



## Poor State of Undertrials

**Prelims:** Supreme Court, Lok Adalat, Law Commission, NCRB, Prison Reforms.

**Mains:** Poor State of Undertrials and Prison Reforms.

### Why in News?

Recently, the [Indian President](#) has raised the issue of the **plight of a large number of undertrials holed up in the prisons.**

### What are the Undertrials?

- An undertrial is a person **who is currently on trial or who is imprisoned on remand** whilst awaiting trial or **a person who is on a trial in a court of law.**
- The 78th Report of [Law Commission](#) also includes **a person who is in judicial custody on remand during investigation** in the definition of an 'undertrial'.

### What is the Status of Undertrials in India?

- As per [NCRB \(National Crime Report Bureau\)](#), over the last 10 years, the number of undertrials in **jails has risen constantly and peaked in 2021.**
- In 2020, about 76% of all **prison inmates in the country were undertrials**, of which about 68% were **either illiterate or school dropouts.**
- Delhi and **Jammu and Kashmir (J&K) were found to have the highest ratio of undertrials** in jails at 91%, followed by Bihar and Punjab at 85%, and Odisha at 83%.
- About 27% of all undertrials were found to be illiterate, and 41% had dropped out before Class X.

### What are the Concerns?

- **Resourceless Prisoners:**
  - There are many **poor and resourceless undertrials who continue to be disproportionately arrested**, routinely remanded to judicial custody in prisons.
  - They are unable to seek and secure bail either because of **lack of economic resources or because of fear of the social stigma outside.**
- **Violence and Abuses in jail:**
  - Prisons are often dangerous places for those they hold. **Group violence is also endemic and riots** are common.
  - Physical mishandling and extra-judicial torture by jail **officials are usually seen in India.**
  - No conduct of the prison authority is **criminalized, making authority** act in negligence **which could and do result in the death of inmates.**
- **Health problems:**
  - Most of the prisons face problems of overcrowding and shortage of adequate space to lodge prisoners in **safe and healthy conditions.**
  - People are cramped in with each other in **unhealthy conditions, infectious and**

**communicable diseases** spread easily. Example: Spread of [Tuberculosis \(TB\)](#).

▪ **Suffering of the Families and Social Stigma:**

- Many a time the family of the prisoner is forced into poverty with children going astray.
- The family also faces **social stigma and social exclusion**, leading to circumstances propelling family towards **delinquency and exploitation by others**.
- The privileged class often take advantage of this situation **to exploit the remaining family members to the fullest** possible extent. This can take the form of rape or forced prostitution.

## What is the Constitutional protection for Undertrials?

▪ **State Subject:**

- '**Prisons/persons detained therein**' is a **State subject** under Entry 4 of List II of the **Seventh Schedule** to the Constitution of India.
- Administration and management of prisons is the responsibility of respective State Governments.
- However, the Ministry of Home Affairs provides **regular guidance and advice to States and UTs on various issues** concerning prisons and prison inmates.

▪ **Article 39A:**

- Article 39A of the Constitution **directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity** and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
- **Right to free legal aid or free legal service is an essential** fundamental right guaranteed by the Constitution.

▪ **Article 21:**

- It forms the basis of reasonable, fair and just **liberty under Article 21 of the Constitution of India**, which says, "No person shall be deprived of his life or personal liberty except according to procedure established by law".

## What are the Recommendations of Prison Reforms?

- The Supreme Court appointed **Justice Amitava Roy (retd.)** Committee, which has given the following recommendations to [reform prisons](#).

◦ **For Overcrowding:**

- **Speedy Trial:** Speedy trial remains one of the best ways to remedy the unwarranted phenomenon of overcrowding.
- **Lawyer to Prisoner Ratio:** There should be at least one lawyer for every 30 prisoners, which is not the case at present.
- **Special Courts:** Special fast-track courts should be set up to deal exclusively with petty offences which have been pending for more than five years.
  - Further, accused persons who are charged with petty offences and those granted bail, but who are unable to arrange surety should be released on a Personal Recognizance (PR) Bond.
- **Avoid Adjournment:** An adjournment should not be granted in cases where witnesses are present and the concept of plea bargaining, in which the accused admits guilt for a lesser sentence, should be promoted.

◦ **For Prisoners:**

- **Accommodative Transition:** Every new prisoner should be allowed a free phone call a day to his family members to see him through his first week in jail.
- **Legal Aid:** Providing effective legal aid to prisoners and taking steps to provide vocational skills and education to prisoners.
- **Use of ICT:** Use of video-conferencing for trial.
- **Alternatives:** The courts may be asked to use their "discretionary powers" and award sentences like "fine and admonition" if possible, instead of sending the offenders to jails.
  - Further, courts may be encouraged to release offenders on probation at pre-trial stage or after trial in deserving cases.

- In 2017, the [Law Commission of India](#) had recommended that undertrials who have completed **a third of their maximum sentence for offences attracting up to seven years of imprisonment be released on bail.**

## Way Forward

- The Undertrials are victims of multiple failings that start with inappropriate criminalization, followed by indiscriminate arrests, weak bail entitlements and inadequate summary disposals through [Lok Adalats](#).
- The need is **for a holistic legislative reform that aims to expand the horizons of individual liberties.**
- Provisions of **Section 167 of the CrPC with regard to the time limit for police investigation** in case of accused undertrial prisoners, **should be strictly followed** both the police and courts.
- Automatic extension of remands has to stop which are also given merely for the sake of the convenience of the authorities. Mere convenience of the authorities **cannot supersede the Constitutional guarantees under Article 21.**
- The emphasis should be on reducing undertrial population, by implementing the amended statutory provisions, judicial decisions regarding rights of undertrials, arrests and grant of bails, and the recommendations of various committees on prison reforms.
- Prisoners should be **provided with better facilities than convicts**, including food, clothing, water, medical facilities, sanitation, recreation and communication with relatives and lawyers.

[Source: IE](#)

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