The Need for Reforms for Undertrial Problem

Why in news?

Addressing the Law Day event at the Supreme Court, President Droupadi Murmu raised the issue of the plight of a large number of undertrials.

What is the picture of undertrials in the prisons of India?

- According to the National Crime Records Bureau (NCRB), about **77%** of all prison inmates in the country in 2021 were undertrials.
- **District jails** had the highest share of undertrials, followed by central jails and sub-jails.
- **Uttar Pradesh** has reported the maximum number of undertrials (21.2%) in the country followed by Bihar and Maharashtra at the end of 2021.
- **Concerns**
    - Poor and resourceless continue to be disproportionately arrested
    - Routinely remanded to judicial custody in prisons
    - Long-winding trials
    - Inability to seek and secure bail either because of lack of economic resources or because of fear of the social stigma outside

What is the need for reforms?

- **Issue with penal statutes** - The Penal Code of 1860 is a classic example that adds to the issue of increasing undertrials.
    - **Section 124A** (sedition)
    - **Section 186** (obstructing public servant in discharge of his public function)
    - **Section 188** (disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed)
- The process of criminal law reform is underway and the Draft IPC and CrPC reform proposals are being actively considered by the central government to get rid of the colonial legacy.
- **Extensive powers to arrest** - In 2020 during the sudden promulgation of the lockdown, the migrant's homeward march in large numbers was treated often as an offence under Section 188.
- **Granting bails** - The arrestee's right to bail is a safety valve that ensures the arrested person a hearing before a judicial agency that goes into the justifications of the executive action.
- However, under the prevailing criminal justice system, **"jail and not bail"** becomes the rule leading to fresh under-trials.

What efforts were taken earlier to solve the issue?

- **PILs and amendments** - The issue with indefinitely detained undertrials was brought to light by public-spirited PILs before the Supreme Court in the late 1970s and early 1980s in the series of "**Hussainara Khatoon**" petitions.
- It led to amendments in the code of criminal procedure and the current court practices.
- **Bails** - There is a special right to bail in favour of the "indigent" (poor and needy) arrestees under Section 436(1)(b) of CrPC.
- The Supreme court in ***Moti Ram Vs. State of M.P.*** **(1978)** recognised personal bond in lieu of surety bail.
- **Inability to fulfil the bail conditions even after securing bail** - Recently, the SC ordered each jail authority to convey to the State Government the data in this behalf.
- The State Government would have to send it to National Legal Services Authority (**NALSA**) so that a scheme can be worked out.
- Assistance would have to be provided seeking verification of the terms of bail in such cases.

Quick facts

Hussainara Khatoon vs Home Secretary, State of Bihar

- It is a landmark judgement which highlighted the importance of timely justice as an integral part of fair trial, thus widening the scope of **Article 21**.
- This case threw lights on the importance of free legal aid for the poorer section of the society to ensure their right to be defended in the court of law by an advocate enshrined in **Article 39A**.

The National Legal Services Authority (NALSA)

- NALSA has been constituted under **Legal Services Authorities Act, 1987** to provide free legal services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes.
- Hon'ble Dr. Justice D. Y. Chandrachud, Judge The Chief Justice of India is the Patron-in-Chief.

References

1. The Indian Express | Fixing the undertrial problem
2. Moneycontrol | 77 percent of India's prisoners are undertrials
3. Legal Service India | Hussainara Khatoon Case



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