



## Mains Practice Question

**Q.** Fairness under Article 21 is impaired when procedural law does not provide a speedy trial of the accused. In light of the above statement, examine the problem of the high ratio of the under trials in Indian prisons and discuss the recommendations of law commission on prison reforms. (250 words)

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### Approach:

- Introduce by giving provision of Article 21 and some data on undertrials.
- Provide for reasons for slow trials rate of undertrials.
- Discuss problems faced by undertrials and the law commission recommendations.

### Introduction

- 'Undertrials' account for two out of three prisoners in India's prisons making India with third highest undertrial population in Asia.
- The public interest demands that criminal justice should be swift and sure that the guilty person should be punished while events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. However, delayed trials and delayed justice have created a big problem for under trials and the Criminal Justice system.

### Body

#### Reasons for slow trials:

- **Delay during Investigation:** It includes all the proceedings under the code of criminal procedure for the collection of evidence conducted by a police officer or by any person who is authorized by a magistrate.
- **Inadequacy of Personnel:** The department are very much understaffed and has to meet a very heavy demand on its personnel.
- Extra-Territorial Jurisdiction.
- Facilities for Transport and Scientific Investigation Lacking.
- Lack of Separate Investigation Branch
- **Case load in courts:** It results in decreased efficiency and output, and sometimes the system may even face a breakdown.
- **Procedural Technicalities:** The procedure in the Courts is very complicated and at the same time dilatory also

#### Problems of high ratio of under trials:

1. This is also against the principle of innocent till proven guilty.
2. It leads to overcrowding of jails which adversely affects the health and hygiene of the prisoners.
3. Prisoners do not get adequate space in the sleeping barrack as required for a normal human being.
4. It leads to further criminalization and dominance of hardened criminals.
5. It is difficult to arrange adequate Escort for production in the courts.

## Law commission on Prison reforms recommendation:

- **Reduce indiscriminate arrests:** Law Commission in its 268th report recommended that Police should avoid needless arrests and magistrates should avoid mechanical remand orders.
- The Commission noting that the jails should primarily be meant for lodging convicts and not for persons under trial, recommended that the two categories of inmates be housed separately, that there should be a separate institution for the detention of undertrial prisoners. Factors such as gender, race, ethnicity, financial conditions or social status should not influence the decision of custody or release of a person under trial
- The commission also seeks to improve a provision that was introduced in 2005 to grant relief to thousands of undertrials languishing in overcrowded prisons.
- The commission has recommended that those detained for an offense that attracts up to seven years of imprisonment be released after they complete one third of that period. Those detained for an offense that attracts more than seven years released after half of that period.

## Conclusion

Fair just and reasonable procedure inflict in the Art.21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt of innocent of the accused is determined as quickly as possible in the circumstances.

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