

Undertrial Prisoners in Bihar

A Study of Liquor Ban Arrests

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Following the liquor ban in Bihar in 2016, many people from Dalit and Adivasi backgrounds were arrested under the prohibition law. A majority of them were behind bars under exaggerated charges or because of procedural lapses by visiting legal aid lawyers. Most of the undertrials are unable to get released on bail due to their inability to produce suitable sureties or pay the bail amount. There is an urgent need for sociolegal intervention with undertrial prisoners towards ensuring their legal rights.

The findings are based on the intervention initiated by the Tata Institute of Social Sciences Criminal Justice Fellowship Programme to work with undertrial prisoners in Bihar during 2016–19.

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The situation of undertrials languishing in prisons continues to be a cause for serious concern in India. Despite various initiatives to address the situation, little has changed on the ground. If anything, their numbers have gone up in recent years, notwithstanding frequent directives from the Ministry of Home Affairs to prison authorities and the Supreme Court's judgment in 2014 that held that undertrials can be released on bail on personal bonds provided half of the maximum period of sentence has already been spent inside the jail (*Hindu* 2015).

According to the National Crime Records Bureau (NCRB) data of 2016, 4,33,003 prisoners have been detained in 1,412 prisons across India having a capacity of 3,80,876, that is, there are 13.7% more prisoners than the total capacity (NCRB 2016). There are certain prisons where overcrowding is above 150%, and in one case, it was found to be above 600% (PTI 2018). In terms of occupancy rates, Dadra and Nagar Haveli reported the highest occupancy (200%), followed by Chhattisgarh (189.9%), Delhi (179.8%) and Uttar Pradesh (164.1%) (NCRB 2016). Furthermore, of the 4,33,003 prisoners detained, 2,93,048 (67.6%) are undertrials, which is one of the major reasons of overcrowding in prisons (NCRB 2016). India has the third highest number of undertrial prisoners in Asia, much higher than other democracies across the world where undertrials comprise 15%–20% of the prison population.

From time to time, the Supreme Court, in its various decisions such as in *Sunil Batra (II) v Delhi Administration* (1980) (henceforth, the Sunil Batra case) and *D K Basu v State of West Bengal* (1997) (henceforth, the D K Basu case), has reiterated on the need for prison reforms and safeguarding the rights of prisoners as

they are entitled to fundamental rights while in custody. In *Bhim Singh v Union of India* (2014), the Supreme Court issued directions regarding the timely release of undertrials. In the public interest litigation (PIL) *Re: Inhuman Conditions in 1,382 prisons in India* (Writ Petition [Civil] No 406 of 2013), the Supreme Court issued directions to reduce overcrowding in prisons by releasing undertrial prisoners under Section 436A of the Code of Criminal Procedure (CrPC), and further directions were issued for the establishment and proper functioning of the undertrial review committees (UTRCs) at the district level. Based on the directions of the Supreme Court in the PIL, the Home Ministry issued an advisory to state governments to implement Section 436A of the CrPC to reduce overcrowding in prisons. Despite orders by the Supreme Court and the Home Ministry's advisory, the implementation remains lukewarm as not all states have followed the directions properly.

The Supreme Court in *Re: Inhuman Conditions in 1,382 prisons in India* observed that most prisoners belong to the weaker sections of society, and they face double agony as their voices are also suppressed. The Supreme Court has reiterated this point of the rights of prisoners and their conditions in many of its decisions and issued directions in this regard, such as in the Sunil Batra case and the D K Basu case. As per the 2015 Prison Statistics of India (PSI) report, it was found that 55% of undertrial prisoners in India belong to Dalit, Adivasi or Muslim communities, which constitute 39% of the population as per the 2011 Census (NCRB 2015). Furthermore, although Scheduled Castes (SCs) and Scheduled Tribes (STs) make up 24.2% of India's population (as per the 2011 Census), their numbers in prisons are as high as 34%, which means one in every three prisoners belongs to the SC or ST communities (*Wire* 2019).

Prisoners in Bihar

Bihar has a total of 58 prisons, seven central, 31 district and seven sub-jails. According to the PSI 2016 data, prisons in Bihar have the fourth highest number of inmates in the country, that is, there are

33,102 inmates against a total capacity of 37,809 inmates, which is around 87.5% of the capacity (NCRB 2016). Of a total of 33,102 prisoners in Bihar, 83.8% are undertrials (NCRB 2016). Beur Central Jail has around 3,500 prisoners against its capacity of 1,800 and 14 prisons in Bihar are overcrowded beyond 150% of their capacity (Nanda 2018). Most of the undertrial prisoners come from very poor socio-economic backgrounds as well as low educational status. As per the PSI 2016 data, 33.6% of the undertrial prisoners in Bihar are illiterate, and about 41% have studied up to Class 10 (NCRB 2016). The Bihar government implemented total liquor prohibition in 2016. This led to numerous arrests, and close to 1.25 lakh people were arrested in Bihar only in cases related to liquor (Ray 2018). There is no recent data available to show what percentage of these persons may still be languishing in prison. Since most of these persons come from a very poor socio-economic background, it is possible that Bihar's prisons may be overflowing with such persons. There is no official data available in this regard as the NCRB data has not been published since 2016.

As per initial reports, of the total 1.5 lakh arrests under the new prohibition law, Other Backward Classes (OBCs) account for 34.4% of the total arrests while they comprise 25% of Bihar's population. Similarly, SCs account for 27.1% and STs 6.8% of total arrests, while their population is 16% and 1.3% of Bihar's overall population, respectively (Singh 2018). This means the communities, which make up around 42% of the state population, have around 70% representation in arrests under the prohibition law, as also that marginalised people accounted to 88% of the total arrests under the said law (Singh 2018). Due to these arrests, poor people are forced to sell their assets and means of livelihoods to hire lawyers and get bail.

Impact on the Poor

The alcohol ban in Bihar was implemented through the Bihar Excise (Amendment) Act, 2016, prohibiting the "manufacturing, bottling, distributing, transporting, collecting, storing, possessing, purchasing, selling or consuming any intoxicant or liquor." The prohibition was implemented by

the Government of Bihar as one of the 2015 electoral promises made by one of the constituent parties of the coalition government, the Janata Dal (United), to reduce crimes against women and bring prosperity among the backward classes. The Bihar Prohibition and Excise Bill, 2016 created a framework for levying excise duty and prohibition on the manufacture, sale, storage and consumption of alcohol, and was imposed in Bihar by amending the Bihar Excise Act, 1915. On 2 October 2016, the state government notified the Bihar Prohibition and Excise Act, 2016, providing for more stringent punishments for the sale and consumption of alcohol. Whereas it is expedient to provide for a uniform law relating to the prohibition and regulation of liquor and intoxicants, the levy of duties thereon and punishment for the violation of the law were considered too harsh and could not be reconciled with the rule of law. Thus, with a view to dilute the stringent provisions associated with the consumption, manufacture and sale of liquor, the Bihar state assembly passed the Bihar Prohibition and Excise (Amendment) Bill, 2018, with 16 amendments to dilute some of the stringent provisions in the law.

The first amendment was the removal of the mandatory jail term for a first-time offence in the case of consumption of liquor. If found drunk or drinking for the first time, the person had to pay a fine of up to ₹50,000 or serve three months of imprisonment term. For subsequent offences, the person could get a jail term of one to five years and a fine of up to ₹1 lakh. Habitual drinkers would no longer be externed from their district for two to six months. The bill also scrapped the provision of arresting all adult members of a family, in case one of them was found to be drinking or storing liquor in the house. Also, no house or vehicle would be, henceforth, confiscated from where the liquor is seized. But shops, land, hotels, buildings and restaurants could be seized, in case they are found to be storing liquor. The amendment watered down the penal provision for first-time offenders who store, manufacture or sell liquor from a 10-year jail term and up to ₹10 lakh fine to a five-year jail term and up to ₹1 lakh in fines. The provision to fine the entire community in case liquor was found

to be frequently manufactured and sold in a particular area was also scrapped. Henceforth, only specific offenders would be booked. The offences would also be bailable and non-cognisable.

The act passed in April 2016 has miserably failed in its endeavour. More than 1.3 lakh people have been arrested till date for breaking the law (IANS 2018a). The major failure associated with the implementation of the law is the inability of the government to provide alternate livelihoods to communities traditionally engaged in making and selling toddy like the Pasis, and the arrests of large numbers of persons from marginalised communities under consumption charges, rather than arresting people who are engaged in organised hoarding and sale of alcohol (IANS 2018b).

This was not the first instance when such prohibition was enacted, as history has witnessed several attempts by governments across the world to impose total prohibition in their jurisdictions to curb negative impacts of alcoholism, especially in terms of crimes and health hazards. Countries such as the United States, Norway, Russia, and Iceland have made failed attempts to impose prohibition, while in India, Gujarat, Kerala, Mizoram, Nagaland and Andhra Pradesh have imposed similar restrictions, but the results were far from satisfactory due to a host of reasons, including tardy implementation and corruption.

In Gujarat, prohibition has interestingly taken a new turn. Three residents of Gujarat have filed a petition in the Gujarat High Court against the provision of prohibiting consumption of alcohol inside the four walls of one's house. The petition challenges the violation of the right to privacy, which has been interpreted as part of Articles 14, 19 and 21 of the Constitution in the *Justice K S Puttaswamy (Retd) and Anr vs Union of India and Ors* (2017). In 2018, Government of Gujarat had implemented a stricter law, with an imprisonment of up to 10 years for the consumption, manufacture, storage and transportation of alcohol. The petitioners have demanded that Sections 12, 13, 24-1B, 34, 35, 39, 40, 40A, 40B, 41, 46, 46A, 47, 65, 65AA and 66 of the Gujarat Prohibition Act and Rules 63, 64, 64A, 64B, 64C, 67, 68, 69, 70, 70A of the Bombay Foreign Liquor Rules should be

struck down because they are against the rights conferred in Articles 14, 19 and 21 of the Constitution. They have argued that these provisions of law prohibit drinking by an individual in private spaces and, hence, violate the privacy of a citizen.

The petitioners have also demanded that the punishments prescribed under Sections 65, 65AA and 66 of the act are excessive and disproportionate, considering they are imposed merely because one is found drunk and in possession of liquor, and they ought to be deleted.

As has been already highlighted, the Bihar Prohibition and Excise Act, 2016 has failed to achieve its objective and has also played havoc with the lives of the poor and weaker sections of society. A large percentage of the arrested persons under this law came from marginalised sections. Communities such as Pasis and Musahars who were traditionally engaged in the manufacture of toddy and liquor were left without livelihood options, and no concrete alternate livelihood avenues were provided to them. The state government introduced a scheme under which communities engaged in toddy-making would be given assistance to start selling fresh neera (toddy palm tree sap), from which toddy is made through a fermentation process. This scheme has not succeeded due to its poor implementation. As per reports, the ban has stripped around 35,000 people of their livelihoods (Raj 2016). Due to the liquor ban, the government has faced heavy revenue losses, and to compensate, the state cabinet passed a proposal of the commercial taxes department to introduce a steep hike in value added tax on items, including fabrics, auto parts, dry fruits, electrical goods, sweets, saris, sand, and cosmetics with immediate effect, which eventually became a burden for the poorer sections.

Intervention from Researchers

The Tata Institute of Social Sciences (TISS) Criminal Justice Fellowship was a field intervention-based fellowship offered to alumni of the School of Law and the School of Social Work at TISS Mumbai. The core idea behind this initiative was to encourage young professionals to initiate new areas of work, especially where there is a dearth of trained human service professionals, and to demonstrate the scope and potential

of working on critical issues, such as sociolegal services for undertrial prisoners, legal rights and rehabilitation of women prisoners, justice and compensation for victims of atrocities against scs, and rights and entitlements of denotified tribes.

This fellowship was focused on developing an intervention strategy based on interactions with undertrial prisoners and their families, lawyers, District Legal Services Authority (DLSA) staff and the judiciary. The intervention included making regular visits to Beur Central Jail and Phulwari Sharif sub-jail in Patna to identify cases of undertrial prisoners who needed sociolegal services. To understand the current status of cases, the fellow visited courts on the dates of the hearing of undertrial prisoners and provided them with information about the current status of their cases. Furthermore, undertrials were provided with legal aid and help with documentation in personal recognisance bail bonds. The intervention strategy included working with the DLsAs and pro-bono lawyers to provide legal aid and guidance to undertrial prisoners.

As the work progressed, it emerged that a majority of the undertrial prisoners were poor, having no means to arrange for legal aid and bail bonds, which were in the range of ₹10,000 to ₹20,000. In most of the cases, the arrested persons were the sole breadwinners of their families, and their dependants had to arrange money by taking loans at high interest rates or by selling their means of livelihood and their livestock. Some of them said that the police had asked for money in return for not filing cases against them.

Presently, the focus of the intervention is on undertrial prisoners who are arrested under this law and to help them get released on personal recognisance (PR) bonds under Sections 436 and 436A of the CrPc.

In the last three years or so, legal aid has been arranged in almost 200 cases of undertrials in Beur Central Jail and Phulwari Sharif Jail. In 2017, all the 58 jails in Bihar were up to their capacity. The situation worsened when 35,000 people were arrested and sent to jail under the liquor law in the state since April 2016.

Most of the undertrial prisoners were illiterate, landless and engaged in informal labour earning less than ₹10,000 per month. They could not afford to

hire lawyers and file for bail and hence, languished in prison despite petty offences. Some of them narrated that since their arrest, they had not met their family members as their families could not afford such visits.

Most of these undertrials were arrested in petty crimes such as theft, pickpocketing, concealment of stolen property, and offences under the Railways Act and the Excise Act. In a large number of cases, the maximum prescribed punishment is less than three years, but they were in prison for between one and half to two years without filing for bail and without a trial. Some cases, where the Criminal Justice fellow could intervene, that went in favour of the undertrials showed how the legal system was tipped against such persons.

Documenting Everyday Conditions

Shivendra Sah,¹ a 35-year-old daily wage earner from the OBC community, came to Patna in search of work, leaving behind his 70-year-old mother in his village in Samastipur. He was working as a daily wage labourer and earned around ₹6,000–₹8,000 per month. On 19 November 2016, he was arrested under Section 37B of the Bihar Prohibition and Excise Act for consuming alcohol and disrupting traffic. Since the day of his arrest, he was kept in judicial custody and the trial had not started. It was a shock for his old mother as she had no clue where her son had disappeared and she was forced to survive at the mercy of the neighbours. At the time the fellow met the undertrial, he had spent 21 months in prison before he was finally released on PR bond by the judge.

Tippu Soren, a 30-year-old cart puller from the ST community, came in search of work, leaving behind his mother and stayed in Patna. In October 2016, he was arrested from the Phulwari region by excise department officials on receiving information from unidentified sources. At the time of the arrest, he was intoxicated and this was confirmed by a breath analyser test. He was charged under Sections 37A and 37B of the Bihar Excise and Prohibition Act, 2016. He was finally released on PR bond after nearly two years in prison, through the intervention of the fellow.

Kailash Sharma, a 24-year-old man, was arrested from the Patna railway station by

the Government Railway Police (GRP) upon a complaint by the public that a drunkard was creating nuisance. The accused left his family in 2010 and had severed all contacts with them. He was working in Patna as a daily wage labourer. He was kept in judicial custody since his arrest, but his family was not informed about his whereabouts by the police. He was released on PR bond by the judge after the case was brought to his notice by the fellow.

Bhola Prasad Yadav was a 25-year-old rickshaw puller in Patna who was the sole earner in his family. On 18 October 2017, while returning home after work, he was arrested by the police under suspicion of intoxication. He was sent to the Patna Medical College and Hospital where the medical tests confirmed his state of intoxication. He was sent to judicial custody while his family was informed about his arrest. He remained in prison for a year before being released on PR bond by the judge.

He promised to appear on the next hearing dates and the judge assured to dispose the case against Bhola as soon as the hearings begin.

Mukesh Dom, a 45-year-old Dalit man, who came from a community of manual scavengers, worked as a sewage cleaner. He was arrested in November 2017 under charges of intoxication and the same was confirmed after medical tests. Mukesh claimed that to do such jobs and to survive amidst such pathetic conditions, he had to drink before getting into sewage drains. Mukesh was released on a PR bond after 11 months in prison. Md Karoon, a 35-year-old young man who worked as a daily wage labourer, was arrested under the Bihar Excise and Prohibition Act for consuming alcohol. The accused claimed that he found it difficult to feed his family as he was the sole earner, and since he could not see them suffer, he started drinking. He was released on PR bond by the judge through the intervention of the Criminal Justice Fellow.

These cases highlight the draconian nature of the provisions of Bihar's liquor prohibition law. It has led to the arrest of thousands of people who were found in a drunken state by the police and has ripped apart the lives of people, most of whom are from socially backward and marginalised communities. Daily wage labourers, mendicants and destitute persons comprised

the majority of those arrested under Sections 37A and 37B of the Bihar Excise and Prohibition Act for consuming alcohol. Some were arrested, who had not even violated Sections 37A and 37B, but the executives in the heat of the moment had charged them under Clause (c) of the above provisions. Uninformed families, failure to arrange sureties or pay cash bail made their lives living hell. As the offences were bailable for first time offenders and most of them were in this category, they had a right of securing bail within three months, but they ended up languishing in prison for periods ranging from one to two years. The lack of proper implementation of the law, and negligence of the visiting jail panel advocates from the DLSAs, who did not take proper cognisance of the cases, added to their agony.

Conclusions

Most of the undertrials in prison under the Bihar Excise and Prohibition Act were from marginalised groups, a sizeable chunk being migrant labourers, and hence were soft targets for the police. Their families were not informed, nor were they provided legal aid. They were not in a position to avail private lawyers and also lacked the knowledge about the legal status of their cases. Most of them were behind bars under exaggerated charges, and procedural lapses on the part of visiting lawyers from the DLSAs added to their agony. Not many people were bothered about the conditions of these undertrial prisoners, and there was a lack of information about them, which added to judicial delays. Provisions such as Section 436A of the CrPC and the concept of the PR bond were alien to most of the practising lawyers, and hence, the benefits of these provisions could not be provided to these persons.

After our intervention, there is a greater concern about the plight of such persons among the stakeholders and better response of the system towards access to justice for undertrial prisoners from marginalised backgrounds. More lawyers are now taking up pro-bono cases and the judiciary is sensitised to the situation of this group. There is a need to sensitise the jail panel advocates to take up the work of legal guidance for undertrial prisoners with

greater sense of purpose. This responsibility cannot be laid at the doors of the DLSA panel lawyers alone. The honorarium paid to legal aid lawyers needs to be substantially increased and the DLSA needs to reimburse the fees to the legal aid lawyers on a timely basis. Most importantly, the work culture of the DLSAs needs to become more result-oriented towards the benefit of the marginalised sections of society.

NOTE

1 Names of the undertrials have been changed to protect confidentiality.

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