Chapter 06
Human Rights of Undertrial Prisoners

6.0 Introduction

In this chapter, an attempt has been made to study human rights aspects of undertrial prisoners. Undertrial prisoners are those persons who are facing trials in the competent courts. They are technically under judicial custody but for all practical purposes are kept in the same prison especially in India. In many countries there are separate institutions for undertrials. Delay in trial of cases is the main human rights issue of undertrials. The purpose of keeping undertrials in the custody is to ensure fair trial so that they cannot be in a position to influence or induce the witnesses. In the Indian Prisons, undertrials constitute more than 65 percent of the prison population. As per reports of National Crime Record Bureau, the percentage of undertrials in the Indian Prisons varies from 65 to 70 percent which is a major indicator of gross violation of human rights. This chapter focuses on the causes and consequences of increasing number of undertrials and human rights issues connected with it. It also suggests remedies to reduce the number of undertrial prisoners as well as to protect the rights of undertrials. In the sample of this study, two-third of the respondents (200) belong to undertrial category and part C of the interview schedule comprises specific issues connected with the undertrials.

6.1 Theoretical Aspect

The National Human Rights Commission has analysed the Prison Population as on 30 June 2003 and expressed dissatisfaction over the increasing number of undertrials. Undertrial prisoners constituted 72.78 percent of the total prison population in the country which shows a marginal drop of 1.28 percent from the figure of 74.06 percent as on 30 June 2002. Eight States/UTs had undertrial prisoners numbering more than 80 percent of the total prison population. These were: Dadar & Nagar Haveli (100 percent), Meghalaya (95.17 percent), Manipur (91.43 percent), J&K (90.99 percent), Bihar (86.11 percent), UP (85.07 percent), Delhi (81.13 percent) and West Bengal (80.72 percent). Chhattisgarh, Sikkim and Andaman and Nicobar
had less than 50 percent undertrial prisoners. Among the major States, MP (56.99 percent), Rajasthan (55.89 percent) and Himachal Pradesh (53.40 percent) are seen to be making efforts to reduce the proportion of undertrials in jails.¹

Undertrials in the Indian Prisons are kept in the same jail where the convicted prisoners are kept. However, it has been made compulsory for the prison officers to provide separate accommodation for the undertrials. The Model Prison Manual advocates that no convicted prisoner shall be kept in the same area in which undertrial prisoners are kept, or be allowed to have contact with undertrial prisoners. No convicted prisoner shall be allowed to enter the undertrial yard or block.²

The then Chief Justice of the Supreme Court of India, Justice YK Sabharwal pointing fingers at the judicial delay said that there are 1.62 crore cases pending across the country of which 1.18 crore are in magisterial courts. While everybody knows that justice delayed is justice denied, no practicable solution has been used to get us back on track, he said.³

A large number of prisoners lying in the jails without sentence have posed a big challenge to the prison management. There are following grounds for keeping an undertrial in jail:

a. In case of heinous and grave offences
b. If the accused is likely to interfere with witness or impede the course of justice
c. If the accused is likely to commit the same or other offences
d. If the accused may fail to appear for trial.⁴

Standard Minimum Rules⁵ giving special status to the undertrials rule that unconvicted prisoners are presumed to be innocent and shall be treated as such. Body of Principles⁶ has also laid stress on the treatment of undertrials and says that a

---

¹ National Human Rights Commission of India, Annual Report 2004-05, Para 4.70
² Model Prison Manual (2003), BPR & D, New Delhi, Para 22.45
³ www.dnaindia.com, 30 July 2006
⁴ Lalli, Upneet: Problem of Overcrowding in Indian Prisons – A study of undertrials as one of the factors, Institute of Correctional Administration, Chandigarh, 2000, p.1
⁶ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UNO, 1988, Principle 36
detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Justice K. Ramaswamy, Member of National Human Rights Commission of India has commented upon the plight of undertrial prisoners in a letter to Chief Justices of High Courts. It is common knowledge that it is the poor, the disadvantaged and the neglected segments of the society who are unable to either furnish the bonds for release or are not aware of the provisions to avail of judicial remedy of seeking a bail and its grant by the court. Needless or prolonged detention not only violates the right to liberty guaranteed to every citizen, but also amounts to blatant denial of human right of freedom of movement to these vulnerable segments of the society who need the protection, care and consideration of law and criminal justice dispensation system.\textsuperscript{7}

\textit{Punjab State Policy on Prisons} has special mention of the undertrials and it says that the State shall endeavour to evolve proper mechanism to ensure that no undertrial prisoner is unnecessarily detained. This object shall be achieved by speeding up trials, simplifying of bail procedures and by periodic review of cases of undertrial prisoners.\textsuperscript{8}

However, in practice, it has been realised that the treatment of undertrials in the jails is not satisfactory and their human rights are violated. Human rights issues connected with the undertrials have been analysed in detail. The focus of analysis is upon the following human right aspects:

i) Undertrials are mostly lodged with the convicts in the same institution
ii) Number of adjournments more than necessary
iii) Delay in the trial of cases

\textsuperscript{7} National Human Rights Commission of India, copy of letter, 22 December 1999
\textsuperscript{8} Manual for the Superintendence and Management of the Prisons in Punjab, 1996, Para 4(iii)
iv) Prolonged detention  
v) Actual confinement more than the pronounced sentence  
vi) Acquittal after confinement  
vii) Vexatious Arrests

6.2 Analysis of Undertrials’ Population and Related Human Rights Issues

On the basis of data available on the population of prisoners in India, it can be easily concluded that undertrials constituted 69.2 percent of the total prison population in 2002 which slightly went down to 66.6 percent in 2003 and 65.5 percent in 2004. In 2005, the percentage of undertrials was 66.2 and in 2006 it was 65.7. On the whole, undertrial population has outweighed the convict population in Indian Prisons and was above 65 percent from 2002 to 2006 as shown in Table 6.1 and Figure 6.1.

Table 6.1  
Distribution of Undertrial Prisoners from 2002 to 2006 in India

<table>
<thead>
<tr>
<th>Year</th>
<th>Prison Population</th>
<th>Number of undertrials</th>
<th>Percentage of undertrials</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>3,22,357</td>
<td>2,23,038</td>
<td>69.2</td>
</tr>
<tr>
<td>2003</td>
<td>3,26,519</td>
<td>2,17,658</td>
<td>66.6</td>
</tr>
<tr>
<td>2004</td>
<td>3,31,391</td>
<td>2,17,130</td>
<td>65.5</td>
</tr>
<tr>
<td>2005</td>
<td>3,58,368</td>
<td>2,37,239</td>
<td>66.2</td>
</tr>
<tr>
<td>2006</td>
<td>3,73,271</td>
<td>2,45,244</td>
<td>65.7</td>
</tr>
</tbody>
</table>

Source: National Crime Records Bureau, India (Annual Reports, 2002 to 2006)

Figure 6.1  
Distribution of Undertrial Prisoners from 2002 to 2006 in India
In this context, the population of undertrials of Tihar Jail, New Delhi has been analysed as per data received from the office of the DIG Tihar Jail. As given in the Table 6.2, undertrials constitute 81 percent of the total population in 2006 which is a very high percentage of undertrials in the Indian Jails.

Table 6.2
Undertrials’ Population in Tihar Jail as on 18 October 2006

<table>
<thead>
<tr>
<th>Jail No.</th>
<th>UT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1623</td>
<td>1827</td>
</tr>
<tr>
<td>2</td>
<td>11</td>
<td>1253</td>
</tr>
<tr>
<td>3</td>
<td>1800</td>
<td>2062</td>
</tr>
<tr>
<td>4</td>
<td>1716</td>
<td>1950</td>
</tr>
<tr>
<td>5</td>
<td>1721</td>
<td>1884</td>
</tr>
<tr>
<td>6 (Female)</td>
<td>398</td>
<td>500</td>
</tr>
<tr>
<td>7</td>
<td>572</td>
<td>642</td>
</tr>
<tr>
<td>8</td>
<td>840</td>
<td>917</td>
</tr>
<tr>
<td>9</td>
<td>911</td>
<td>976</td>
</tr>
<tr>
<td>D.J. (Rohini)</td>
<td>1564</td>
<td>1761</td>
</tr>
<tr>
<td>Grand Total</td>
<td>11156</td>
<td>13772</td>
</tr>
</tbody>
</table>

In the context of Amritsar Central Jail, data was collected in terms of undertrials from 2003 to 2008. Table 6.3 shows that the undertrials constitute about two-third (65.9 percent) of the prison population in 2003, which came down to 58.1 percent in 2004. In the year 2005 and 2006 it remained upto 60.5 percent. With a slight increase in 2007(61.5 percent) it increased to 67.7 percent in 2008 which is more or less similar to the national percentage of undertrials. On the basis of this analysis, it is concluded that undertrials dominate in the total Prison Population in Amritsar Central Jail. This increasing trend of undertrials leads to overcrowding and poses threat to general living conditions of the prisoners. It also puts prison officials in a vulnerable position to initiate reformatory activities. It reflects slow pace of judicial process and it’s a correct indicator of violation of human rights of undertrials in the prison.
Table 6.3
Distribution of Undertrial Prisoners from 2003 to 2008 in Amritsar Central Jail

<table>
<thead>
<tr>
<th>Year*</th>
<th>Total Prison Population</th>
<th>Undertrials</th>
<th>Percentage of undertrials</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>1793</td>
<td>1183</td>
<td>65.9%</td>
</tr>
<tr>
<td>2004</td>
<td>2005</td>
<td>1164</td>
<td>58.1%</td>
</tr>
<tr>
<td>2005</td>
<td>2027</td>
<td>1228</td>
<td>60.5%</td>
</tr>
<tr>
<td>2006</td>
<td>2136</td>
<td>1293</td>
<td>60.5%</td>
</tr>
<tr>
<td>2007</td>
<td>2134</td>
<td>1305</td>
<td>61.15%</td>
</tr>
<tr>
<td>2008</td>
<td>2316</td>
<td>1570</td>
<td>67.7%</td>
</tr>
</tbody>
</table>

*Indicates average data of January each year
Source: Office of the Superintendent, Central Jail Amritsar

The composition of prisoners in India with 65.5 percent of undertrial population is cause of concern because it necessitates custody of very high number of persons who ultimately get acquitted\(^\text{9}\). The comparable component of undertrial prisoners in some countries as in 2004 has been shown in Table 6.4 and Figure 6.2:

Table 6.4
Percentage of Undertrial Prisoners in Foreign Countries as in 2004\(^\text{10}\)

<table>
<thead>
<tr>
<th>S.N.</th>
<th>Country</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>U.K.</td>
<td>17.5</td>
</tr>
<tr>
<td>2.</td>
<td>USA</td>
<td>20.2</td>
</tr>
<tr>
<td>3.</td>
<td>Columbia</td>
<td>43.2</td>
</tr>
<tr>
<td>4.</td>
<td>Luxembourg</td>
<td>45.9</td>
</tr>
<tr>
<td>5.</td>
<td>Nigeria</td>
<td>64.3</td>
</tr>
<tr>
<td>6.</td>
<td>India</td>
<td>65.5</td>
</tr>
</tbody>
</table>

\(^\text{10}\) ibid.
Table 6.4 shows that the percentage of undertrials in India is far more than the UK (17.5) and the USA (20.2). Even the countries like Columbia and Luxemburg have less than 50 percent of undertrials. The system of date bound trial is very successful in these countries which send lower number of undertrials to the prisons and that is why reformative activities are successfully implemented there.

![Figure 6.2](image)

**Percentage of Undertrial Prisoners in Foreign Countries as in 2004**

6.3 Treatment of Undertrials

As mentioned above, undertrials in the Indian jails are kept in the same prison and they are treated as convicts in practice which amounts to a gross violation of human rights. Punjab jails are no exception contrary to the provisions of *Punjab State Policy on Prisons* which lays emphasis upon separate institutions for undertrial prisoners. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment clarifies that “persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.”

Standard Minimum Rules has elaborated the rights of untried (undertrial) prisoners in regard to their treatment. It clearly says that untried prisoners shall be

---

11 Supra Note 8, Para 4(iii)
12 Supra Note 6, Principle 8
kept separate from convicted prisoners. The other provisions of *Standard Minimum Rules* regarding undertrials treatment may be summarised as follows:

“Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food. An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable. If he wears prison dress, it shall be different from that supplied to convicted prisoners.

An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.”

---

13 *Supra Note 5, Rules 85-92*
Similar provisions have been made in the *Punjab Jail Manual*\(^{14}\) on the lines of *Standard Minimum Rules*. However, there is a considerable gap between theory and practice. Majority of undertrial respondents (87 percent) have expressed dissatisfaction over treatment and this has surprisingly been endorsed by the Prison officials. The officials find it difficult to manage the prisons and to initiate reformatory activities.

### 6.4 Delay in Trial of Cases: a Major Human Rights Issue

Because of delay in the trial of the cases, the undertrials have to spend a considerable period of time in the prisons. Concerned over the time taken by courts in deciding cases, the then President of India Dr. A.P.J. Abdul Kalam suggested that a study be conducted to examine the judicial delays. Inaugurating a two-day seminar on narcotic drugs and psychotropic substances on March 26, 2006, Dr. Kalam stressed upon the need to speed up the judicial process with minimum adjournments. He further told that it may be useful to conduct a case study of hundred cases to examine the number of adjournments and the duration it has taken to settle the case on an average. The study may also throw a light on how to speed up the judicial process.\(^{15}\)

As informed by the then Minister of Law and Justice Mr. H. R. Bhardwaj to the Parliament (30 November, 2007) unsatisfactory appointment of judges, unsatisfactory selection of government counsels, imperfect legislation, indiscriminate closure of courts, granting of unnecessary adjournments and additional burden on courts due to election petitions were also adding to case backlog in courts besides shortage of judges.\(^{16}\)

There are examples of quick disposal of certain cases by the courts. A court of Rohtas in Bihar, established an astonishing precedent for delivering expeditious justice when it sentenced two rapists to seven years in jail at the end of a two-day trial. The trial set the record for the shortest judicial proceeding in India. Sessions Judge Arun Kumar Srivastava began the trial on July 25 and sent the accused to jail on July 27 in 2006. In June 2005, a Jodhpur court sentenced the rapists of a German

---

\(^{14}\) *Supra Note 8, Para713-733*

\(^{15}\) *The Tribune*, 27 March 2006

\(^{16}\) *Indiainfo.com/2007*
tourist within 20 days of the crime. In April 2006, a Jaipur court sentenced a rapist of a German student within a week.\textsuperscript{17}

Table 6.5 shows that 64.1 percent inmates of the total undertrials were detained in the custody upto six months in India as per data collected for the end of 2006 whereas the corresponding figure in Punjab was 62.8 percent slightly lower than that of India. The percentage of inmates detained under judicial custody from six months to one year was 17.4 in India and 13.4 percent in Punjab which was 4 percent less than the Indian percentage. 11 percent undertrials were detained for one year to two years in India and 7.3 percent in Punjab. However 6.9 percent undertrials were detained in Punjab for 2 years to 3 years which was 2.3 percent more than the Indian percentage.

Similarly 5.5 percent undertrials were detained for the period of 3 to 5 years in Punjab approximately double than that of Indian percentage (2.3). The percentage of undertrials detained for more than 5 years was 3.9 percent in Punjab which was far more than Indian percentage (0.6). On the whole, 16.3 percent undertrials were detained in judicial custody for more than 2 years in Punjab which was more than the double of Indian percentage (7.5). (Also see Figure 6.3)

<table>
<thead>
<tr>
<th>Period</th>
<th>Percentage of India</th>
<th>Percentage of Punjab</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto Six months</td>
<td>64.1</td>
<td>62.8</td>
</tr>
<tr>
<td>Six months to one year</td>
<td>17.4</td>
<td>13.6</td>
</tr>
<tr>
<td>One year to 2 years</td>
<td>11.0</td>
<td>7.3</td>
</tr>
<tr>
<td>2 years to 3 years</td>
<td>4.6</td>
<td>6.9</td>
</tr>
<tr>
<td>3 years to 5 years</td>
<td>2.3</td>
<td>5.5</td>
</tr>
<tr>
<td>Above 5 years</td>
<td>0.6</td>
<td>3.9</td>
</tr>
</tbody>
</table>


\textsuperscript{17} dna.india.com, July 31, 2006
Table 6.6 throws light on the actual situation regarding period of detention of undertrials in Amritsar Central Jail. Out of total 2313 inmates on 11 September 2006, the number of undertrials was 1495. Out of which 1033 (69.1 percent) were released within six months of judicial custody whereas 186 undertrials (12.4 percent) were released between six months to one year. The number of undertrials in judicial custody from one year to two years was 171 (11.4 percent) and from 2 years to 3 years 70 (4.7 percent). 30 undertrials (2.0 percent) were detained in judicial custody for 3 years to 5 years and the number of undertrials detained for 5 years or more was 5 (0.4 percent).

About 7 percent undertrials were detained in judicial custody for 2 years and more which was almost similar to Indian percentage (7.5). However it is much less than Punjab percentage (16.3). At the same time the percentage of undertrials released within 6 months (69.1 percent) in Amritsar Central Jail is considerably more than Punjab (62.8 percent) as well as of India (64.1 percent) which is a matter of satisfaction as revealed by the Prison authorities. This is because of proactive measures adopted by the prison authorities in association with District Legal Services Authority headed by District & Sessions Judge.
Table 6.6
Distribution of Undertrial Prisoners by Period of Detention as on 11 September 2006 in Amritsar Central Jail

<table>
<thead>
<tr>
<th>Period</th>
<th>Number of undertrials</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto Six months</td>
<td>1033</td>
<td>69.1</td>
</tr>
<tr>
<td>Six months to one year</td>
<td>186</td>
<td>12.4</td>
</tr>
<tr>
<td>One year to 2 years</td>
<td>171</td>
<td>11.4</td>
</tr>
<tr>
<td>2 years to 3 years</td>
<td>70</td>
<td>4.7</td>
</tr>
<tr>
<td>3 years to 5 years</td>
<td>30</td>
<td>2.0</td>
</tr>
<tr>
<td>Above 5 years</td>
<td>5</td>
<td>0.4</td>
</tr>
<tr>
<td>Total</td>
<td>1495</td>
<td>100</td>
</tr>
</tbody>
</table>

It is pertinent to mention here that in 2006, Amritsar Central Jail set up a Legal Aid Cell with a view to provide free legal aid to the poor and underprivileged prisoners facing charges of petty offences and languishing in jails for a long time. The cell paved the way to the release of more than 550 poor inmates involved in petty offences. The cell was established with the support of some prisoners having knowledge and interest in legal proceedings. The active partners of this Legal Aid Cell were: Prisoners, Prison Officers, District Legal Services Authority, Lawyers for Social Action (NGO) and Amritsar Bar Association. The beneficiaries were of the following categories:

a. Persons involved in petty cases and having undergone a considerable period in the jail with the trial still going on.

b. Persons under judicial custody involved in Excise cases where the Magistrate has no jurisdiction to try such cases as per amended Punjab Excise Act 2003.

c. The prisoners against whom chargesheets were not filed by the police despite expiry of the stipulated period of 60 or 90 days.
6.5 Hearing and Adjournments

After analysing the period of detention in the judicial custody, hearings and adjournments of the cases of the undertrials are being analysed. For this purpose a case study of 100 cases has been conducted with a view to have firsthand knowledge of the problem. These 100 cases were broadly classified in four categories: Murder and other heinous cases (31), NDPS (27), crime against women (20) and Local and Special Acts (22). In all these cases, the accused were in the judicial custody till completion of trial. All these cases are related with inmates lodged in Amritsar Central Jail which were concluded in the year 2006.

Some of the particulars in each case have been collected from prison records. However, most of the details have been collected from the court records with the help of Assistant Attorney in-charge of District Legal Services Authority. The cases have been taken into account on random basis as per convenience because of difficulty to collect all the particulars of the cases. For example, if some particulars are available in the jail in respect of one particular case, relevant details were not available in the courts in desirable manner for the same case. To make the study more representative, average number of adjournments as well as average time period has been calculated category-wise and thereafter overall average has been calculated. The adjournments have been given in the round figures. However average time duration has been given up to one decimal point indicating months. For example, 2.6 years means 2 years and 6 months.

Table 6.7 shows that it takes average 34 hearings and 2.6 years period to decide a case after framing the charges when accused in custody. In murder and other heinous cases, it takes 39 hearings and 3 years period to complete the trial. The period of trial will further increase if one leaves the cases being tried in the fast track courts. Similarly NDPS cases are decided in 2.9 years after 35 hearings despite the fact that special courts have been constituted to deal with these cases. Cases related with crime against women take average 1.9 years and 31 hearings to complete the trial. In this category, cases of dowry death, rape and marital cruelty have been included for the study. In local and special cases, trials are completed in 1.9 years and in 28 hearings. It means that an undertrial inmate has to wait for average 2.6 years to get the
final verdict after framing of charges. Besides this, an undertrial has to remain in judicial remand for additional 90 days.

<table>
<thead>
<tr>
<th>S. N.</th>
<th>Category</th>
<th>Average number of Hearings and Adjournments</th>
<th>Average duration to complete trial (In years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Murder*</td>
<td>39</td>
<td>3.0</td>
</tr>
<tr>
<td>2</td>
<td>NDPS</td>
<td>35</td>
<td>2.9</td>
</tr>
<tr>
<td>3</td>
<td>Crime against Women</td>
<td>31</td>
<td>1.9</td>
</tr>
<tr>
<td>4</td>
<td>Local and Special Act</td>
<td>28</td>
<td>1.9</td>
</tr>
<tr>
<td></td>
<td>Overall Average</td>
<td>34</td>
<td>2.6</td>
</tr>
</tbody>
</table>

*Also includes other heinous cases like kidnapping and dacoity

Table 6.7
Data Showing Average Hearings and Adjournments and Duration of Trial

Prisoners’ views were obtained in this regard and they were of the opinion that trial should not take more than 6 months to conclude in the cases where accused are in the custody. Investigating officers of Police have also expressed similar views and stated that because of delay in the process of trial, they lose grip on the case and are unable to follow the same in an efficient manner. However, judicial officers and prosecutors have different opinions and they cite shortage of judges and non-appearance of witnesses as the main reasons behind inordinate delay in the trials.

On the basis of the above facts and circumstances, it is evident that trial takes excessive time in the Indian courts. So undertrials have to remain in custody for long time before their cases are disposed. However, legal provisions demand for speedy justice. *Body of Principles* (UNO, 1988) emphasises on the right of a person detained on a criminal charge to complete trial within a reasonable time or to be released on bail pending trial. As per Article 125 of *Criminal Procedure Law of China*, ‘A people’s court shall pronounce judgment on a case of public prosecution within one month, or one and a half months at the latest, after accepting it for trial’

18 www.asianlii.org
In the USA, right of an accused to a speedy trial is fundamental. The presumptive speedy trial time limit for persons held in pre-trial detention should be 90 days from the date of the defendant’s first appearance in court after the filing of a charging instrument. The presumptive limit for persons who are on pre-trial release should be 180 days from the date of the defendant’s first appearance in court after either the filing of any charging instrument or the issuance of a citation or summons. As per Speedy Trial Act of 1998 of Philippines, in no case shall the entire trial period exceed one hundred eighty days from the first day of trial. Under Scots Law, the 110-day rule prevents people from being detained without trial for more than 110 days. After that period, they must be released.

The Indian Code of Criminal Procedure 1973 while giving the courts power to postpone or adjourn proceedings lays stress upon trial within a reasonable timeframe. Section 309 of the Code says that “in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined”.

Various decisions of Supreme Court of India and High Courts emphasize upon trial in a timeframe. The Supreme Court of India in its landmark judgment in ‘Hussainara Khatoon versus State of Bihar’ explicitly held speedy trial as part of Article 21 of the Constitution of India guaranteeing right to life and liberty. It emphasised that speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. In ‘Maneka Gandhi versus Union of India and others’, a Constitution Bench of the Supreme Court went into the meaning of the expression “procedure established by law” in Article 21. The court held that the procedure established by law does not mean any procedure but a procedure that is reasonable, just and fair. The court read Articles 19 and 14 into Article 21 of the Constitution for this purpose.

---

19 www.abanet.org
20 HC Deb, Prevention of Delay in Trials, 28 October 1997 vol. 299
21 Supreme Court of India, Hussainara Khatoon versus State of Bihar, 1980 (1) SCC 98
22 Supreme Court of India, Maneka Gandhi versus Union of India and others’ 1978 (1) SCC 248
While issuing a slew of directions to improve the disposal rate, Delhi High Court emphasizes to fix a time-frame for each stage of trial (like completion of pleadings, framing of charges, and recording of evidence). It further directs that “Endeavour shall be made to gradually reduce the average trial period of each case (civil and criminal) to 2/3 years.\textsuperscript{23}

The Punjab and Haryana High Court, expressing dissatisfaction over the slow pace of justice delivery system, has directed the subordinate judiciary to expeditiously decide rape, dowry death and corruption cases in the larger interest of the society. The High Court has favoured advancing the dates of hearing and “day-to-day proceedings” in such cases. The reasons for seeking adjournments would require explanation\textsuperscript{24}.

The issue of the huge number of pending and delayed criminal cases came up before the Supreme Court in a petition filed by a non-governmental organisation. The Supreme Court in the case reported as ‘Common Cause versus Union of India & Others’\textsuperscript{25} observed: “It is a matter of common experience that in many cases where the persons are accused of minor offences punishable for 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 them.”

The court further issued detailed guidelines for the release of under-trial prisoners and the ending of proceedings. The court ordered the release of under-trial prisoners on bail in cases involving offences under the IPC or any other law in force at the time if the offences are punishable with imprisonment not exceeding

\begin{itemize}
  \item Three years with or without fine and if trials for such offences have been pending for one year or more and the accused concerned have been in jail for a period of six months or more.
\end{itemize}

\textsuperscript{23} Ashok Rao (Monday, 06/15/2009), Delhi High Court Directs Lower Courts To Fix Time Limit For Disposal Of Cases,[www.topnews.in/delhi-high-court-directs-lower-courts-fix-time-limit-disposal-cases-2177816]
\textsuperscript{24} HC for daily hearing in rape, dowry cases, The Tribune, 15 July 2009
\textsuperscript{25} Supreme Court of India, Common Cause versus Union of India & Others, 1996 (4) SCC 33
ii. Five years, with or without fine, and if the trials for such offences have been pending for two years or more and the accused concerned have been in jail for a period of six months or more.

iii. Seven years, with or without fine, and if the trials for such offences have been pending for two years or more and the accused concerned have not been released on bail but have been in jail for a period of one year or more.\textsuperscript{26}

In ‘Raj Deo Sharma versus State of Bihar’\textsuperscript{27}, the Supreme Court issued certain directions for effective enforcement of the right to speedy trial. The Supreme Court laid down, among other things, that if an offence is punishable with imprisonment for

i. Not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed, irrespective of whether the prosecution has examined all the witnesses or not and the court can proceed to the next stage of trial. Furthermore, if the accused has been in jail for a period of over half of the maximum period of punishment prescribed for the offence, bail shall be granted.

ii. Exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of three years from the date of recording the plea of the accused on the charges framed, whether the prosecution has examined all the witnesses or not.

It is evident from above verdicts and other facts that though Indian legal system does not have any special legislation for trial in a timeframe, yet various rulings and judgements of Supreme Court of India have tried to give it a legal shape. The historical verdicts in the cases of Hussainara Khatoon, Maneka Gandhi and Raj Deo Sharma have reiterated the right to speedy trial as fundamental right. However, delay in trials is a matter of great concern in the Indian legal system. The causes of delay require detailed and logical examination.

\textsuperscript{26}ibid.
\textsuperscript{27}Supreme Court of India, Raj Deo Sharma versus State of Bihar, 1998 Indlaw SC 1131
6.6 Causes of Delay in Trial and Undue Adjournments

To ascertain the actual cause of unnecessary adjournments, a comprehensive study has been conducted. For this purpose, 10 cases of prisoners were taken for this study who were lodged in Amritsar Central Jail. Besides this, various stakeholders of criminal justice system were interviewed which include Investigating Officers of Police, Public Prosecutors, Lawyers, and Judicial Magistrates. On the basis of analysis of causes of adjournments on each date in the respect of all these ten cases and discussion with these stakeholders, the following reasons were identified:

1. Shortage of judges
2. Non-service of summons of witnesses and Non-appearance of Witnesses
3. Non-appearance of Police witnesses on the pretext of VIP duty, transfer to other places, etc.
4. Non-production of accused from the jail because of unavailability of Escort
5. Delay tactics by advocates and the accused
6. Non-production of Case property
7. Undue adjournments
8. Lack of coordination between various organs of Criminal Justice Administration

To understand the problem, the above points are elaborated in detail.

6.6.1 Shortage of Judges

Shortage of courts and judges is one of the major reasons for delay in the trials of cases. The judiciary is over-burdened due to work pressure. Over 25.4 million cases are pending in subordinate courts, 3.7 million cases in various high courts while the Supreme Court is stuck with 45,887 cases awaiting justice mainly because of shortage of judges at various levels.\(^{28}\)

As informed to the Parliament by the then Minister of Law and Justice, H R Bhardwaj (30 November, 2007), shortage of judges and delays in filling up vacancies

in high courts, among other factors, have led to an increase in pendency of cases across the country. In district and subordinate courts, over 2.7 crore cases were pending. Against a sanctioned strength of 15,399 judges, almost 3,031 vacancies were still to be filled.29

In a statement before the Parliament, Indian Law Minister M. Veerappa Moily (09 July 2009) said that there was a shortage of 234 judges in the high courts of India and 4,000,000 cases were pending in various High Courts around the country. As per a June 2009 estimate, the 21 high courts in the country have a total sanctioned strength of 886 judges, but the actual working strength is 652 judges, as accepted by the Minister.30

Expressing concern over the tardy pace of resolution of litigation in courts, the Supreme Court of India on 21 March 2002 had directed the Central and State Governments to fill all the existing vacancies in the lower courts latest by March 31, 2003. The Apex court had also asked the government to increase the judges’ strength in lower courts from existing 10.5 to 50 judges per one million of population and to recruit the requisite number of judges within five years.31

Data was collected in respect of Amritsar Court to understand the actual problem and it was found that only 25 judges were posted in 2006 in the Amritsar Sessions Division where 29130 criminal cases were pending besides 22301 civil cases. Table 6.8 throws light on the subject which gives status of criminal and civil cases from 2004 to 2006. This is on the basis of data released by Amritsar Court on the eve of Mega Lok Adalat on October 20, 2007.

Table 6.8 gives clear picture of shortage of judges and work load assigned to them. It is not possible for 25 judges to decide over 51 000 civil and criminal cases in a year. It is not in the interest of natural justice also to give over 2000 cases to a single judge for hearing. As suggested by police officers, civil and criminal courts should be

separated in the interest of criminal justice administration, whereas judges are of the view that the number of judicial officers and courts should be increased keeping in view the increasing population.

<table>
<thead>
<tr>
<th>Year</th>
<th>Nature of cases</th>
<th>Previous Balance</th>
<th>Institution</th>
<th>Disposal</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>Civil</td>
<td>22348</td>
<td>9132</td>
<td>7790</td>
<td>23690</td>
</tr>
<tr>
<td></td>
<td>Criminal</td>
<td>28400</td>
<td>10905</td>
<td>7254</td>
<td>32051</td>
</tr>
<tr>
<td>2005</td>
<td>Civil</td>
<td>23690</td>
<td>10054</td>
<td>11620</td>
<td>22124</td>
</tr>
<tr>
<td></td>
<td>Criminal</td>
<td>32051</td>
<td>13065</td>
<td>11364</td>
<td>33752</td>
</tr>
<tr>
<td>2006</td>
<td>Civil</td>
<td>22124</td>
<td>11425</td>
<td>12348</td>
<td>22301</td>
</tr>
<tr>
<td></td>
<td>Criminal</td>
<td>33752</td>
<td>11448</td>
<td>16070</td>
<td>29130</td>
</tr>
</tbody>
</table>

6.6.2 Non-Service of Summons and Non-appearance of Witnesses

Non-service of summons is the second most important reason for delay in trials. It was specially pointed out by the Judicial Magistrates and public prosecutors that timely service of summons and appearance of witnesses on the given time and date can save valuable working hours of the courts. It is the primary responsibility of the investigating agency (which is police) to ensure timely service of summons of the witnesses. Normally every police station has earmarked 3 to 4 officials for the purpose of services of summons. In Punjab they are known as ‘Tamili’. However the ‘Tamils’ find it difficult to ensure proper services of summons especially in the cases where witnesses belong to far flung areas. Many times tourists are the complainants who belong to other states and also other countries and it is very difficult to serve the summons in these cases. Delay in trial causes further delay as the complainants lose their interest because of excessive delay. Even the formal witnesses like police officials who are part of investigation lose interest in the cases after their transfer from that district to other places and it is also difficult to serve summons upon them.
Even after services of summons, witnesses do not turn up to join trials in the courts on many occasions. There is no hard and fast rule to compel the witnesses to attend the court proceeding. Sometimes courts issue warrants to ensure attendance of witnesses but this is not common to each and every case. In many cases witnesses belong to far flung areas and they do not prefer to come on specified date because of paucity of time and resources. It is a genuine grudge of the witnesses that they are not paid to reimburse their expenditure on travel and stay to attend the court proceeding.

Section 61 of the Code of Criminal Procedure of India poses compulsion on the officer authorised to ensure summons to visit personally to the place of residence of the persons upon whom summons are to be served. However, procedure as laid down in section 69 of the Code can be adopted in such cases where witnesses belong to farther places and summons can be served by registered post addressed to the witness at the place where he ordinarily resides (Ratanlal and Dhirajlal, 1999). Rules can be amended to authorise the services of summons through telephone and E-mail in the modern era of information technology. Even examination of witnesses can be conducted through Video-conferencing in such cases and the witnesses will find it easy and will not evade from appearance. It will also be beneficial for Police officers who are transferred to other places.

6.6.3 Non-appearance of Police Witnesses

On many occasions formal witnesses like Police Officers do not appear in the courts on the pretext of VIP duty, law and order arrangements and citing other reasons. In the Indian system of Policing, Investigation and Law and Order are dealt with by the same agency and it is difficult for the officers responsible for the maintenance of law and order to investigate the cases and pursue the same in the courts. Non-appearance of police witnesses in the courts delays the trial as cases are constituted by the police officers.

The Supreme Court of India has given verdict in Prakash Singh & Others vs. Union of India and Others\textsuperscript{32} to ensure separation of investigation from law and order. Expressing concern on the present system, the Supreme Court has reiterated that “More than 25 years back i.e. in August 1979, the Police Commission Report

\textsuperscript{32} Supreme Court of India, \textit{Writ Petition (civil) 310 of 1996}, Date of Judgment: 22 September 2006
recommended that the investigation task should be beyond any kind of intervention by the executive or non-executive. For separation of investigation work from law and order, even the Law Commission of India in its 154th Report had recommended such separation to ensure speedier investigation, better expertise and improved rapport with the people without any watertight compartmentalization in view of both functions being closely interrelated at the ground level.”

Article 36 of Punjab Police Act 2007 makes provisions for separation of investigation from law and order for effective crime investigation. It says that the investigation staff shall ordinarily not be diverted for any other duties, except with the permission of the Deputy Inspector General of Police of the Range concerned. Section 15 of the Act gives minimum fixed tenure for the field officers to ensure professionalism and better administration of criminal justice system.

However, the things can only be changed when the verdicts and rules are implemented in letter and spirit.

6.6.4 Non-production of Undertrials from the Jails

It is the primary responsibility of the police to produce the undertrials before the trial courts on each and every date of hearing. Jail officials often blame the police for not sending escort on time. Many times escorts are not sent on the pretext of VVIP duties and Law and Order arrangements. Court proceedings are hampered in the absence of accused and resultantly adjournments are ordered.

To study this problem, details of non-availability of escort were worked out for the year 2005 and 2006 (up to June) as per information available with Amritsar Central Jail. Table 6.9 shows the quarterly details of undertrials who could not be produced before trial courts because of non-availability of Police escort.

As indicated in table 6.9, total 1890 undertrials were not produced before the trial courts from January 2005 to June 2006 because of non-availability of police escort. In the first quarter of 2005, this figure was 714 which came down to 117 in the second quarter and 97 in the third quarter. However it again increased to 300 in the fourth quarter of 2005, 411 in the first quarter of 2006 and 251 in the second quarter of 2006. The police officers find it difficult to produce undertrials in the courts especially in the cases where a single person or a gang facing trials in various courts at various locations. For example, a gang of bank robbers facing simultaneous trials in the courts
of Amritsar, Lucknow, Delhi and Mumbai and it is not an easy task to produce them in several courts at various locations.

Table 6.9
Quarterly details of undertrials not produced before trial courts because of non-availability of escort in 2005 and 2006 in Amritsar Central Jail

<table>
<thead>
<tr>
<th>Period</th>
<th>Number of Undertrials</th>
</tr>
</thead>
<tbody>
<tr>
<td>I Quarter 2005</td>
<td>714</td>
</tr>
<tr>
<td>II Quarter 2005</td>
<td>117</td>
</tr>
<tr>
<td>III Quarter 2005</td>
<td>97</td>
</tr>
<tr>
<td>IV Quarter 2005</td>
<td>300</td>
</tr>
<tr>
<td>I Quarter 2006</td>
<td>411</td>
</tr>
<tr>
<td>II Quarter 2006</td>
<td>251</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1890</strong></td>
</tr>
</tbody>
</table>

Source: Office of the Superintendent, Amritsar Central Jail

Amritsar District Police has set up a dedicated squad of 50 police officials headed by an Inspector of Police for production of undertrials as stated by the SP Headquarters of Amritsar Police. The situation has improved now and it is suggested to set up similar squads in all the districts for production of undertrials in the trial courts. Besides this, videoconferencing facility can be started for smooth and speedy trials. The system has been successfully implemented in Andhra Pradesh, Delhi and Maharashtra (as stated by the DIG of Tihar Jail). This system will be more helpful in the cases where accused are lodged in one jail and a number of cases are pending in various trial courts.

Successful trial in Telgi case is an ideal example of trial through videoconferencing. “The idea of trial by video-conferencing had then been mooted. When the prosecution was unable to provide the requisite facilities at the Karkardooma court, it was decided that a camp court be held at the CGO complex, which has provisions for video-conferencing. The large number of accused involved in the case had been cited as the reason for the delay by the CBI. ACMM Vinod Kumar showed Telgi the legal documents on a screen and asked him to acknowledge
the same. Telgi was asked whether he had received the copy of the chargesheet, to which he responded in the positive.\textsuperscript{33}

6.6.5 Delay Tactics by Advocates and Accused

Many times defence advocates take undue adjournments just to delay the process of trial, as pointed out by the public prosecutors. Sometimes undertrials on bail do not appear on the date of trail on the pretext of illness or some urgent work. Many times they furnish false medical certificates. The situation gets worse where one undertrial is in judicial custody and his accomplice on bail adopts delay tactics in the same case. In many cases, accused adopt delay tactics to kill the time and win over the witnesses with intent to get acquitted.

Public prosecutors and police officers were of the opinion that undue adjournments should not be allowed by the trial courts on filthy grounds. A mutually agreed datesheet should be prepared and followed in spirit to ensure smooth and speedy trial.

6.6.6 Non-production of Case Property

Non-production of case property is also an important reason responsible for delay in trial of cases. Case properties are normally kept in the ‘Malkhana’ (store) of Police Stations under the supervision and custody of Station Clerk. Case properties are not produced on time on many occasions and trials are delayed.

Sometimes case properties are handed over on ‘Superdari’ (bond) to the lawful claimants on the orders of the trial courts. It has been seen that they do not produce the same on the date of hearing and trial is delayed.

It is, therefore, suggested that case properties should not be given on superdari till conclusion of the case and Police Station officers should be made responsible to produce the same on each and every date of trial.

6.6.7 Adjournments because of Magistrates on Leave

Sometimes trial magistrates are on leave or on outstation duty and intimation is not given to prosecution, police and witnesses. Because of this, everybody who comes

\textsuperscript{33} The Indian Express, Delhi, 30 August 2005
to attend the proceeding of the court gets harassed. It is suggested to intimate all the persons beforehand, if the trial magistrate is on leave or on outstation duty.

6.6.8 Lack of Coordination between Various Organs of Criminal Justice System

For smooth conduct of trials, it is necessary to have coordination between the organs of criminal justice system. In the Indian system of criminal justice administration, the following organs are important:

a. Judiciary  
b. Prosecution  
c. Police  
d. Prison  
e. Advocates from defence side

It has been seen in practice that lack of coordination among these functionaries constitutes a major cause of delay in quick disposal of cases. Quarterly coordination meetings chaired by the District and Sessions Judge and attended by the representatives of other departments does not serve the purpose in the changing atmosphere of criminal justice system. There should not be any kind of watertight compartmentalisation between these functionaries. An informal system should be devised to make better coordination in the larger interest of criminal justice administration. Upneet Lalli (2002)\textsuperscript{34} has also concluded that training programmes for judges, prosecution, police and prison officers should be held and a forum for proper coordination of Criminal Justice System agencies should be evolved.

6.7 Actual Confinement more than the Pronounced Sentence

There are instances where certain undertrials spent more time in the judicial custody than their pronounced sentences. This is a serious breach of human rights. To understand this blatant violation of human rights, the following two short case studies are presented:

\textsuperscript{34} Supra Note 4.
Case Study UT 01

UT01 an undertrial lodged in Amritsar Jail was arrested on 13 November 2004 on the charges of having illicit liquor and remanded to custody pending trial. The trial court sentenced him on 13 March 2006 with imprisonment of one year with Rs 5000/ as fine (one month imprisonment in default of not paying the fine). The person aged about 28 years belonging to rural background and coming from a poor family was released from the jail on 12 April 2006. He spent 5 months extra custody than the pronounced punishment. The verdict of the trial court is reproduced as follows:

“The period from 13.11.2004 to q3.03.2006 already undergone be set off against the substantive sentence of imprisonment.”

It is evident from the facts mentioned above that UT01 had to spend extra period in custody because of delay on the part of trial of the case. He could not engage lawyer of his choice because of his poor background and could not manage bail pending trial.

Case Study UT 02

UT02, an undertrial hailing from a poor family charged with illegal sale of his own kidney was lodged in Amritsar Central Jail in September 2002 and trial was going on. He was sentenced 3 years rigorous imprisonment with fine in March 2006. The trial was delayed because of delay tactics adopted by co-accused on bail who were rich and influential. This person could not engage lawyer of his choice and was languishing in the custody. He was not able to furnish bail because of poverty. This is an example of a case where rich and influential charged with more grievous offence in the same case get bail and a poor man languishing because of poverty.

Human rights violations of this nature are very common in the Indian Criminal Justice System. Taking stock of the situation, the then Supreme Court Chief Justice YK Sabharwal rightly pointed out that “No democracy can pride itself on being fair to its citizens if it cannot provide speedy and equitable justice. In India, cases take years to get to the hearing stage and many more until sentencing. In several cases, the time
spent in jail while a trial is on may be more than the sentence finally given. This is an unacceptable violation of fundamental rights."

6.8 Acquittal after Confinement

It is very common in the criminal justice administration of India that undertrials are confined under judicial custody for a long time and after the trial they are declared innocent. This is a major human rights violation and especially poor persons are such victims. In many cases influential and rich people go for compensation but the poor remain silent as they are not in a position to engage lawyer and pay court fee for this purpose.

This problem can be better understood on the basis of the following two case studies:

Case Study UT 03

UT 03, a 25 years old undertrial who belonged to a farmer family was charged with murder by a court of Amritsar District. He remained under judicial custody from November 2002 to April 2006 till completion of trial of his case. He had to remain under custody for 3 years and 4 months and thereafter he was declared innocent. This amounts to blatant violation of human rights as he served more than 3 years in Amritsar Central Jail as a prisoner.

Case Study UT 04

UT 04, a 35 years old undertrial coming from rural background was charged with illegal possession of narcotics drugs. He remained in custody from May 2003 to May 2006 till completion of his trial. He was released from Amritsar Central Jail in May 2006 after acquittal from the charges.

On the basis of above-mentioned case studies, we can easily understand the plight of undertrials. Poor and underprivileged persons are more affected lots in the Indian Jails. Keeping a person in custody for 3 years and more and after that declaring...
him or her innocent does not serve the purpose of Criminal Justice Administration. Delay on the part of trial is the main cause of this type of violation of human rights.

6.9 Vexatious Arrests

As pointed out by the National Police Commission (NPC)\textsuperscript{36}, the powers of the arrest available to the police give ample scope for harassment and humiliation of persons, prompted by malafide considerations. In actual practice, several persons who ought to be arrested are let free on account of political influence or other considerations, while harmless persons who need not be arrested at all are often arrested and even remanded to police custody on inadequate grounds. Some malafide arrests get exposed on \textit{habeas corpus} petitions filed in High Courts but such exposures are rare compared to the large number of unjustified arrests that take place all the time.

NPC has recommended very strict guidelines for making arrests by the police, which should be strictly observed in day-to-day administration by the senior supervisory ranks. However, the State Governments are yet to make firm arrangements down the line for observing these guidelines in day-to-day police work.

The NPC also recommended that sections 2(c) and 2(1) of the \textit{Code of Criminal Procedure} should be amended to remove the emphasis on arrest in the definition of cognisable and non-cognisable offences and section 170 of the \textit{Code of Criminal Procedure} should be amended to remove the impression that it is mandatory to make an arrest in non-bailable cases.

National Human Rights Commission of India in its \textit{Annual Report 2004-2005} has also pointed out that unnecessary and unjustified arrests made by the Police and slow judicial process causing congestion of undertrial prisoners are the main causes of overcrowding in jails.

The Supreme Court of India has also taken strong view on unwarranted arrests and has issued broad guidelines to safeguard the citizens. In the Para 36 of the

\textsuperscript{36} Ministry of Home Affairs, Government of India, National Police Commission, 1977, \textit{Third Report}
judgment in the case of *D.K. Basu vs. State of West Bengal*\(^{37}\) given by the Honourable Supreme Court of India, the following safeguards are available to the citizens to avoid indiscriminate arrest:

(1) “The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The ‘Inspection Memo’ must be signed both by the

---

\(^{37}\) Supreme Court of India, *D.K. Basu vs. State of West Bengal*, AIR 1997 SC 610
arrestee and the police officer effecting the arrest and its copy provided to the
arrestee.

(8) The arrestee should be subjected to medical examination every 48 hours
during his detention in custody by a trained doctor on the panel of approved
doctors appointed by Director, Health Services of the concerned State or
Union Territory. Director, Health Services should prepare such a panel for all
Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to
above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation,
though not throughout the interrogation.

(11) A police control room should be provided at all district and State
Headquarters, where information regarding the arrest and the place of custody
of the arrestee shall be communicated by the officer causing the arrest, within
12 hours of effecting the arrest and at the police control room it should be
displayed on conspicuous notice board.”

6.10 Bail not Jail

There are two types of offences as defined in the Code of Criminal Procedure
of India (1973): Bailable and Non-Bailable. In Bailable cases, Police or the
Investigating agency has the power to release the accused on bail. In the Non-Bailable
cases, Police or the investigating Agency has to produce the accused within 24 hours
of arrest before the competent magistrate. It is the discretion of the Magistrate
depending upon the gravity of matter as well as evidence on the file to send the
accused on remand or to release him or her on bail. Sections 436 to 450 of the Code
are related with bail and Bond. However Section 436A has been inserted in the Code
of Criminal Procedure by Criminal Law (Amendment) Act, 2005, which has given
some relief to the undertrials and which is required to be implemented in letter and
spirit. This section is reproduced as under:

"436A. Maximum period for which an undertrial prisoner can be detained.-
Where a person has, during the period of investigation, inquiry or trial under
this Code of an offence under any law (not being an offence for which the
punishment of death has been specified as one of the punishments under that
law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that, no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law."38

It is evident that nobody can be detained in remand more than the maximum period of imprisonment provided for the offence. A person detained in custody can apply for bail pending trial if he or she has already undergone half of the maximum prescribed imprisonment for that offence. Police Officers are also of the view that provision of bail can be applied in the normal cases like cheating, accident, dowry, and hurt cases. The police normally oppose the bail in the cases like murder, Fake Currency, NDPS and other heinous cases.

6.11 Free Legal Aid

A detained person is entitled to have the assistance of a legal counsel. He is also entitled to be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.39

It also lays stress upon quick trial and provision of bail. A person detained on a criminal charge is entitled to trial within a reasonable time or to release pending trial.40 Except in special cases provided for by law, a person detained on a criminal

---

38 Criminal Law (Amendment) Act, 2005 (www.lawmin.nic.in)
39 Supra note 6, Principle 17
40 ibid, Principle 38
charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.\textsuperscript{41}

\textit{Standard Minimum Rules} say that for the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall, if he so desires, be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.\textsuperscript{42}

Article 39A of the \textit{Constitution of India} deals with the obligation of the State to provide free Legal Aid to such accused prisoners both in the prison and outside, as are unable to engage a lawyer due to lack of means to defend themselves in the court for the criminal charges brought against them.\textsuperscript{43}

\textit{The Legal Services Authority Act 1987} was enacted in pursuance of this provision and Legal Services Authorities were set up at National, State and District levels for the purpose of providing legal aid to the needy persons. At the district level, District and Sessions Judge has been made chairperson of the District Legal Services Authority. One law officer of the rank of Assistant District Attorney is earmarked for the purpose of executing day-to-day functioning related with people in need of free legal aid. Punjab Legal Services Authority has made it compulsory to visit jails at least once a week by the Assistant District Attorneys. The purpose of this visit is to provide legal advice to the jail inmates, collecting their applications and to submit them to the concerned courts.\textsuperscript{44}

However, ground reality is far from the theoretical provisions made in the various enactments and directions. The advocates engaged under this provision do not pay proper attention during trial because of paucity of time and fewer honorariums.

\textsuperscript{41} \textit{ibid, Principle 39}
\textsuperscript{42} \textit{Supra Note 5, Rule 93}
\textsuperscript{44} Letter number 2068-79 date 03.05.2000 from Executive Chairperson, Punjab Legal Services Authority
Most of the poor inmates who have been provided legal aid by the District Legal Services authority do not know even names of their advocates. In 2008, cases of more than 67 percent inmates of this jail were pending in the courts which can easily be understood from the number of undertrials.

6.12 Plea bargaining

Plea bargaining is a new concept in the history of the Criminal Justice Administration of India. This concept has been brought into effect by Code of Criminal Procedure (Amendment) Act 2005 which came into effect from 11 January 2006. A new chapter XXIA has been inserted on Plea Bargaining (Sections 265 A to 265 L) to reduce pendency of cases in Courts. The salient features of this new provision are given as under:-

(i) It is applicable to an accused person who is facing trial in an offence which is not punishable with death and life imprisonment or imprisonment for more than seven years under the law.
(ii) It does not apply to an offence, which affects the socio-economic conditions of the country or any crime against woman or a child below the age of fourteen years.
(iii) An application for plea bargaining can be made by an accused to the court if he is covered by the eligibility criteria mentioned at serial number (i) & (ii).
(iv) Views of Public Prosecutors or complainant, as the case may be, shall be taken by the court on this application.
(v) On acceptance of the application of the accused made voluntarily and after taking into account views of Public Prosecutor / Complainant satisfactorily, disposition shall be worked out in a meeting participated by the Public Prosecutor /Investigating Officer of the case / accused and the victim.
(vi) On arriving at satisfactory disposition it shall lead to following consequences: -

(a) The Court shall award the compensation to the victim in accordance with the disposition under Section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under Section 360 or for dealing with the accused
under the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force;

(b) After hearing the parties under clause (a) above, if the Court is of the view that Section 360 or the provisions of the _Probation of Offenders Act 1958_, or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be;

(c) After hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;

(d) In case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

(vii) In the scheme of plea bargaining, it has also been specifically provided that the statements or facts stated by an accused in an application for plea bargaining shall not be used for any other purposes. Therefore, it will encourage the accused especially those involved in less serious cases to avail of this provision in order to get relatively lighter punishment. Consequently, it will contribute to the faster disposal of undertrial cases.

This provision, if applied in letter and spirit, can lessen the burden of courts and reduce the number of undertrial cases.

### 6.13 Conclusion

Around 65 percent of prison population in India belongs to undertrial category which is very high as compared to the UK (17.5) and the USA (20.2). Despite various enactments and directions, treatment of undertrials in the jails is not good. Undertrials are kept in the same premises and even in the same barracks in the jails as are meant for the convicts which is a major human rights issue.

Trial of cases is delayed inordinately and undertrials have to stay in the jails for longer periods. It takes average 34 hearings and 2.6 years to decide a case after framing the charges when accused is in custody, as per this study. In some cases,
undertrials have to spend more time in the judicial custody than their pronounced sentences. Acquittal after confinement is a serious violation of human rights.

The National Human Right Commission of India (NHRC) has also observed that the number of undertrial prisoners is increasing day-by-day and the period for which they languish in jails is also a very long one. In a few cases, the NHRC has found undertrials in judicial custody for 24-25 years, which is far beyond the punishment prescribed for any offence under the penal law.45

In Amritsar Central Jail, 7.1 percent undertrials were detained in judicial custody for 2 years and more which was similar to Indian percentage (7.5). However, it is much less than Punjab percentage (16.3). At the same time, the percentage of undertrials released within 6 months (69.1 percent) in Amritsar Central Jail is considerably more than that of Punjab (62.8 percent) as well as that of India (64.1 percent).

The main causes of delay in the trials are shortage of judges, non-service of summons of witnesses and non-appearance of witnesses, non-appearance of police witnesses on the pretext of VIP duty or transfer to other places, non-production of accused from the jail because of unavailability of escort, delay tactics by advocates and accused, non-production of case property, undue adjournments because of magistrates on leave and lack of coordination between various organs of Criminal Justice Administration.

6.14 Recommendations

The number of judges should be increased to 50 judges per one million of population to reduce the burden of the judges.

There should be a separate cell in the police to ensure timely service of summons. Rules can be amended to authorise the service of summons through telephone and E-mail in the modern era of information technology. Even examination of witnesses can be conducted through video-conferencing.

There should be a minimum fixed tenure for the investigating officers to ensure timely completion of investigation and trial as provided in section 15 of the *Punjab Police Act 2007*.

It is suggested to set up dedicated police squads in all the districts for production of undertrials in the courts. Besides this, video-conferencing facility can be started for smooth and speedy trials.

Undue adjournments should not be allowed by the trial courts on flimsy grounds. There should be proper coordination between various organs of Criminal Justice Administration like police, judiciary, prosecution and the prison officials.

The police should refrain from vexatious arrests. The definition of cognizable offence should be delinked from police power of arrest. The directions of the Supreme Court of India in the DK Basu case (AIR 1997 SC 610) should be implemented to protect the rights of the arrested persons.

Bail should be granted in non-serious cases and poor people should be released on personal bond. Free legal aid should be provided to the needy person under detention and quality of the service should be improved. The concept of plea bargaining should be applied in letter and spirit to dispose of cases coming under the purview of this provision.