



Research Article

Pre-Trial and Undertrial Detention in Bangladesh: Human Rights, Constitutionalism and Judicial Delay

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Abstract

In Bangladesh, pre-trial and undertrial detention has turned out to be a big constitutional and human rights issue, not necessarily because it is statutorily designed but because of chronic judicial procrastination in the criminal justice system. Even though pre-trial detention is supposed to be an extraordinary measure to guarantee the integrity of the trial and prevent the risk of procedural abuses, in reality, it often leads to extended denial of freedom, without a speedy trial. This paper critically looks at how institutional slowness in courts and investigations, such as late filing of charge sheets, adjournment patterns, and institutional backlog, are all involved in normalising the extended incarceration. The study is founded on constitutional values of personal liberty pursuant to Articles 32 and 33 of the Constitution of Bangladesh and points to the fact that there is a gap between the formal legal protection and its practical application. It claims that judicial delay is the key structural element that makes pre-trial detention an approximate form of punishment. The paper also examines pertinent Bangladeshi jurisprudence, such as *Aruna Sen v. Government of Bangladesh* and *Abdul Latif Mirza v. Government of Bangladesh*, to illuminate the judicial doctrinal devotion to liberty, as well as to point out enforcement restrictions in practice. An Indian constitutional jurisprudence case-specifically, the case of *Arnab Goswami v. State of Maharashtra*, *Union of India v. K.A. Najeeb*, and *Satender Kumar Antil v. CBI* in the comparative analysis can be seen as reflecting a developing judicial awareness that delay in itself can be a form of infringement of personal liberty. The paper concludes that procedural discipline, filing of charge sheets in a timely manner, legal assistance, better institutional co-ordination and a system of bail which considers delay as a constitutionally relevant aspect of the case are all that is needed to bring meaningful reform in Bangladesh. Finally, the paper stresses that criminal justice legitimacy will be evaluated based on how much the custodial power is restrained in response to delayed adjudication rather than the scope of the custodial power.

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INTRODUCTION

It is not just the punishment of crime that can be used to judge a criminal justice system, but also the care that it exercises with its power to limit liberty until the guilt is established. In Bangladesh, widespread application of pre-trial and undertrial imprisonment shows a structural issue that persists, which is the delay of the judicial system. What is supposed to be a temporary and extraordinary kind of custody is in fact a matter of daily occurrence due to the slowness of trials, procrastination of investigation and overcrowded courts. Pre-trial detention is not meant to serve more than a few purposes in law, like the safeguarding of evidence, making sure an accused individual appears before a court, or preventing tampering during investigation. But when trials take a long time to conclude, there will no longer be a temporary detention. It starts to act as a punishment although no conviction has been arrived at. In most situations, individuals stay in prison as their cases await being heard, and in other instances the term in prison is almost or even more than the potential term of the crime. The issue at hand, however, is not whether there is or there is not detention, but the fact that the justice system takes a long time to act making detention a long process. This paper looks at this problem by looking at the constitutional provisions, structural issues in the justice system, and international legal developments, particularly in India, where it has been increasingly accepted by the courts that delay in the trial process itself can be a breach of the right to liberty.

Conceptual and Basic Understanding

Pre-trial detention refers to holding an individual in custody even as his or her trial is in progress. Undertrial detention is the term used to mean individuals who have been arrested and are held in jail awaiting the decision of their case in a court. These are simply people who have not been convicted yet are in prison. According to the current constitutional law, pre-conviction detention is an exception, but not a rule. The simple concept is that any individual is assumed to be innocent until he/she is proved guilty. This implies that one must be tried properly and only after then be punished. But the problem arises when the courts and investigation systems become overly lengthy, and detention becomes unrelated to its initial purpose. It is not anchored on any obvious need, but rather it is only kept going on since the case is on hold. By so doing, the justice system begins to change to decide not to be guilty but only to control prisoners.

Constitutional Framework in Bangladesh

Personal liberty is highly upheld in the Constitution of Bangladesh. Article 32 indicates that nobody should be denied life or liberty, except by law. Article 33 offers protection to arrested persons, including being notified of the cause of arrest, the right to a lawyer and being presented before a magistrate within 24 hours. These are highly sought-after protections on paper. But in reality, it becomes an issue because it can take a long time to get cases to trial and those cases are not necessarily decided in terms of individual cases. Liberty has been identified as important by courts in Bangladesh in several cases. The court in the case of **Aruna Sen v. Government of Bangladesh**

indicated that detention cannot be arbitrary and should solely be in accordance with the law. In **Abdul Latif Mirza v. Government of Bangladesh**, the Appellate Division upheld that the powers of detention should never be beyond the constitutional limits and judicial review. Although these rulings are obviously pro-liberty, the real problem is that even with slow trials and delays, long periods of custody are still achieved.

Why Judicial Delay Happens

Prolonged undertrial detention is primarily due to judicial delay. Among the largest issues is the work overload of the courts. Cases have been more than the system can manage, and thus hearings are postponed, and it takes years to complete the cases. Delay in investigation is another cause of a major cause. Police investigations are also very time-consuming due to resource shortages, slowness in gathering evidence and taking time to prepare charge sheets. Even before the commencement of a proper trial, sometimes an individual is in jail. It also depends on the socio-economic factors. Individuals who have money can afford good lawyers and have an easier time getting bail. Less fortunate people, on the other hand, might languish in jail due to lack of means to hire an attorney or bail. This brings imbalance in accessing freedom. The combination of all these makes it possible to have a system in which delay is the order of the day, and detention is automatic.

Comparative View: India and Judicial Guidance on Delay and Liberty

Indian constitutional courts have come up with an objective and viable solution to the issue of detention on a large scale. The point of these rulings is very straightforward; one cannot lose his or her liberty by the mere fact that a trial is not quick. Courts have reiterated severally that when the justice system is too slow, it will be unfair to retain an individual in jail without conviction. In the case of **Arnab Goswami v. State of Maharashtra**, the Supreme Court emphasised the fact that personal liberty is among the most significant rights in a democratic system. The Court clarified that the judges should be keen to deny bail, particularly when one is still an accused. It expressed very clearly that criminal cases should not be taken to coerce or harass people. The fundamental teaching of this case is that liberty has to be vigorously defended by courts at the initial phase, as opposed to the final phase of the case. In the case of **Union of India v. K.A. Najeeb**, the Court put emphasis on delay. It stated that despite the stringent nature of the law, which does not easily grant bail, judges could still grant bail when the trial took too long. The most important thing in this message is that when a trial is not completed in a reasonable period of time, it will be unconstitutional to retain a person in jail, as stated in Article 21 (right to life and liberty). This case demonstrates that delay in itself can trump hard legal prohibitions against bail. The Court provided more comprehensive guidelines to the whole criminal justice system in **Satender Kumar Antil v. CBI**. It claimed that there should not be automatic arrest but only when there is a need to arrest. The Court elaborated that not only do individuals get arrested when it is not necessary in most instances, but also this results

in needless jail time. The primary teaching of this case is that bail ought to be the default rule and jail ought to be applied in special cases where a real risk is present (such as absconding or destruction of evidence). In **Arvind Kejriwal v. Directorate of Enforcement**, the Court once again pointed out that detention cannot be indefinite in the face of serious economic offences without due trial making any progress. The point being here is that the complex investigation of the case or seriousness of the allegations in themselves does not suffice to warrant long custody where the trial is not proceeding well.

Combining all these instances, we obtain a very simple principle:

- A. Freedom is the norm; imprisonment is the exception.
- B. People should not be held in jail just because they are taking longer to undergo trials.
- C. Another violation of basic rights can be the delay in justice itself.
- D. The question to be always asked by the judges is: Is it really necessary to continue in detention, or is it due to the delay in the case?

Simply, what the Indian courts are saying is that a sluggish justice system cannot be used as an excuse to hold a person in custody without convicting him or her. When the system is not able to complete the trial in a short time, then the freedom should be preserved by default, by bail or release terms.

Human Rights Impact of Delay and Detention

The issue of holding people in jail without conviction raises grave human rights issues when they spend considerable time in jail. The greatest problem is that the presumption of innocence becomes operative. Prolonged imprisonment has an impact on the psyche. Stress, fear and uncertainty are experienced by many under-trial prisoners as they are not aware of the time when their case is going to be finalised. It also affects the family since the arrested individual might be one of the principal sources of livelihood and his/her absence will cause financial and emotional issues. Although the individual might be proved innocent later, the time he/she has spent in jail cannot be refunded. This renders undertrial detention a very grave damage. This is also taken care of by international human rights standards. According to the International Covenant on Civil and Political Rights (ICCPR), the detention of any person in arbitrary conditions and the completion of the trials within a reasonable period should not be allowed. The UN Standard Minimum Rules for the Treatment of Prisoners also emphasise that there should be a difference between the treatment of undertrial prisoners and convicted prisoners, yet in most cases it is not followed in practice.

Reform-Oriented Analysis: Responding to Judicial Delay and Reducing Unnecessary Detention

The central structural issue in undertrial detention in Bangladesh needs to be addressed, and the first step towards any meaningful action concerning undertrial detention should include acknowledging that the fundamental issue is judicial delay. In cases of criminal trials that are unreasonably long, detention is no longer a short-term procedural protection but

progressively becomes a long-term loss of freedom without determination. Reform, then, should be directed towards the minimisation of delay, but at the same time, liberty should be secured in the criminal process. One of the initial reform orientations is the enhancement of judicial capacity as well as disciplined handling of cases. The Bangladesh courts are normally functioning under an excessive burden of cases, and hence the cases tend to be adjourned frequently and tend to run slowly. Such delay is not necessarily due to legal complexity but institutional constraints of time and control in scheduling and oversight of proceedings. An organised case management system with predetermined and realistic, yet strict, time frames and adjournment only due to well-founded reasons can help considerably to minimize unnecessary delays. Additional measures such as improved administration in courts and digitization of case tracking system can also help to ensure that cases do not languish in the system. Second, reform needs to tackle delay during the investigation phase which is in most cases the genesis of lengthy detention. In most instances, suspected individuals are in custody since investigations are incomplete or charge sheets are not filled on time. This poses a scenario whereby it is a case of detention before the trial even commences. Reasonable time expectations should thus be stipulated in conducting investigations by investigation agencies and accountability should be evident in cases where investigations are delayed without any explanation. Simultaneously, the cooperation among police, prosecution services, and courts should be enhanced in such a way that after an arrest has been made, the case proceeds to the subsequent phase of the investigation in a steady and predictable way and does not get stuck at the investigation level. Third, there is a need to be more consistent and liberty-oriented in the decision-making of the bails. In reality, the amount of bail is at times determined, however, not by a sound judgment of whether the defendant indeed needs to be held in custody or not. The concrete risk factors to which the courts should concentrate on are the probability of absconding, tampering with evidence or interruption of justice. In the cases where it is not evident that such risks exist, further detention is hard to be justified. Notably, the lateness of the trial procedure, in itself, should be considered as a legal factor. In a case that has not taken off, the reasoning behind retaining the case becomes less convincing and needs to be reviewable considering the presumption of innocence. Fourth, legal aid needs to be reinforced in order to minimize unwarranted incarceration. Judicial delay is disproportionately experienced by people that cannot afford to pay or are not well versed in the law. In the absence of a good lawyer, most of the accused individuals cannot get prompt bail or defend their freedom effectively. Legal assistance services ought to be offered thus at the first level of arrests and should be provided at every phase up to the trial. This minimizes the chances of the accused remaining in custody just because he/she cannot manoeuvre his/her way through the legal process. Fifth, there is the need to have better institutional coordination in all the components of criminal justice system. The courts, police, prosecution agencies and forensic institutions do not always work in a coordinated fashion, an aspect that leads to unwarranted delays. Cases can take a long time to be

investigated, prosecuted and adjudicated when there is no proper synchronisation between the three processes. Ensuring that there are more effective communication lines, procedural schedules and accountability measures between these institutions may help in ensuring that cases are not caused to be stopped unnecessarily. Lastly, reform should also aim at the pragmatic approach of treating the under-trial prisoners in the prison cells. Even though the overcrowding is usually blurred by the distinction between the undertrial detainees and the convicted prisoners which is a legal difference, it is not always the case. It is also significant to ensure proper segregation in the accommodation area, enhance access to legal services, and basic dignity in custody to support the idea that these people are not yet convicted. These are not measures that would necessarily decrease the time in detention but they cut the costs of the long judicial delay. Therefore, to mitigate the problem of undertrial detention in Bangladesh, a direct answer to the issue of judicial delay is necessary instead of some procedural changes in a vacuum. A mechanism to guarantee prompt trials, enhance coordination among institutions, enhance legal assistance, and take a more cautious view to the setting of bails will automatically decrease the unwarranted imprisonment. In a conclusive manner, criminal justice is not effective in terms of the number of individuals arrested by the justice system, but rather in terms of how the justice system takes caution to ensure it does not keep individuals longer than the justice actually demands.

CONCLUSION

Pre-trial and undertrial detention in Bangladesh is a problem that is directly related to judicial delay. Despite the fact that the Constitution provides high levels of personal liberty, lengthy investigations, overloaded court system, and inequitable access to legal representation contributes to lengthy detentions without conviction. Comparative examples can also be made with India where courts are becoming more and more aware of this problem. The examples of Arnab Goswami, K.A. Najeeb and Satender Kumar Antil are clear indications that even the postponement of the trials may turn out as a breach of the fundamental rights. Lastly, the best struggle is not merely being in custody but to have justice done in due time. In the case of justice being delayed freedom is practically compromised. A just criminal justice should hence be concerned about minimizing delay such that no individual should be held in custody than is necessary.

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Dr. Sudip Halder holds a Ph.D. in Law from Banaras Hindu University and is a distinguished legal scholar specializing in Penal Law, Criminal & Security Law, and Constitutional Law. A renowned poet and acclaimed author, he seamlessly combines legal scholarship with literary excellence. His writings reflect profound insights into justice, society, and human values. Through his academic research and creative works, he has earned wide recognition for his significant contributions to both law and literature.