May 1-15, 2014, p. 48.

detained in prison unnecessarily, there is a need to expand the mandate of the URCs to review all other cases as well. While the court has not expressly stated what kind of cases are to be considered, the implementing authorities must chalk out a criterion based on which a review of all undertrials can be considered.

The primary purpose of review committees is to ensure that no undertrial is held for unjustifiably long periods in detention or simply gets lost in the system without being given a chance to knock on the doors of justice. Thus, attention should be given to persons who become eligible to be released on bail, have already served one-half or the maximum jail term for their offence, do not have access to counsel, are vulnerable due to mental and physical disability, are accused of serious offences and have been under trial for a long period of time, or have committed such petty offences that there is no need to keep them in judicial custody.

Members of the review committee should meet every month to review individual cases of prisoners and take necessary action towards recommending their release on bail, effective production before the court, appointment of legal aid lawyers, or any other action as required. The district & sessions judge or the head of the committee may fix a particular day in the month to be assured of regularity; for example, the second Saturday of every month. A letter in this regard can be sent from the office of the district & sessions judge to all the members of the committee to ensure regularity and attendance. If the district & sessions judge or head of the committee is unable to convene the meeting owing to unavoidable circumstances, then another officer may be assigned the responsibility and must convene the meeting. The committee meeting must be convened and cannot be delayed under any circumstances.

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