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Pre-Trial Detention in India: Its Challenges and Reform Initiatives

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In India, the criminal justice system and the idea of liberty are closely related, especially when it comes to pre-trial detention. Pre-trial detention is one of the major problems of jail overcrowding in India. A criminal justice system associated with the practice of pre-trial detention comes along with major ramifications. People can be detained before their trials for many reasons. Keeping a person in police custody, before the beginning of their trial, is called as Pre-Trial detention. The legal system has implemented pre-trial detentions as a safeguard to certain situations that have been later discussed in the article. Although pre-trial detention serves certain important purposes, it is usually harmful to the detainee as it interferes with his liberty, hampers the socio-economic development of a State, and wastes the resources of a State. To put light upon the many facets of its practice's effects, this article investigates how it affects case results.

Keywords: *pre-trial detention, imprisonment, trial, human rights, liberty.*

INTRODUCTION

Having someone in custody, before the beginning of their trial, is called as Pre-Trial detention. When such pre-trial detainees wait for their court date, they are imprisoned in a correctional facility, such as a jail. There are certain situations where there is a possibility of escape or the

harm the person could cause to the community if released before trial. The legal system has implemented pre-trial detentions as a safeguard to such situations. Before the trial is over, the person is placed in pre-trial detention until the end of the proceedings, at which point they may be released on bond or subject to other terms as established by the court.

A 'just society' must be based on liberty and this aspect is one of the main tenets of democracy. According to the International Human Rights Law, a person who is deprived of his liberty by detention or arrest is entitled to proceedings before a court. Any victim of such unlawful arrest or detention shall have an enforceable right to compensation. According to a report by the 'Commonwealth Human Rights Initiative' (CHRI), as of December 2020, 76.1 percent of the prisoners in India are pre-trial detainees. These prisoners are held as suspects or witnesses to crimes. An enormous number of people are detained before their trials due to many reasons, including backlogs of cases, lengthy court proceedings, and resource shortages.¹ Principles of liberty form the foundation of a harmonious society. Holding individuals in custody before their trial raises important considerations within the criminal justice system that are discussed in the following paragraphs.

UNDERSTANDING PRE-TRIAL DETENTION

Pre-trial detention serves several purposes. It includes the guaranteed appearance of the individual in the court, preventing any harm to others or the legal system, and managing matters about escape or avoiding prosecution. Safety of the public, as well as ensuring that the accused shows up for his trial while maintaining the presumption of innocence are two very crucial aspects of the criminal justice system that must be balanced.²

The terms 'Preventive Detention' and 'Pre-trial Detention' are often used synonymously. However, small differences exist depending on the jurisdiction. The practice of keeping someone in jail even when there is not a trial scheduled, to keep them from committing any

¹ Commonwealth Human Rights Initiative, *SAFEGUARDING THE RIGHTS OF PRE-TRIAL DETAINEES ACROSS THE COMMONWEALTH* (2022)

² Adriano Martufi and Christina Peristeridou, 'The Purposes of Pre-Trial Detention and the Quest for Alternatives' (2020) *European Journal of Crime, Criminal Law and Criminal Justice* <https://brill.com/view/journals/eccl/28/2/article-p153_153.xml?language=en> accessed 22 February 2024

crimes in the future, or to protect the public from that individual, is known as Preventive Detention. Pre-trial custody is one aspect of the broader concept of preventive detention. When a person has not broken the law yet but is apprehended by the authorities to be a threat to the law and order of the State, they may place him in preventive detention. Furthermore, such regulations do not have to abide by the procedural safeguards that are essential to an individual being detained in the case of a regular course of events. Instead, such detention entails confinement without a criminal trial.

PRE-TRIAL DETENTION IN THE INTERNATIONAL ARENA

Pre-trial detention rates are typically higher in nations with high levels of instability, poor development, and inept government. This holds significance for both domestic policymakers and foreign development assistance providers, particularly in regions where development coexists with modernization and democratic transitions – two factors linked to the use of pre-trial detention. In certain circumstances, they make up over 90 percent of all inmates.³ The pre-trial detainees although innocent until they are proven guilty, are many times held in conditions that are worse than those of convicted prisoners.

Pre-trial detention is one of the major contributors to prison overcrowding. A surprising element of pre-trial detention is that the detainees are that they are accused of relatively minor offenses. For instance, because the offenses for which they are found guilty are generally minor, more than half of all pre-trial detainees in England and Wales – a jurisdiction where the practice of pre-trial custody is employed sparingly – end up receiving a non-custodial sentence.⁴

LEGAL FRAMEWORK IN INDIA

In India, criminal proceedings are divided into three primary stages under the criminal procedure, which are as follows: the phase before trial, the phase of Trial, and the phase after

³ The Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human rights implications of overincarceration and overcrowding* (2015)

⁴ Martin Schönteich, 'The overuse of pre-trial detention: causes and consequences' (2013) 92 Centre for Criminal and Justice Studies <<https://www.crimeandjustice.org.uk/publications/cjm/article/overuse-pre-trial-detention-causes-and-consequences>> accessed 22 February 2024

the trial. The main piece of legislation controlling pre-trial detention practices and rights in India is the Code of Criminal Procedure. Although arbitrary arrest and detention are forbidden by the Code, there are numerous accounts of such actions. In India, the police have often been known to hold people without presenting valid identification or an arrest warrant. The Code of Criminal Procedure's Section 167 mandates that investigations be finished in a day or that an arrested person be free unless the police can provide a magistrate with 'well-founded' justifications for an extended period of custody.⁵ An additional fifteen days of detention may be granted at the magistrate's discretion. In cases where the charge involves a possible term of 10 years or more or a death penalty, extensions may be given for up to 90 days if the investigation is not finished within 15 days, and for all other crimes, extensions may be granted for up to 60 days. The person later, has to be free on bond. The Code of Criminal Procedure's Section 436A⁶ expressly bars holding a person in pre-trial custody for more than half the maximum term of the charges against them, to encourage the release of such detainees within a reasonable time frame. The decision passed in *Common Cause v Union of India*, by the Apex Court brought great clarity to the maximum period within which detainees may be held.⁷

Pre-trial detention is not specifically mentioned in the Indian Constitution. Though not specifically related to pre-trial detention, Indian courts have construed Article 21 of the Constitution, which protects life and personal liberty, to include the right to a fast and fair trial.⁸ As per Article 22 of the Indian Constitution, a person who is arrested shall not be held in custody unless being promptly informed of the grounds for the arrest.⁹ He shall also be not denied the opportunity to consult with and be represented by a lawyer. Someone who is arrested and taken into custody is obligated under Article 22(2) of the Indian Constitution to appear before the nearest magistrate within twenty-four hours of his arrest¹⁰. This does not include the time needed to get from the site of detention to the magistrate's court. After this point, a person cannot be detained in custody without a magistrate's approval. However, it is crucial to

⁵ Code of Criminal Procedure 1973, s 167

⁶ Code of Criminal Procedure 1973, s 436A

⁷ *Common Cause v Union of India* (1996) 4 SCC 33

⁸ Constitution of India 1950, art 21

⁹ Constitution of India 1950, art 22

¹⁰ Constitution of India 1950, art 22(2)

remember that the Code of Criminal Procedure's descriptions of procedural laws, which also include those about pre-trial detention, are interpreted and applied by the values of justice, equity, and individual rights.

CHALLENGES AND CONCERNS

The assumption of innocence and the right to liberty are restricted by pre-trial confinement. Convicted offenders are housed among pre-trial inmates. Torture, physical abuse, and arbitrary arrest have all been reported. It is among the most severe measures a state may implement against an individual and can lead to disastrous outcomes. People who are detained are isolated from their friends and family, run the possibility of losing their homes and jobs, and may have their reputations damaged. The case in *Joginder Kumar v State of U.P.* emphasized the balance between the power of the police to arrest and an individual's right to personal liberty. In this case, the Supreme Court highlighted that an arrest cannot be made merely because it is lawful and the power to arrest should not be abused.¹¹

Detainees awaiting their trial are presumed innocent by law. Nonetheless, the great majority of defendants and arrestees are not equipped with the training, experience, or understanding needed to defend their presumption of innocence. Pre-trial release or imprisonment is a matter that courts usually don't give much thought to. As a result, alternatives to pre-trial confinement and the individual circumstances of defendants – such as their personality, mental health, and financial status, are rarely taken into account. In the case of *Rudul Shah v State of Bihar & Anr*, compensation was awarded for illegal detention even after acquittal. This sets a precedent for the rights of individuals after their acquittal.¹²

The case dynamics can be shaped by pre-trial confinement, which might have an impact on the judicial procedures. Detainees may have obstacles in formulating a strong defense, as communication barriers with lawyers and restricted access to legal resources may make it more difficult for them to make a strong case.

¹¹ *Joginder Kumar v State of UP* (1994) AIR 1349

¹² *Rudul Shah v State of Bihar & Anr* 1983 AIR 1086

A troubling pattern emerges when examining the socioeconomic differences in pre-trial imprisonment. People from poorer socio-economic backgrounds sometimes find it difficult to get bail, which results in protracted jail stays. The potential for socioeconomic variables to impact case outcomes and the fairness of the judicial system is called into question by this disparity.

Pre-trial detention adds to the overcrowding of jails by putting a burden on resources and taking focus away from more serious cases. This calls into question the criminal justice system's efficacy and impartiality. Due to their limited access to legal resources, vulnerable populations such as the economically disadvantaged and marginalized communities are disproportionately impacted by pre-trial imprisonment. In the 2019 case of *Prem Narayan v Union of India*, the Allahabad High Court declared that preventive detention is an infringement on an individual's freedom, which cannot be easily violated.¹³

A person is under pressure to give up their rights, including the right to a trial when they are imprisoned before their trial. Some may become so desperate to get out of custody that they enter guilty pleas even though they are innocent. Pre-trial imprisonment can be a tactic to apply pressure, and it can erode the degree to which someone has freely given up their rights, thereby compromising the fairness of the legal process.

In the country between April and December 2012, the NHRC reported 80,764 examples of abuse by security personnel for review, according to the Ministry of Home Affairs' annual report for 2012-13. In India, it is customary to employ anti-terrorism and national security legislation to permit lengthy pretrial detention durations without a trial or even sufficient accusations.¹⁴

REFORMS

To establish an equitable and effective legal system in India, pretrial detentions must be reformed. There are pre-trial detention alternatives, which are less expensive, and the money saved may be better used to build a fair and efficient criminal justice system with more judges,

¹³ *Prem Narayan v Union of India* Habeas Corpus No 27130/2019

¹⁴ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013*

more in-depth investigations, expedited processes, and better jail facilities. Pretrial detention, however, is nevertheless routinely imposed in many nations on individuals who are suspected of committing a crime, regardless of whether this practice is appropriate or required or if less intrusive alternatives may be used.

Re-examining the bail system is a crucial change that will guarantee accessibility, equity, and a more thorough evaluation of variables including the type of the offense and the likelihood of escape. In addition, reducing the frequently lengthy durations of pre-trial custody requires accelerated legal proceedings, which might be attained by adding judges and utilizing technology. A more focused approach can be promoted by evaluating the need for individual detention on a case-by-case basis with the aid of evidence-based risk assessment tools.

Strengthening legal aid services is equally vital to guarantee that individuals, regardless of their financial standing, have access to competent legal representation. Moreover, exploring and implementing community-based alternatives, such as electronic monitoring or supervised release, can provide effective ways to balance public safety with the rights and dignity of those awaiting trial. Regular reviews of pre-trial detention cases ensure the prevention of arbitrary or prolonged imprisonment. Such reforms collectively aim to create a criminal justice system in India that suits the principles of fairness, efficiency, and human rights.

The Under Trial Review Committee should investigate in-depth issues related to the efficient application of Sections 436¹⁵ and 436A¹⁶. to ensure that under-trial inmates are released as soon as possible and that those who are unable to provide bail bonds because of their financial situation are not imprisoned solely for that reason. To give first-time criminals a chance at rehabilitation and restoration in society, the Under Trial Review Committee will also investigate the issue of the Probation of Criminals Act's implementation¹⁷. Bail should be granted to pre-trial detainees as a matter of their rights. According to the ruling of the Supreme Court of India, bail cannot be unjustly denied, even in situations where it is discretionary. The seminal

¹⁵ Code of Criminal Procedure 1973, s 436

¹⁶ Code of Criminal Procedure 1973, s 436A

¹⁷ Probation of Offender Act 1958

judgment in *D.K. Basu v State of West Bengal* laid down specific guidelines for the police during the arrest and detention of a person. These guidelines, which include the proper identification of the arresting officer and the preparation of a memo of arrest, were instituted to prevent custodial violence and ensure transparency.

CONCLUSION

A thorough effort is required to address the issues related to pre-trial imprisonment in India. Pre-trial detention is a controversial component of India's criminal justice system that has a significant impact on how cases turn out. As India navigates the complicated terrain of pre-trial detention, a critical examination of the legal framework and its practical implications is important. A criminal justice system that is more equitable and effective can be achieved by improvements to case management, modifications to legal procedures, and a concentration on alternatives to jail. Finding a balance between the need for public safety and the defense of individual rights is a difficult issue. It demands legal modifications and a solid commitment to a fair and efficient criminal justice system. Finding the correct balance between upholding public safety and safeguarding individual rights continues to be crucial in India.