



### **JUDICIARY VIS-À-VIS UNDER INVESTIGATION PRISONERS (UIPs)**

Whether the Indian Judiciary is a performing or non-performing asset is being widely debated in the recent time. By and large, the Indian Judiciary is appreciated and is also receiving accolades from all corners irrespective of class, creed, religion and political affiliation. At the same time, the judiciary also comes under receiving end on certain issues. Clogged docks in the courts and large number of under trial prisoners (UTPs) are the prominent issues, engaging the attention of all concerned.

In the last more than five decades, the Indian Judiciary has proved that it is independent in the true sense and an effective guardian and protector of the rights of the common citizens under the constitution. There was a time when some of the progressive judicial pronouncements were characterized as “Judicial Activism” or “Judicial Overreach” by the critics. One section of the critics has been of the opinion that the revolution in judiciary is an encroachment on the powers of Legislature and Executive, whereas, the majority does not share the same view. Having taken note of various landmark judgments, wherein the Indian Judiciary has enlarged the scope of Article 21 of the Constitution of India as well as various other judgments relating to protection of environment, strengthening the offices of Election Commissioners, Chief Vigilance Commissioner, tracking down high profile corrupt persons and down to the issue of unearthing black money in the country, the general view is that the proactive role of the judiciary is good for the country. The section of people holding such view also argues that since judiciary is an important organ of the constitution, it has equal role in the good governance of the country and maintenance of the rule of law. Thematic content of the arguments regarding the role of the judiciary is that neither the judiciary should become a super legislature nor the judiciary should remain a mute spectator to the infringement of basic features of the constitution or infringement of fundamental rights of its citizens or the failure of contemporary organs of the constitution in good governance of the country.

Despite the brilliant show of the judiciary in some areas, it is a matter of concern that it has not been able to render speedy justice. This is the first area wherein the judiciary is condemned or at least its sincerity is challenged. There is no denial of the fact that nearly 3(three) crore cases are pending in various courts in India. Knowledgeable persons have acknowledged the fact that given the number of judges in India it would take few hundred years to clear the backlog. Presently, only Fifteen thousand (approx.) judges throughout the country are shouldering the burden of three crore cases. In a country of 128 crores of people the Judges' ratio comes to less than thirteen per ten lacs of population. In contrast, in USA the judge-population ratio per one million is 107, in UK it is 51, in Australia it is 41 and in Canada it is more than 75 per one million population.

After the judgment of the Supreme Court in the All India Judges Association case, the Government of India and various State Governments have no doubt taken initiatives to increase the strength of Judges. However, the ailment of large pendency cannot be cured only by way of increasing the strength of judges in small installments. In view of the magnitude of the pendency and large disparity in the Judge-population ratio the Supreme Court has advised the Government in the aforesaid judgment to increase the judges' strength at least to fifty per million population in stages. The implementation of the aforesaid advice in letter and spirit would go a long way to control the menace of the pendency.

Now I shall look at the issue of UTPs. It has been alleged in the print and electronic media that the judiciary is not very sincere to contain the jail population. The full form of the abbreviation "UTP" clearly indicates that only those persons who are inside prison during the pendency of their case in the court should ordinarily fall in the said category. Under the law and as per various judicial pronouncements trial of a case begins only after framing of charge(es). To put it differently a trial has to precede investigation and filing of charge sheet by the police. This process, in average, takes a considerable time. The Code of Criminal Procedure, 1973 has prescribed the maximum period of 90 days, except under State enactments or special laws, which authorizes larger period of detention during the investigation period. Precisely, no accused can be detained in prison beyond 90 days, if charge sheet is not submitted during this statutory period of investigation. Even after filing of the charge sheets most of the accused persons are granted bail depending, inter-alia, upon the nature of the crime,

likelihood of non-cooperation of the accused in the trial, probability of tampering of evidence etc. According to me, hardly 5% accused persons are denied bail even after filing of charge sheets. In other words, 95% of the so-called UTPs are those persons who are detained in jails during the period of the investigation of cases. Hence, it would be just and proper to categorize this class of prisoners as ***Under Investigation Prisoners***, UIPs and not UTPs.

UIPs are also considered as floating population in jails. Statistics show that the UIPs population depends upon the crime rate. The number of UIPs depends upon the number of filing of cases during a particular period. If more number of criminal cases are registered there is every likelihood of higher rate of arrests. Resultantly, the graph of UIP population is likely to go high, despite the average rate of grant of bail by the courts.

I have already noted earlier that in my estimation 95% of the so-called UTPs are, in fact, the UIPs and this population cannot fall in the category of Under Trial Prisoners. Then again the ratio of Under Investigation Prisoners depends upon the number of persons arrested by police, during investigation. For instance, in the year 2001 as many as 68,03,271 persons were arrested under various penal provisions of IPC and special and local laws and the figure of arrest went up to 77,89,937 in the year 2010. In contrast the jail population had increased from 3,13,635 in the year 2001 to 3,68,998 in the year 2010. However, the jail population, including UIPs and UTPs, has come down to nearly three lacs at the end of 2011.

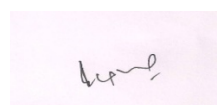
The jail population includes convicts, UTPs and other prisoners. The National Crime Records Bureau has informed this author that they do not maintain separate statistics of UIPs (i.e detenués during investigation period). However, from a news report that appeared in "The Hindu", Kolkata edition dated 18.3.2012 only 3.2% of persons arrested for various crimes are in prison due to liberal bail system adopted by the courts. This statistic appears to have been provided by the Bureau of Police Research and Development, New Delhi. The global view of the prisoner statistics shows that India ranks fourth in prison population. However, the encouraging information is that per-capita (per one lac) jail population in India is only 29 against the highest per-capita rate of 715 persons in the United States. In the neighbouring countries viz., China, Sri Lanka

and Pakistan, the per-capita rates of jail population are 119, 105 and 59 respectively.

As per the study report of the National Human Rights Commission, 60% arrests are unwarranted. This report is further supplemented by National Police Commission's reports. In its third report the Police Commission has also observed that an arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances (i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.;(ii) The accused is likely to abscond and evade the processes of law; (iii) The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint and (iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

If the observations of the Police Commission and the NHRC and various judicial pronouncements are adhered to by the investigating agencies the jail population, more particularly that of UIPs, will considerably come down.

Arrest of suspects and named accused persons is a necessary concomitant of investigation of criminal offences. The police agency is criticized if suspects are not apprehended and arrested and they are also cursed and criticized for random arrests. Hence, it would be wise for the police authorities to religiously follow the norms laid down by the various authorities before arresting a person. The arresting authority should also keep in mind that any irrational or unwarranted arrest offends legal, fundamental and human rights of such an arrested person. Same principle is also applicable to the judiciary. A small percentage of arrestees are detained in prison either during investigation or during trial in public interest. However, a few progressive steps by the judiciary in this regard will also certainly go a long way to reduce the incarceration of accused persons, who are yet to be proved guilty.



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