

Concept note for proposed intervention on releasing undertrials under s. 436A, Cr.P.C.

Introduction:

Jails constitute an important component of the justice administration system. The UN standards on the conditions in jails very clearly lay down the rights of the prisoners- be it under trials or convicts. The principles of fair trial also emphasise on the fact that as far as the under trials are concerned, the rule should be bail and not jail. Unfortunately, the condition in India is very pitiable. The most important issue that haunts the jail administration is the issue of overcrowding, and one of the reasons for this is that a large proportion of the jail population consists of undertrials.

Centre for Social Justice (CSJ) has consistently worked on issues that touch the most vulnerable in the social ladder. Undertrials have been one such group with whom CSJ has had a long standing association, either through trainings paralegals in the jails, releasing under trials, conducting legal awareness camps in jail, etc. It took the lead in creating a NGO task force in Gujarat that was concerned with the depleting situations in the Jails in Gujarat. The task force consisted of members from eminent organizations who are committed to social justice work. This NGO task force report on prison reforms in Gujarat state was submitted to Hon'ble Minister for Jail and Rural Housing, Shri Jaspal Singh on 27-07-99. CSJ acted as the secretariat to the task force. The task force tried to contextualise Justice Mulla Committee report on the issue of prison reforms in the context of Gujarat. It gave several recommendations one of which was the concept of "*kayda sahayak*" or the **prison paralegal**. They recommended one life convict as a Kayda Sahayaks for every 75 prisoners. These Kayda Sahayaks can be trained in the basic principles of law, the rights and duties of prisoners, so also the legal procedure necessary to release people on bail. Kayda Sahayaks can be shown how the various applications for bail, personal bond, and confessions are to be drafted so that they can draft applications on their own.

If one takes a look at the socio-economic profile of the prison population, it becomes clear that it is the poor, largely from the dalit, adivasi and minority community who inhabit the jails. Most of them are people who can not access a lawyer or are those who can not manage a bail or a surety and hence are forced to stay in prison without the right to a fair trial. [2012 statistics](#) from the National Crime Records Bureau indicate that about 13.3% undertrials belong to the Scheduled Tribes and 22.4% to the Scheduled Castes, while 21% of undertrials are Muslim. These three vulnerable communities, who are also specific target groups for CSJ's activities, together constituted a whopping 56.7% of all undertrials in jails in the country as of 2012.

Recent order of the Supreme Court on s. 436A, Cr.P.C.:

A recent order of the Supreme Court of India in [Bhim Singh v. Union of India](#) offers a useful opportunity for CSJ's intervention in jails of the states that we are currently working in. The order directs that proceedings under section 436A of the Code of Criminal Procedure, 1973 (Cr.P.C.) be initiated in every jail across the country for releasing undertrials who have served their term under that section. This is extremely significant from a human rights framework in the particular context of personal liberty and rights of an accused person under Article 21.

A brief overview of section 436A will be useful in providing some background. The section was inserted into the Cr. P.C. in 2005 with the objective of ensuring that undertrial prisoners were not indeterminately detained in jail due to slow progress of their cases. The relevant portion reads as follows:

“Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties...

(...)

Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.” [emphasis supplied]

Section 436A deals only with undertrial prisoners, and there are only two requirements to be satisfied for its operation: first, the prisoner has to be under trial for an offence other than one attracting a sentence of death; and secondly, the prisoner should have remained in detention for a period amounting to half of the maximum sentence of imprisonment specified under the law. Once these conditions are satisfied, the Court is mandated to release the prisoner on personal bond, with or without sureties. The second proviso to the section further states that no person, under any circumstances, can be detained for a period longer than the maximum period of imprisonment provided for the offence under trial. Literally interpreted, this would mean that a prisoner would have to be automatically released upon serving out the duration of the maximum sentence for the offence under trial, even if the trial is incomplete. However, in practice, undertrials continue to languish in jail in the absence of legal representation and an effective system for communication of information between prisons and courts.

The Court's order directs every Sessions Judge, Chief Metropolitan Magistrate and jurisdictional Magistrate to hold a weekly sitting *in every jail*, beginning October 1, 2014, identify undertrial prisoners satisfying the requirements of section 436A, and pass orders *in jail itself for their immediate release*. This will inevitably require provision for legal aid to these undertrials, particularly those who are indigent or illiterate. Given that CSJ's lawyers are on the panels of the legal services authorities in several of the districts that we work in, there is a significant scope for intervention in terms of providing legal aid to the undertrials whose cases are going to be taken up as directed by the Supreme Court.

CSJ intervention:

The impact of the Supreme Court's order on undertrials is likely to be extremely significant and provides greater impetus for an intervention by CSJ. The intervention can encompass the following aspects:

1. In the districts where CSJ has a direct presence, we can be directly involved in providing legal aid and assisting the court in the implementation of the entire programme to ensure that the Court's order results in all eligible undertrials availing the remedy under section 436A.
2. Collating information about the number of undertrials in each jail eligible for release under section 436A, through RTI or other means.
3. While the court has devised its own reporting mechanism through the Registry of the High Court, the proceedings of each hearing can be independently documented by CSJ and presented as a (shadow) report from the perspective of social action lawyers. This report besides presenting an independent perspective of the proceedings would also be a useful empirical resource for future policy and academic research in this field.
4. In this regard, it would also be useful to identify other organisations working in the field and coordinate with them to make this a collective effort, particularly in districts where CSJ does not have a direct presence. Such organisations would include Lawyers Collective, Alternative Law Forum, SICHREM, Jagdalpur Legal Aid Group, etc.

Task list:

- Filing RTIs with each jail to find out the number of prisoners eligible for release under section 436A.
- Coordination between lawyers and DLSA in each district to carry out jail visits and identify the prisoners eligible for release.
- Interaction with the jail officials on the possibility of training convicts as *kayda sahayaks* (jail paralegals) so that they can assist their fellow prisoners in filing basic applications.