

Deccan Herald Caged Ordeal

6 September 2014, 06:05PM

By Shailesh Gandhi

One of the fundamental premises of our legal system is that a person is innocent until proved guilty. This implies that until a person's guilt is proved, he shall not be punished or incarcerated.

However, everywhere in the world there is one class of people who are kept in prisons though their guilt may not have been established by a process of law. These are the undertrials who may be innocent or guilty. All countries where a rule of law prevails, try to keep the percentage of such undertrials low. In the USA, the percentage of undertrials is around 20 per cent of the prisoners.

In India, this figure is 65 to 70 per cent which places us amongst the worst 10 countries on this count. In simple terms, two of the three persons in our prisons have not been convicted. Most of them cannot obtain bail because of their poverty. Some of them are in prison for a term longer than the maximum sentence they would get if convicted! In our country, if a person is poor and is framed by the police, he may spend years in prison despite being innocent.

This is a direct consequence of a dysfunctional criminal justice system. 'Justice delayed is gross injustice'. It rewards the powerful criminals and penalises the honest and the poor. Parliament recognised the plight of the poor undertrials and amended the Criminal Procedure Code in 2005 by inserting Section 436A which states:

"The 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:"

Thus, there is a legal requirement to recognise when an undertrial has spent 50 per cent of the maximum term he is liable to be convicted for, and release him on furnishing a personal bond. Despite such a law being passed by the much maligned Parliamentarians, it has not offered substantial relief to the undertrials. Relief could be actualised if the prison authorities and the judicial system paid some attention to this. Both of them have failed to do so.

Our prisons are overcrowded and if Section 436A was properly implemented, it would reduce this inhuman over-crowding. Who is to blame for this? The primary failure is that of the judiciary and prison authorities. But, the blame must also be shared by civil society and media. We have become sensitive to the plight of animals in cages but have not shown the same empathy for our poor citizens who are being denied their rights and liberties. These poor undertrials are also in cages for no fault of theirs except poverty. In a very perverse manner, the state denies liberty to some unfortunate citizens whose only fault is that they are poor and hence cannot furnish bail bond.

What is the root cause for this plight of our undertrials? The primary cause is a judicial system which does not see the need for delivering justice within a reasonable time. The judiciary believes if it has to deliver good justice, it must not be held accountable for delivering it in a timely manner. In a Supreme Court judgment in Hussainara Khaton v. State of Bihar, Justice P N Bhagwati had observed, "No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article

21 of the Constitution.

Speedy trial needed

There can, therefore, be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21." Despite this wisdom expressed in countless cases, the situation is only becoming worse and the citizen's fundamental right is being denied. This writer has shown that if courts accept the discipline of abiding by the discipline that almost no case should take more than double the average time, the maximum time at the three Courts would be 18 months, 60 months and 38 months in the Supreme Court, High Courts and lower courts, respectively. If the vacancies which are 15, 30 and over 20 per cent, respectively, are filled, these periods could be reduced further. In all services except the judiciary, it is accepted that time-bound delivery is essential. Our present system does not even make an attempt to deal fairly and equitably with all cases. The right to justice without delay was recognised even in the Magna Carta in 1225. One hopes that the judiciary which asks for a time-bound commitment on various matters will accept its responsibility and commit itself...

Section 436A is an attempt to mitigate the pain and suffering of the undertrials. However, so far, this has not been very effective because of the general apathy in implementing it by the prisons and the judiciary. Some attempts have been made by RTI activists including this writer, to get the list of names of prisoners eligible for release under 436A but they have not had much success since the prison records in most states are not computerised. It is difficult to keep track and identify the eligible prisoners when operating records manually. Amnesty International India has been doing consistent work in this area in Delhi and Karnataka, but justice for these prisoners needs to become a national agenda if this relief is to be obtained for our fellow citizens.

The Central government recently showed some interest in implementing this relief. Parliament passed a law but it was not implemented. If we want the relief under Section 436A benefits the poor undertrials, citizens and media must take the responsibility of ensuring that prison records are computerised. Do we care for our poor compatriots who are in cages?

Source: [Deccan Herald](#)