

# Plight of Undertrial Prisoners and Their Human Rights



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## Abstract

Human right is a concept that has been constantly evolving through human history. Human rights are those rights available to all human beings irrespective of their religion, race, caste, sex and place of birth. Human rights derive from the inherent dignity of human being and these rights are a means to realize human dignity. Human dignity is the spine of human rights and it is in fact the very foundation on which human rights rest. Any person, who is accused, suspected, undertrial, detainee, convicts also have human rights and by virtue of their humanity, these human rights ought to be protected against unjust and degrading treatment. A person through the Criminal Justice System can be divided broadly into three phases: *the pre-trial phase*, *the trial phase*, and *the post-trial phase*. Those kept in jails under the broad categorization of 'criminal prisoners' would also include undertrials. In our country as per data available more than 65% prisoners in Indian jails are undertrials and waiting for justice. The Apex Court in *Bhim Singh case* has issued directions to release undertrial prisoners who have completed half of the maximum period or maximum period of imprisonment as per Section 436A Code of Criminal Procedure. This decision is a ray of hope for a large number of undertrial prisoners languishing in different Jails. In this paper an attempt is made to analyze the existing law along with judicial decisions for the protection of human rights of undertrials. Further, this paper will focus on the implementation aspect of section 436A of the Code of Criminal Procedure.

**Keywords:** Criminal Justice System, Offence, Human Rights, Undertrials, Prisons, Constitution, Right to Life, Fair Trial.

## Introduction

In our society any person who committed the crime must be punished through the criminal justice system. It is the duty of the state to punish the offender because an offence is treated against the society, not against individual, but if any offence is committed, any person can set the criminal law into the motion by registering an FIR in a police station or by filing a complaint before the Magistrate. The person against whom a criminal case is registered generally treated as an accused. But the guilt or innocence can only be decided by the competent court through the trial and the burden of proving guilt lies on the prosecution. If a person who is facing trial, but not released on bail is considered as undertrial and '*he is presumed innocent until proven guilty*'. A person does not lose all his basic human rights merely on the ground that he has committed some offence. So no undertrial can be deprived of his/her fundamental human rights merely on the ground that he is undertrial or he is an accused of committing an offence. The undertrials also have some fundamental human rights, which must be protected.

The problem of undertrial prisoners has assumed new proportions in the present day scenario. In India, there are many reasons such as poverty, illiteracy, etc., of which undertrial prisoners, become prey easily. They are languishing in various jails in different states for a period much longer than the maximum term for which they could have been sentenced, if convicted.<sup>1</sup> They are the basically the victim of the system.

## Who is Undertrials?

Undertrial prisoners are persons who have not been convicted of the charge(s) for which they have been detained, and are presumed innocent in law.<sup>2</sup> Actually an 'undertrial' is a person who is currently facing trial or who is imprisoned on remand whilst awaiting trial. Undertrial is defined in the *Oxford Dictionary* as, "A person who is on a trial in a court of law". The *78<sup>th</sup> Report of Law Commission* also includes a person within the definition of an 'undertrial' who is in judicial custody or on remand during the investigation.

All the accused of an offence are kept in jails, those kept in jails under the broad categorisation of 'criminal prisoners' would also include undertrials,<sup>3</sup> convicts,<sup>4</sup> and those preventively detained. Undertrials would include the following further categories:<sup>5</sup>

1. "Those who have been refused bail and are awaiting trial;
2. Those granted bail, but unable to furnish bail bonds or sureties;
3. Those whose applications for bail have not been considered by the court for a variety of reasons, including the fact that they have not been produced in court on the appointed date, or that they have no lawyers to represent them or that the prosecution is yet to file a charge-sheet on the completion of the investigation."<sup>6</sup>

The All India Committee on Jail Reforms (better known as the Mulla Committee) noted in a report that "the majority of undertrial prisoners are people from poorer and underprivileged sections of society with rural and agricultural backgrounds."<sup>7</sup> Because these people neither aware about their rights nor have sufficient means to represent their case.

Lakhs of helpless, underprivileged litigants, endlessly waiting for justice with the hope one day they will get justice, but unfortunately in its entirety this system never realized their plight. The prisons are overcrowded and don't have adequate space to lodge prisoners in safe and healthy conditions. When these prisoners are cramped in with each other in unhealthy conditions, infectious and communicable diseases spread easily.<sup>8</sup>

The Indian debate on the problem of "undertrial prisoners" begins with the empirical claim that the proportion of undertrials comparison to convicts in our prison system is too high. According to the statistics of the National Crime Record Bureau (NCRB) published in 2006, 2, 45,244 undertrials have been lodged in various jails of the country. It comprises 70% of the total number of inmates in the country's jails. As against figures for 2005, the number of undertrials increased by 3.4 per cent in 2006. Over half of the number of the undertrials has been in jails for the past several years without their trial being completed.<sup>9</sup> In the year 2012, the undertrials comprised 66% of the prison population. India has an exceptionally low rate of incarceration which is defined as the number of persons in prison per 1, 00,000 population.<sup>10</sup> As per the NCRB report compiled in 2013, the total number of undertrial prisoners in the country was 2, 78,503, which constitutes 67.6% of total inmates. In 2015, about 2.82 lakh people behind bars were undertrials, it comprises 67% and about 65% undertrials spend three months to five years in jail before securing bail.<sup>11</sup> The detention of undertrials often violates the normative principle that there should be no punishment before a finding of guilt.<sup>12</sup>

Hasan Mansur, National Council member of People's Union for Civil Liberties (PUCL) said that "Most of the undertrials are unaware of their legal rights, and they are poor and most of them have committed crimes which are petty in nature. The poverty and illiteracy are the essential reasons for the

delay in getting justice for the undertrials. He said that "the police are also largely responsible for keeping the undertrials in jails for such long periods."<sup>13</sup> One of the main reasons of a high number of undertrial prisoners in the prison is too many arrests during the investigation and trial process by the police and few convictions at the end of the trial.<sup>14</sup>

Basic Human Rights and freedoms are inherent in mankind and the idea of human rights provides an ideal towards which legal systems should strive to reach through appropriate laws and policies. These basic rights are recognized in the Constitution as well as in different legal systems throughout the world and in the International Human Rights Instruments.<sup>15</sup>

### **Legislative Measures for The Protection of The Rights of Undertrials**

A fair and effective administration of justice is the cornerstone of a society and an essential component of public confidence in the institutions of government.<sup>16</sup> It maintains the balance in the society in order to prevent crime and deliver justice to the victim. Under the Constitution of India certain fundamental rights and liberties has been guaranteed to the people while the criminal justice administration by punishing the offenders protects these rights through the implementation of laws. The framers of the Constitution has incorporated many provisions relating to criminal justice at the time of framing the Constitution to establish a just society by ensuring fair and speedy justice to the people.<sup>17</sup>

The criminal trial in India basically based on police reports and begins with the institution of cases on the basis of classification of offences and the investigation made therein. If police arrested the person accused in any case, he is kept locked for years as undertrial, it's a violation of his/her rights. Even there are a number of provisions in the Code of Criminal Procedure, (Herein after Referred as Cr.P.C.) which provides the protection to the accused person from the time of arrest till the completion of trial.

Trial is the last stage after the commission of crime and its aim to decide the guilt and innocence of an accused.<sup>18</sup> The primary object of a criminal trial is to ensure a fair trial, which is guaranteed under Article 21 of the Constitution of India and it renders public justice by punishing the criminals, but the trial should be conducted expeditiously.<sup>19</sup>

The Cr.P.C. contains an elaborate procedure, which has to be followed in every investigation, inquiry and trial, for every offence under the Indian Penal Code or under any other law time being enforced.

If any person arrested by a police officer and taken into custody should be produced before Magistrate within 24 hours as Article 22<sup>20</sup> of the Constitution and section 57<sup>21</sup> of Cr.P.C. requires. However, in certain cases where investigation cannot be completed within such period, the person can be remanded to further custody by the order of the Magistrate. Once a person is arrested, it becomes necessary to secure his release.<sup>22</sup> Given the large scale violation of human rights that occurs in relation

to persons arrested, legal assistance would be required even when a person is brought into a police station.<sup>23</sup> The arrested person should be informed about the rights by the police. The arrested person is entitled to bail as a matter of right if the charge-sheet is not filed within 60 or 90 days.<sup>24</sup> This may not happen if the accused:

1. Is not aware of this provision;
2. Does not have a lawyer who can point this out to the court and move an application in his behalf; or
3. Even if he can get bail, but on account of his poverty, unable to furnish bail bonds and sureties.

The basic object of section 167 of Cr.P.C. is to stop the undue detention of the accused. Why accused should suffer because of the default on the part of investigation agency.

**Section 173** (1) Cr.P.C. provides that "Every investigation under this chapter shall be completed without unnecessary delay". **Chapter XXIA** 'Plea Bargaining' (Section 265 A-265L) has been introduced through the Criminal Law (Amendment) Act, 2005 in the Cr.P.C. to facilitate the earlier disposal of criminal cases and to reduce the caseloads of courts. **Section 309**<sup>25</sup> provides that "In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded." **Section 320** of Cr.P.C. specified the list of offences may be compounded with or without the consent of the court. It can also be helpful to reduce the number of undertrials if, it will properly be implemented.<sup>26</sup> **Section 321** provides the withdrawal from the prosecution, but this provision basically is being used for the benefit of politician. **Section 436** of Cr.P.C. is dealing with bail in bailable offence and the grant of bail is a matter of course. It may be given either by the police officer-in-charge of police station having the accused in the custody or by the court.

Bail in non-bailable offences is discretion of the courts as per Section 437 of Cr.P.C.. If a person released on bail is considered to be in the constructive custody of the court.<sup>27</sup>

So far as the undertrial prisoners are concerned, there was no express provision in Cr.P.C. before 2005. But with a view to bringing down the number of undertrial prisoners in different jails of the country, the Cr. P.C., was amended in 2005 and section 436A<sup>28</sup> was inserted which provides that if an undertrial has been in jail for more than half of the maximum period of imprisonment for the crime he is charged with, shall be released on personal bond with or without sureties.

The explanation appended to the new Section 436-A inserted by the Cr. P.C. (Amendment) Act, 2005 makes it clear that the period of detention under this section for granting bail or the period of detention passed due to delay in proceedings caused by the accused shall be excluded. But most of the undertrials prisoners are not aware of the rights prescribed in section 436A.

**Section 41A**<sup>29</sup> was inserted in the Cr.P.C. to minimize abuse of powers of arrest by police. The police officer under the provisions of sub-section (1) of Section 41, may, issue a notice to accused to appear before him if he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years.

The guidelines have been issued by the Supreme Court<sup>30</sup> to curb automatic arrests under Section 498A IPC and other crimes punishable up to 7 years. The court said that "our endeavor in this judgment is to ensure that police officers should not arrest, accused unnecessarily and Magistrate does not authorize the detention casually and mechanically." Thus, section 41 A Cr.P.C. can be helpful to reduce the number of undertrials, if followed strictly by the police. If police officers fail to implement this law should be held liable.<sup>31</sup>

Most of the time police misuse the power of arrest and it ultimately helps in increasing the number of undertrials in prisons. The Supreme Court said that "by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2 per of the jail expenditure."<sup>32</sup>

Recently Law Commission has come out with its 268<sup>th</sup> Report (May 2017) favouring undertrial prisoners. It recommended that "undertrials who have completed one-third of the maximum sentence for offences up to seven years be released on bail. Those who are awaiting trial for offences punishable with imprisonment of more than seven years should be bailed out if they have completed one-half of their sentence." The Commission also suggested that "new legal provisions for remission should be included to cover those undertrials who have already endured the full length of the maximum sentence. Prolonged periods in prison where undertrials and convicts were not segregated would only make hardened criminals of the former."<sup>33</sup>

Above analysis reflects that many provisions have been incorporated in the Cr.P.C. for speedy disposal of cases as well as for the protection of undertrial prisoners. But the Recent Law Commission Report is one more addition in this direction and it will also be helpful for the protection of the rights of undertrials, if the recommendation of the Law Commission will be incorporated in Cr.P.C. through Amendments.

#### **Judicial Response towards Undertrials**

The role of the judiciary, of course is primarily to ensure the most effective and proper implementation of the Rule of Law begins from the protection of Human Rights.<sup>34</sup> Human rights are never safe in a country unless an activist judiciary with pragmatic humanism becomes 'the sentinel on the qui-vive'. The judiciary must protect the fundamental human rights as guaranteed in the Constitution of India. In this regard the judiciary has played a decisive role in the protection of human rights of undertrials and concerned by the plight of the undertrial prisoners languishing in various jails in the country, various directions issued by this Court from time to time.

The Apex Court had occasion to deal with the rights of prisoners in *Sunil Batra (II) v. Delhi Administration*.<sup>35</sup> In this case the question before the court was whether the prisoners are persons and they are entitled to fundamental rights while, in custody. The Court answer these questions and observed:

“Are prisoners, persons? Yes, of course. The rights of prisoners has been recognized in the International Covenant on Prisoners Rights’ to which our country has signed assent. In *Batra case*,<sup>36</sup> this Court has ruled that fundamental rights do not flee the person as he enters the prison, although they may suffer shrinkage necessitated by incarceration.”

A little later in the aforesaid decision, this Court had to say in this regard:

“Prisoners are peculiarly and doubly handicapped. For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social status and the like. Secondly, the prison house is a walled-off world which is incommunicado for the human world, with the result that the bonded inmates are invisible, their voices inaudible, their injustices unheeded. So it is imperative, as implicit in Article 21, that life or liberty, shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure.”<sup>37</sup>

*Moti Ram v. State of M. P.*,<sup>38</sup> the Hon'ble Supreme Court observed:

“The consequences of pre-trial detention are grave. Defendant's presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions imposed on convicted defendants. The jailed defendant loses his job and he is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.”

A strange combination of circumstances in early 1979 brought unexpected national attention to the plight of the people put in jail, awaiting their trials.<sup>39</sup> In *Hussainara Khatoon v. State of Bihar*,<sup>40</sup> A petition for a writ of *habeas corpus* was filed by a number of under-trial prisoners who were in jails in the State of Bihar for years awaiting their trial. The Apex Court has said that:

“The petition discloses a shocking state of affairs in the jails, where people charged for minor offences were languishing in jail. These prisoners keep on languishing in jail as they were not in a position to furnish bail. An alarmingly large number of men and women, including children, are behind prison bars for years awaiting trial in courts of

law. The offences with which some of them are charged are trivial, which, even if proved, would not warrant punishment for more than a few months, perhaps for a year or two, and yet these unfortunate, forgotten specimens of humanity are in jail, deprived of their freedom, for periods ranging from three to ten years without even as much as their trial having commenced. It is a crying shame on the judicial system which permits incarceration of men and women for such long periods of time without trial. We are shouting from the housetops about the protection and enforcement of human rights. Many of these unfortunate men and women must not even be remembered when they entered the jail and for what offense? They have over the years ceased to be human, beings: they are mere ticket-numbers. It is high time that the public conscience is awakened and the Government as well as the judiciary begins to realise that in the dark cells of our prisons there are a large number of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice a commodity which is tragically beyond their reach and grasp. Law has become for them an instrument of injustice and they are helpless and despairing victims of the callousness of the legal and judicial system. The time has come when the legal and judicial system has to be revamped and restructured so that such injustices do not occur and disfigure the fair and the otherwise luminous face of our nascent democracy. The Court ordered the immediate release of under-trials on their personal bond.”

The leading opinion of Justice Bhagwati (for himself and Justice Kaushal) proceeds in terms to hold that “the right to speedy trial is not specially enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21” as interpreted by the court in *Maneka Gandhi v. Union of India*.<sup>41</sup> The court looks at *Maneka case* as having prescribed that the procedure established by law should be ‘fair, reasonable and just’; obviously, no procedure can fulfil these minima until it “ensures a speedy trial for determination of guilt” of an accused person.<sup>42</sup> The court said that “a procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of Article 21.”

In the case of *Hussainara Khatoon (IV) v. State of Bihar*,<sup>43</sup> the Supreme Court held that “the state cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the

administrative and judicial apparatus with a view to improving speedy trial.”<sup>44</sup>

In *R.D. Upadhaya v. State of Andhra Pradesh*,<sup>45</sup> the Supreme Court observed that

“the undertrials should be released on bail to the satisfaction of the courts. If the undertrial prisoners are unable to provide sureties, the trial court may consider releasing them on bail by obtaining personal bonds. The Supreme Court also directed that it is not necessary for undertrial prisoners to move applications for bail. The lower courts, on the authority of the Supreme Court, may now grant them bails.”

Hon'ble Apex Court in the case of *State of U.P. v. Shambhu Nath Singh*,<sup>46</sup> observed:

“It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty”.

In *P. Ramachandra Rao v. State of Karnataka*,<sup>47</sup> the Court held that:

“The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or the ability of the accused to defend himself have 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. Speedy trial, again, would encompass within its sweep all its stages, including investigation, inquiry, trial, appeal, revision and re-trial in short, everything commencing with an accusation and expiring with the final verdict the two being respectively the *terminus a quo* and the *terminus ad quem* of the journey which an accused must necessarily undertake once faced with an implication....”

The Supreme Court in the case of *Imtiyaz Ahmad v. State of Uttar Pradesh*,<sup>48</sup> observed that

“long delay has the effect of blatant violation of the rule of law and adverse impact on access to justice which is a fundamental right. Denial of this right undermines public confidence in justice delivery system”.

In *Bhim Singh v. Union of India*,<sup>49</sup> the 3-judge Bench of the Supreme Court Considering the fact that a large number of undertrial prisoners housed in the

prisons. The Supreme Court of India has issued following direction:

“We, accordingly direct that the jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge to hold one sitting in a week in each jail/prison for two months commencing from 1st October, 2014 for the purposes of effective implementation of 436A Cr.P.C. which provides for the maximum period for which an undertrial prisoner can be detained. In its sittings in jail, the above judicial officers shall identify the under-trial prisoners who have completed a half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436A pass an appropriate order in jail itself for the release of such under-trial prisoners who fulfill the requirement of section 436 A of Cr P. C. for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sitting to the Registrar General of the High Court at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay.”

“To facilitate the compliance of the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for “holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance.”

This judgment really brings a ray of hope to a large number of undertrial prisoners languishing in jails. Keeping in view of the decision in *Bhim Singh Case* the Government is considering to free undertrials who have served half of their maximum terms of the sentence. And the Government of India, Ministry of Home Affairs on September 27, 2014 has issued guidelines to the State Government and Union Territories to adopt various measures for the release of under-trial prisoners who have spent more than half the period of their likely sentence under section 436 of the Cr.P.C.<sup>50</sup>

Chief Justice Lodha said “the situation demanded immediate action as 66% of the prisoners were undertrials, many too poor to raise bond money for bail. They languish in jails because courts are not enabled to take up their cases. Many States have no finances for the courts. There is no infrastructure, no courtrooms,<sup>51</sup> This order has attracted widespread media coverage; some civil society organisations have described it as “inspiring and welcome.”

Chief Justice of India R. M. Lodha said in his Independence Day speech that “the criminal justice delivery system had failed and the process itself had become a punishment. It offers nothing more than pain, suffering, human rights exploitation and deprivation of liberty, especially to the most vulnerable sections of the society.” He added “Preferably, we should set a goal that no trial exceeds three years, and no appeal from a trial should take over a year”. He asked whose fault was it that men and women languish in jail without dignity and freedom, awaiting trial.<sup>52</sup> He further said that “conviction rates have dipped abysmally due to corruption and ineptitude of law enforcement agencies, starting with the local investigation officer. He pointed to how conviction rates slumped from 62.5 per cent in 1972 to 32 per cent in 2012.” He said that “A robbery is implicated as theft, a rape is implicated as molestation, a kidnapping is registered as an elopement. Conversely, molestation is registered as rape, a theft is registered as robbery and elopement become kidnapping. The result is there is no legal evidence to sustain the conviction.”<sup>53</sup>

Union Law Minister Mr. Ravi Shankar Prasad has written to all chief justices to ensure that “the basic human rights of undertrials are not undermined” by their imprisonment for terms longer than the period mandated by law,<sup>54</sup>

The Apex Court again in the *Re: Inhuman Conditions in 1382 Prisons*,<sup>55</sup> passed an order calling for the improvement in prisoners' conditions incarcerated in jails across the country. The Court issued the below mentioned directions in order to tackle the situation:

1. “The Under Trial Review Committee, which has been set up in various States, should meet quarterly and the first meeting should be held before 31st March, 2016.
2. Aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason should be considered.
3. Adequate number of competent lawyers should be empanelled to assist undertrial prisoners and convicts, particularly the poor and indigent.
4. Issue of the release of undertrial prisoners in compoundable offences, should be looked into, the effort being to effectively explore the possibility of compounding offences rather than requiring a trial to take place.
5. Proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity.
6. Ministry of Home Affairs will ensure that the Management Information System is in place at the earliest in all the Central and District Jails as well as jails for women so that there is better and effective management of the prison and prisoners.
7. Annual review of the implementation of the Model Prison Manual 2016 should be conducted by the Ministry of Home Affairs.”

In *Hussain v. Union of India*,<sup>56</sup> the Supreme Court taking note of the problem of delay in disposal of trials, the bench of A.K. Goel and U.U. Lalit, JJ said that:

“Ways and means have to be found out by constant thinking and monitoring. It is the constitutional responsibility of the State to provide necessary infrastructure and of the High Courts to monitor the functioning of subordinate courts to ensure timely disposal of cases. Presiding Officer of a court cannot rest in the state of helplessness. The Court said that an appropriate action plan should be prepared at the level of the High Court and thereafter at the level of each and every individual judicial officer.”

The Court further said that courts in order to resolve the menace of pending trails causing hardships to the undertrial prisoners, the below mentioned directions should be issued by the High Courts to the subordinate:

1. “Bail applications be disposed of normally within one week;
2. Magisterial trials, where accused are in custody, be normally concluded within six months and sessions, trials where accused are in custody be normally concluded within two years;
3. Efforts be made to dispose of all cases which are five years old by the end of the year;
4. As a supplement to Section 436A CrPC, but consistent with the spirit thereof, if an undertrial has completed a period of custody in excess of the sentence likely to be awarded if a conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time;
5. The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.”

In *Imtiyaz Ahmad v. State of U.P.*,<sup>57</sup> the Supreme court terming the inadequacy of judges to be the root cause for the delay in disposal of cases resulting in huge backlog said that until National Court Management Systems Committee (NCMSC) formulates a scientific method for determining the basis for computing the required judge strength of the district judiciary, the judge strength shall be computed for each state, in accordance with the prevailing ‘Unit system’ of the High Courts.

In *State of UP Vs. Tribhuvan*,<sup>58</sup> the Supreme Court has held that “period already undergone by a convict while he was in detention, as under-trial and as convict, could be treated as jail sentence once awarded to him and its benefit by way of set off could be given to him under Section 428 of Code.”

As is evident , the Apex Court has issued a number of guidelines from time to time for the protection of the rights of undertrials. On a positive note, this Court has started showing more concern for the implimentaion of Section 436A of Cr.P.C.. At the

personal level while few judges were contacted telephonically by the author regarding their compliance with the directions of the Apex Court in *Bhim Singh* case, almost every judges unanimously responded in conformity. They further said that there is a regular monthly visit by the jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge and they are furnishing monthly report about undertrial prisoners falling within the preview of section 436A Cr.P.C. in order to ensure compliance of the same. It reflects that things are going in the right direction and this effort will certainly be helpful in the timely release of undertrial prisoners.

### Conclusion

On the basis of the above analysis, it can be concluded that it is the responsibility of the functionaries involved in the criminal justice administration viz: Police, Magistrates, Prosecutors, Defence and Prison authorities that they should implement the existing provisions in letter and spirit as well as the guidelines issued by the Judiciary time to time for the protection of the rights of the undertrials. These undertrials also have human rights which must be protected at every cast. Law in books is enough, but law in action must be improved. The outcome of the Criminal Justice System must be to inspire confidence and create an attitude of respect for the rule of law. An efficient criminal justice system is one of the corner stone's of good governance. The main task of the criminal justice system is to regain the lost confidence of the people by revamping the entire Criminal Jurisprudence in such ways that no guilty person escapes punishment, nor does innocent suffer. There is a need to improve the bail system in India so that the number of undertrials can be reduced. The criminal courts should exercise their available powers under the Cr.P.C. to effectuate the right to speedy trial. In case of violation of human rights of the prisoners, the state should award adequate compensation to them. Other than this If our conviction rate improves, then the proportion of under trials will certainly drop. Justice Lodha suggested that it is "high time that the tools of technology should be provided to the police, the prosecution and judicial officers" for quick delivery of criminal justice.

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18. *Ambika Prasad v. State Delhi Administration*, 2000 SCC (Cri.) 522.
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20. Article 22 provides that "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."
21. Section 57 stipulates that "No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a magistrate under s 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the magistrate's court."
22. Section 59 Cr. .P.C.
23. Section 41 D Cr.P.C.
24. Section 167 Cr.P.C.
25. Subs. By Act 13 of 2013.
26. Dr. Mohd. Asad Malik, ' Problem of Delay and Access to Justice', 13 *Civil & Military Law Journal*, Vol. 48 (2011).
27. C.K. Thakkar, *Criminal Procedure*, 145 (2011)
28. Section 436A: "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. Explanation.- In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”]
29. Subs. by Act 5 of 2009, Section 5 came into force w.e.f 1.11.2010.
  30. *Arnesh Kumar v. State of Bihar & anr*, Criminal Appeal No. 1277 OF 2014 (@Special Leave Petition (CRL.) NO.9127 of 2013) date of Judgment 2 July 2014.
  31. *Ibid.*
  32. *Siddharaman Satlingappa Mhetre v. State of Maharashtra*, AIR 2011 SC 312.
  33. <http://www.thehindu.com/> visited on 07/11/2017
  34. *Supra* note 15 at 85-86 (2000).
  35. (1980) 3 SCC 488
  36. (1978) 4 SCC 494
  37. *Infra* Note 55.
  38. (1978) 4 SCC 47
  39. *Upendra Baxi*, 'The Supreme Court Under Trial: Under-Trial and the Supreme Court', 35 (1980) 1 SCC Jour Sec
  40. AIR 1979 SC 1369. Also see *State of Maharashtra v. Champalal Punjaji Shah* (1981) 3 SCC 610.
  41. (1978) 1 SCC 248.
  42. *Supra* note 40 at 37.
  43. (1980) 1 SCC 98.
  44. *Ibid.*
  45. AIR 2006 SC 1946
  46. AIR 2001 SC1403.
  47. AIR 2002 SC1856.
  48. AIR 2012 SC 642
  49. MANU/SC/0786/2014) : (2015) 13 SCC 603.
  50. [http://mha.nic.in/sites/upload\\_files/mha/files/GuidelinesForRreckoningHalfLife\\_161014.pdf](http://mha.nic.in/sites/upload_files/mha/files/GuidelinesForRreckoningHalfLife_161014.pdf)
  51. *Krishnadas Rajagopal*, 'Free undertrials who have served half their likely term', 11 *The Hindu* (September 6, 2014).
  52. *Krishnadas Rajagopal*, 'Criminal justice process itself a punishment, says CJI', *The Hindu* (August 15, 2014).
  53. *Ibid.*
  54. *Utkarsh Anand*, Law Minister to HCs: Act on your own to free undertrials, 1-2 *Indian Express* (February 13, 2017)
  55. (2016) SCC 121. Decided on February 5, 2016 (W.P. (C) No. 406 of 2013).
  56. 2017 SCC OnLine SC 235, decided on 09.03.2017.
  57. (2017) 3 SCC 658.
  58. Decided on November 06, 2017 by the Supreme Court.