

Unabated Plight Of Undertrials In The Criminal Justice System

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Abstract

Under trial and their plight are two interconnected issues which bog down Indian criminal justice system & prison administration simultaneously. Under trials form major chunk of detainees/ prison inmates. Consequentially, scores of other administrative ailments crop up which lead to the core issue of gross violations of human rights. Our dispensation of the justice system consists of the police, courts & prison which form three pillars on which the edifice of justice is founded. The cumulative effect is that there are 430 lakh cases pending in District Courts of India. There are approx. 60 lakh cases pending in High Courts across the country and approx. 69 thousand cases in the Supreme Court thus, there are approx. Human Rights are those cardinal intrinsic and pious rights which are as significant as are the humans themselves. Human Rights as basic rights exist and commence with the moment humans come into existence. The rights are inalienable and exist irrespective of caste, creed, gender, religion etc. Human Rights are liable to be violated by other individuals and institutions. The elaborate and comprehensive declarations and provisions in statutes are of no value in the presence of trivialization of human rights.

Key Words: criminal justice system, criminal law, jail administration, Prisoners rights, rights of undertrials

INTRODUCTION

500 lakh cases across the courts all over the country. The study is aimed to analyze the role of criminal Justice System in preserving, protecting, and promoting Human Rights of under trials. Particularly,

after the independence, the Constitution of India & the related laws provided new impetus in identifying & redefining the rights of prisoners/under trials. The legal entity of under trials prisoners & convicts under criminal laws of Constitution of India, International Covenants, rights derived from judicial pronouncement and their Human Rights perspectives is protected.

GENERAL RIGHTS OF PRISONER

“There are rights which are specifically & intently illustrated in various laws applicable in the country.”¹

- a. appropriate lodging with classification,
- b. availability of healthy environment and medical services,
- c. protection from torture, cruel and degrading punishment,
- d. avoidance of solitary confinement for a prison offence,
- e. access by family members of prisoners,
- f. employment of prisoners and prison wages,
- g. availability of information about prison rules,

IN CONTEXT OF HUMAN RIGHTS STANDARDS

Human Rights once desecrated are liable to put a question mark on fundamental freedom. The existence and progressive continuity of Human Rights speak volumes on the ongoing march of society and human civilization. Human life and dignity, equality & brotherhood are interrelated factual inseparable regardless of their nationality, sex, race, ethnicity, language, or any other such statutes and are available without discrimination. **“Human Rights are the rights relating to life, dignity, and equality of the individual guaranteed by the Constitution of India or embodied in the International Covenants and enforceable by the Courts of Law in India.”²**

The basic minimum standards of Human Rights which every criminal justice system of a democratic set up in a country must align with are enshrined and laid down in “Articles 9 to 12 of the Universal Declaration of Human Rights and Article 10 of the International Covenant on Civil and Political Rights.”^{61,62} The concept of Human Rights has an underlying connectivity to Magna Carta, 1215 AD. **“Magna Carta is deemed to have enumeration of various rights based upon do’s and don’ts and in its strength turned out to be turning point for expounding Human Rights as part and parcel of modern democracy and its onward march.”³**

Before that, it is worth mentioning that the release of slaves by Cyrus the Great in 539 BC was the first incident in history which can be categorized as close to preserving Human Rights of a group of people as first charter of Human Rights. First charter of Human Rights. Petition of Rights, in 1628 followed by United States Declaration of independence, 1776 and Bills of Rights 1791 provided inspiration for conceptualization of first four articles of the Universal Declaration of Human Rights, 1948. Human Rights stands as the most important testimony of modern structuring of democracies and have emerged as fulcrum of democratic justice system. The idea of Human Rights gained currency intensely in after math of World War II in the brutal background of extermination and genocide of massive world population as part of war crimes heaped on mankind. With advent of the United Nations, the call for Human Rights standards became shriller and louder. **“The UN standard rules on the treatment of prisoners also known as Mandela Rules contain so many rules concerning prisoner’s rights which are as follows:”⁴**

- a. separation of categories prisoners,
- b. separate accommodation,
- c. clothing
- d. food,
- e. bedding
- f. hygiene,
- g. Sport,
- h. medical services,
- i. double jeopardy,
- j. prohibition of corporal punishment,
- k. information and complaints,
- l. rights of prisoners to contact their family,

CRIMINAL JUSTICE SYSTEM IN INDIA

The criminal justice system consists of the statutes, the Constitution, different enactments, judgments, Police, judicial pronouncements & jails. The criminal justice system does draw sustenance from the international statutes; conventions held and attended by galaxy of nations & dedicated international bodies passing declarations related to protection and preservations of Human Rights. An effective democracy based Criminal Justice System and existence of Human Rights is complementary to each other. In a colossal system despite watertight provisions and safeguards, the desecration of

Human Rights does take place in multiple forms. Police and the institutionalized administrative set up. There is no denying that the criminal justice system is British legacy which we have embraced. The violations of Human Rights are often identified by national and international organizations including scholars, NGOs, Human Rights activists etc. There is critical match as well as mismatch where the police and prison are often seen involved in Human Rights violations whereas the judiciary at higher level is seen involved in blunting and stopping the same. The atrocities in prison including physical torture, rape and to the extent, deaths have often been reported and found correct practices. The higher Courts are often seen coming out lashing the police administration however it appears that the real spirit of the higher Courts attached in their pronouncements evaporate by the time the same reach the ground particularly in far flung areas of the country. It is obvious that one system inflicts injury: the other puts balm on it. The principal stake holders who are directly /indirectly connected to the violation of natural rights of under trials take place are as under:

a. POLICE

Policing in a democratic society is seen as an upholder of the dignity of the person by protecting rights. However, democracy gets threatened when the police cease to respect the legal and constitutional rights of the citizens and persistently disregard the due process of law. It is often seen that when the complainant approaches the Police Station, he is treated with suspicion and apathy; similarly, when the complaint is registered wrongly, the Police ill-treats the person against whom the complaint is registered and starts treating him as criminal without investigating. Though it is mentioned time and again that physical punishment to prisoners is not permitted but the practice of third-degree treatment continues till this date and though known but all revered institutions tacitly watch and accept the practice.

b. COURTS

Though the Court can play pivotal role as the last bastion for dispensing justice and also in controlling law enforcing agencies but due to reasons the Courts have opted for picking up limited threads thus leaving larger playing field to Police. The Criminal Justice System is based on the two golden rules of criminal law which are as under:

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- i. There is presumption of innocence, and ten guilty may go free but not even one innocent person should suffer.
- ii. With passage of time, moral and ethical corrosion have occurred due to that, evidence infrastructure which is the backbone of criminal justice system has started facing strain.

c. PRISONS

Prison is a state subject as per entry 4 of list II, seventh schedule of the Constitution of India. The abysmal and substandard conditions in Indian prisons are a question mark on the Human Rights as preached from the high pedestal's world over. Indian Prison are supposed and described to be living inferno; the visits of Justice of the Supreme Court to certain earmarked prisons have brought out sordid and naked truth regarding the inhuman conditions. The prison administration has remained away from public glare and has been found insensitive to human needs and sustenance.

d. STATE

State is the ultimate protector of Human Rights. However, the State is found overindulged in violation of Human Rights. The state rules the Executive and runs its writ all over the country. It is true that many a times the organs of criminal justice system instead of interacting & entwining with each other counteract with one another. The Apex Court representing the entire legal system with legal traditions and laws has proven to be custodian and developer of the human right jurisprudence in our country. The torture and indiscriminate incarceration of accused & Under trial for long duration does haunt. The issue of compromise of Human Rights of under trials during their being in process of criminal justice system chills the spine whenever the skeleton have tumbled out of skeletons from time to time in natural course, due to public consciousness or due to intervention of judicial bodies. The time-to-time judicial intervention in redefining and re-evaluating Human Rights and approaches introduced a significant change in overall responsiveness and sensitivity of the criminal justice system.

MAJOR PROBLEMS OF PRISON SYSTEMS WHICH WERE REALIZED AFTER FORMAL & INFORMAL INTERACTION WITH STAKE HOLDERS

a. Occupancy in Prison / Overcrowding Congestion in jails, particularly among undertrials, has been a source of concern. Prison overcrowding is worldwide phenomenon to include developed countries. The major reason for overcrowding & lack of accommodation is the unattended population of under trials who continue incarcerated due to lack of legal processes implemented in their respective cases, inadequate financial means not enough for personal bond & legal lingering on. Long legal trial overshadows available prison accommodation. Lack of accommodation causes overcrowding which has its adverse implications on the mental & physical health & wellbeing of prisoners. The provision for classification & segregation of prisoners is long term factor for carrying out correctional impact on prisoners. **“The prisoners are categorized & accordingly placed in different slots based upon age, sex, mental health, nature of offence, whether habitual or a casual prisoner. Female prisoners are segregated and housed in separate areas viz., female blocks. Old, aged prisoners are kept separately to get special attention. Convicted prisoners are separated from trials. Prisoners affected by contagious diseases are segregated and housed in separate blocks ear marked for the purpose. Hardcore criminals are lodged in high security blocks. All the convicted criminal prisoners are broadly classified as “A” class such as casuals and “B” class such as habitual. Rule 8, 57, 63(1), 63(2), 67 & 68 of the Standard Minimum Rules for the Treatment of Prisoners define the classification of prisoners.”⁵** Rule 57 mentions that imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Rule 63(1) ensures that the fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups. Rule 63(2) provides that these institutions need not provide the same degree of security for every group. Rule 67 states that the purposes of classification shall be:

(i) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence.

(ii) To divide the prisoners into classes to facilitate their treatment with a view to their social rehabilitation. Rule 68 makes it mandatory that so far as possible separate institutions or separate

sections of an institution shall be used for the treatment of the different classes of prisoners. As per Section 27 of the Prisons Act, 1894, the females are separated from other prisoners. Unconvicted criminals are separated from convicted criminals; civil prisoners are separated from criminal prisoners.

The occupancy rate in prisons climbed to 118.5% in 2019. Moreover, a very large sum of the budget is used for the maintenance of prisons. In March 2020, as COVID-19 spread its wings & created ripples against life & health. The Supreme Court suo motu ordered every state government to initiate measures to decongest their respective state prisons. The Supreme Court (SC) of India ordered the interim release of eligible prisoners in view of the uncontrolled second surge in the raging Covid-19 pandemic. The Court's order aimed to decongest jails and a measure that protects the right to life and health of the prisoners. An order of such consequence and subsequent measures taken by state governments should have ideally ended up decreasing prison congestion in 2020. On the contrary, **"the prison population has dramatically increased and as of July 17, over 6, 22,585 prisoners are crammed in the same space meant for 4, 03,739 people in 1,378 prisons. This means the prison occupancy rate in the country is over 155%. According to the National Crime Bureau's data, available until 2020, "the national prison occupancy rate has mostly oscillated between 115% and 118%. Similarly, Uttar Pradesh, notorious for contributing close to one-fourth of the total prison population, with an occupancy rate of 167.9% (1, 01,297 prisoners lodged in its 72 prisons meant for 60,340), today has 119,958 prisoners."**⁶ This means the occupancy rate has further risen to 198.8%. "A total of 2/ 3 population of jail inmates consists only of the under trials. The statistics released, Prison Statistics of India (PSI), 2020 published by National Crime Records Bureau (NCRB) between December 2019 and December 2020, prison occupancy reduced marginally from 120% to 118%. In absolute numbers, in December 2020, there were 7,124 more people in jail than in December 2019. The increase in the share of under-trials in prisons was at an all-time high. PSI 2020 puts the percentage at 76% in December 2020: An increase from the earlier 69% in December 2019. The appalling figures come from Uttar Pradesh, which had tragic occupancy rates of 177% respectively (December 2020). "The score of undertrial prisoners has increased from 3,71,848 in 2020 to 4,27,165 in 2021 (as on 31st December of

each year) with an overall increase of 14.9%. Uttar Pradesh has reported the highest capacity in their jails with 63,751 inmates -15 % of total inmates all over the country. The state has 1,17,789 prisoners in jails consisting of 21.3 % of total inmates.” Recently, the National Crime Records Bureau 2021 released comprehensive statistical information on various aspects of prison administration in India. As per this report, as of 2021, **“5, 54,034 Lakh inmates were lodged in prisons across the country while the actual capacity of the prisons was only 4, 25,609. The occupancy rate of prisons in India is calculated as the percentage of the ratio of inmate population to total capacity in prisons. An occupancy ratio of more than 100% implies that the prisons are overcrowded and if it is below 100%, it means that the prisons are not yet filled to their capacity. The occupancy ratio of prisons in India was 130.2% at the end of 2021. The occupancy ratio of males in prisons was 122% while that of women was only 71.9%,”** clearly indicating that overcrowding is an acute problem for male prisoners.

b. Corruption: Corruption by prison staff, and its less aggressive corollary, guard corruption, is common in prisons.

c. Unhealthy Living Conditions: The overcrowding in prisons leads to unsatisfactory living conditions.

d. Staff Shortage and Inadequate Training

e. Unequal treatment: Special privileges are accorded to the minority of the prisoners who came from the upper and middle classes, irrespective of the crimes they have committed or the way they comfort themselves in prison.

f. Inadequate prison Program: Hardly any of the prisons have well-planned prison programs providing daily structured activities, vocational training, pre-discharge guidance, and post-prison monitoring.

g. Insufficient Legal Aid: The lack of good and efficient lawyers on the legal aid panels is a concern.

h. Abuse of Prisoners: Physical abuse of prisoners by the guards is another chronic problem in the prisons of India.

i. **Custodial Tortures /Deaths:** The torture brutal physical treatment in custody by police officials is another major problem of jails in India.

SENTENCES & INCARCERATION

6.“Among 4,27,165 undertrial prisoners, around 70.9% of prisoners were confined for periods up to 1 year (3,02,917 prisoners), as on 31st December 2021. Out of this, the greatest number of undertrial prisoners (1,46,074 prisoners) were confined for up to 3 months accounting for 48.2%. This is followed by 86,525 undertrial prisoners who were confined for 3-6 months and 70,318 undertrial prisoners who were confined for 6-12 months. However, there were only 32,492 undertrial prisoners (7.6% of total Undertrials) confined for 2 to 3 years and 24,033 undertrial prisoners (5.6% of total Undertrials) confined for 3 to 5 years as on 31st December 2021. Also, there were 11,490 undertrial prisoners (accounting for 2.7% of total undertrial prisoners) who were confined for more than 5 years.”⁸

OBSERVATIONS MADE BY THE SUPREME COURT IN MAY 2021: KEY OBSERVATIONS:

7.The Supreme Court realized the requirement of following norms which were prescribed in **Arnesh Kumar vs State of Bihar (2014)** case. The order says that “the arrest should not be made as routine affair in offences which are of cognizable nature & so invite non bailable provisions. If arrest is made the justification for arrest needs to be mentioned with reasons.”⁹ Based upon law commission report 177 th , “Section 41(1)(b) was enacted which provides recording of reason for arrest of the person who has committed the offence punishable for seven years”.¹⁰ Authorities in all districts in the country to give effect to Section 436A of the Code of Criminal Procedure (CrPC). Under Section 436A, CrPC, the undertrials who have completed half of the maximum prison term prescribed for the offence may be released on personal bond.

8. PRISON REFORMS RECOMMENDED BY JUSTICE AMITAVA ROY

- a. To Curb Over Crowding
- i. Quick ness in disposal of cases
- b. Specially constituted Court
- i. Special Courts need to be constituted to deal with petty offences.

- c. Acceptance of Personal Recognizance Bond,
- d. Adjournment to be rarely Practiced,
- e. Discretionary Powers of the Courts in awarding sentences other than sending to jails,
- f. Use of virtual Proceedings,
- g. Guaranteed legal aid with supportive vocational training,
- h. Provisions of Section 167 of the CrPC for the time limit for police investigation in case of accused undertrial prisoners,
- i. In 2017, the 21st Law Commission of India had recommended that undertrials who underwent a third of their maximum sentence for offences which provided up to seven years of imprisonment be released on bail,
- j. All Police & court activities to respect the provisions of Article 21 of the Constitution of India.

FROM THE LENS OF ARTICLE 14, 19 & 21 OF CONSTITUTION OF INDIA

The Apex Court of India has enormously extended the ambit of Art. 21 and has enunciated the desire to extend protective umbrella around the Fundamental Rights of the under trials. The rights to human dignity are enlarged & defined by the Supreme Court through various pronouncements. The status of Human Rights is high under the Constitution of India which makes provision for Fundamental Rights and empowers the Apex court. Earlier, the prison was termed regressive & antithesis to personal liberty & democratic norms. With passage of time, as the unfolding of new vistas & windows occurred under the large umbrella of democracy, it became settled understanding that the Fundamental Rights cannot be snatched away from the prisoners/under trials. Art. 14, 19 & 21 are pillars enshrining & echoing basic rights of prisoners/under trials. In determining the rights of prisoners, the Judiciary has ushered in a new and maiden approach of analyzing and defining Art. 21 and associated Fundamental Rights. Article 21 covering the right of personal liberty has been elaborately balanced and enveloped by inclusive interpretation of Human Rights maintaining human dignity and stopping and checkmating cruelty, inhuman & ignominious treatment against prisoners. The Apex Court, by means of interpretation of Article 21 and judicial pronouncements has literally developed human right jurisprudence which emphasizes upon fair trial, human conditions and due process of law while tackling with prisoners. The Apex

Court representing the entire legal system with legal traditions and laws has proven to be custodian and developer of the human right jurisprudence in our country by providing expansion to Art. 21 of Constitution of India. The Supreme Court, being Apex Court heading Judiciary as one of the independent branches of three main constituents containing separation of powers. The Apex Court has adopted a very conscientious & involved role in protecting the rights of prisoners and maintaining the dignity of under trials. The deplorable conditions of prisoners have become one of the agendas for the Apex Court to address. Human Rights jurisprudence has taken shape & form due to cardinal judicial decisions. Maneka Gandhi, Sunil Batra (I), M.H.Hoskot and Hussainara Khatoon in their times have provided widest, lengthiest interpretation to provisions of part III of Constitution of India . Article 21 of Constitution of India lays down the 'theory of procedure established by law'. The Apex Court ruled that Article 19 & its notion of reasonable restrictions are linked with Article 21 thus "procedure to deprive a person of his life & personal liberty has to be reasonable, fair & just else shall stand ultra vires". The meaning & understanding of Article 21 of Constitution of India has provided new leash of life & hope to under trial prisoners who were always more than the actual convicts. Out of all Fundamental Rights, two most happening Articles connected and affecting to the under trials are Article 14 and Article 21 in our Constitution. Article 21 is used to include the Right to Life and Right to live with Dignity. The Supreme Court devised a unique relationship between Article 21 and Article 14 of our sacred Constitution of India and opined in Maneka Gandhi case that "from a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. That the procedure cannot be arbitrary, unfair, and unreasonable". In the following cases namely Maneka Gandhi, Sunil Batra (I), and Hussainara Khatoon, the Supreme Court has taken the view that the provisions of Part III of Constitution of India need to be expanded to read deepest & widest meaning & interpretation. Over a period, due to constant judicial activism, the Supreme Court has added various facets of rights as intrinsic parts of Article 21 of Constitution of India. The Supreme Court of India has been sensitive and humane always towards Human Rights of the prisoners. Under the Seventh Schedule of the Constitution of India, the State is custodian of prison administration and law and order. The twin Articles and their elaboration by the Apex Court has opened new vistas of opening and hope to under trials. The

judiciary has been conscious of the Human Rights violation of the prisoners and under trials. A mention is necessarily to be made in the diary at the place of detention in connection with the arrest along with all relevant details of the friend and the Police officials who took custody. The Supreme Court has made it explicit several times through various proclamations that any form of torture or degrading treatment is violative of Article 21 of the Constitution. The saving of prisoner from physical & mental inflict does mean applying Right to life & personal liberty. The Right to Life and Personal Liberty enshrined in Article 21 is not living in vegetative state or breathing like an animal. The terms “life” under Article 21 covers the living condition prevailing in jails. **“it becomes necessary to permit the pressmen as friends of the society and public spirited citizens access to information as also interviews with prisoners.”**¹¹ As the horizon of Human Rights is increasing, in its fold comes “the right to be informed & consulted with a lawyer.”¹² Justice delayed is justice denied. Speedy trial is prerequisite to overcome the deadly menace of overcrowding of under trials in Indian Jails. The trial is not asked for without merit, but it is desired that the case be ended based on merit, with due cognizance but surely to conclusion. The Apex Court has held in cases after cases that the right to speedy trial flowing from article 21 of the Constitution is available to accused at all stages of trial & retrial if so happens & thereafter in stages of appeals. On the other hand, “proponents of the Right want us to go a step forward and prescribe a time limit beyond which no criminal proceeding should be allowed to go on. Without such a limit, they say, the right remains a mere illusion and a platitude.”¹³

9. The Under trials/ Prisoners are primarily humans. By merely going behind bars, they do not become less human or stop to be humans. The Constitutional Courts have reiterated that under trials must be made available with right human conditions & environment to develop with rehabilitative aptitude. The Higher courts have developed human right jurisprudence by interpreting art 14,19,21,22,32,27 and 39 A of the constitution. There are articles 14, 20, 21 & 32 in Constitution of India which have protected & kept oxygenating life force to criminal justice system. Article 12 of Constitution of India protects these Fundamental Rights of citizens against the state. Article 14 of Constitution of India provides “Equality before the law” & ‘Equal opportunity of the Law’. Article 20 of Constitution of India stipulates that, no act

can be made an offence by enacting legislation with retrospective effect and person can be prosecuted for offence for more than once. Article 32 provides constitutional remedies for enforcement of Fundamental Rights. The SC is empowered to issue directions/ orders/ writs for enforcement of rights. The Judiciary is maintaining vigilante role in matters pertaining to Human Rights violation and sees to it that the prisoners/under trials are not deprived of their fundamental status beyond a critical limit as sanctioned in law and their Human Rights are taken care of. Poor & under privileged don't go to jail because he was found guilty, but he stays in jail many times because he is poor. A robust Criminal Justice System carries several provisions based on the principles of equality and liberty to include the interests of under trials as well. Bail is right and jail is the exception. In matters of petty offences and for crimes where punishment is less than 7 years, the right to seek bail is inherent provided the accused furnishes the bail. Somewhere the procedure of bail is linked to financials and social standing. The poor of this nation is the last refugee to suffer by our legal system. Pre-trial detention is avoidable and unnecessary routine arrests by police, delay in trial, reluctance of the Courts to grant bail, unavailability of surety are some reasons for prolonged stay of prisoners inside the jails. Justice VR Krishna Iyer had quoted William Blake saying that **"Prisons are built with the stones of law"**. Prisoners have full freedom to enjoy Fundamental Rights as enshrined in Constitution of India of course with subject to reasonable restrictions of Constitution & prison laws. "Prisoner remains a person in Person.

The apex Court in India has pronounced various observations and strictures which stand as guidelines in regard to matters like as under: The right to Physical protection in case of **DBM Patnaik Vs State of Andhra Pradesh**, behoves the Court to insist that, **"Prison houses are part of the Constitution of India cannot be held at bay by jail officials 'dressed in a little, brief authority.'"**¹⁸² **"The convict needs to be treated with dignity and basic rights mentioned under Article 19 & 31."**¹⁴

The Supreme Court has explained the need of hand cuffing several times. Through Public Interest Litigation, the issue of constitutional validity of the "hand cuffing culture" in the light of Article 21 of the Constitution has been covered several times. There is little doubt that barbarities like bar betters and handcuffs were recklessly being practiced either on account of ignorant unconscionableness

or willful viciousness in several detention camps. Many of the victims are poor, mute, illiterate, desperate, and destitute and too distant from the law to be aware of their rights or ask for access to justice. However, this laudable objective of speedy trial is frustrating for various reasons.

The Court observed that it is stipulated that a legal counsel may be earmarked as per Article 142 read with Articles 21 and 39 A of the Constitution of India to imprisoned individual for doing complete justice. The very cardinal idea behind granting free legal aid scheme is to balance out principle of equality before law. If the free legal aid is not guaranteed to financially deprived citizens, the principles related to freedom and Human Rights enshrined in Constitution of India and International statutes shall stand hollow. Parliament has enacted the legal services authorities Act 1987 under which the Government has established legal aid and an Advice Board. A Supreme Court Bench observed that the Government was under obligations to provide legal aid to accused if financial constraints exist as per the provisions stipulated in article 21, 39-A along with Article 142 & Section 304 CrPC. Maneka Gandhi vs. Union of India proved to be a catalyst case. A three judges Bench reading Articles 21 and 39-A, along with Article 142 and section 304 of Cr.PC together, declared that "the Government was under duty to provide legal services to the accused persons."¹⁵

In their 85-page order on July 11, 2022 Justices S K Kaul and M M Sundresh pointed out that **"Our endeavor in this judgement is to ensure that police officers do not arrest the accused unnecessarily and magistrates do not authorize detention casually and mechanically. We ... call on the Government of India to consider the introduction of an Act specifically meant for granting of bail as done in various other countries like the United Kingdom."**¹⁶

CONCLUSION

On Nov 26, 2022, President Draupadi Murmu on Saturday said the legislature, the executive and the judiciary need to have "one thinking" for the country and its people. In her valedictory address at the Constitution Day celebrations organized by the Supreme Court here, she suggested decongesting jails by helping poor people languishing there for years for petty crimes. "It is said that jails are getting overcrowded and there is a need to set up more

jails days that we will have to make new prisons because prisons are overcrowded. Are we moving towards development/progress? What is the need to set up more jails? We need to reduce their numbers," Draupadi Murmu commented over the increasing number of undertrials in India while speaking at the valedictory session of the Law Day celebrations organized by the Supreme Court. The period of remand and pre conviction detention should be minimum. The deprivation, denial &, despondency & disturbance to an under trial resulting from delayed & extended investigation is avoidable. "The mental agony, expense, and strain which a person proceeded against in criminal law must undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself. The same has persuaded the Constitutional Courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. The Supreme Court has suggested the Government to consider incorporation of Bail Act. If one must monitor the system. Proper supervision of the process is required from stage of remand to stage to award of punishment. Increasing the number of judges is one directional suggestion but in fact, that is not the long-term solution. That there is requirement of removing deeper malaise which revolves around pre trial investigation process which may take away almost 77% under trials out of the captivity.

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