LAW COMMISSION OF INDIA

SEVENTY-EIGHTH REPORT

ON

CONGESTION OF UNDER-TRIAL PRISONERS IN JAILS

FEBRUARY, 1979

D.O. No. F. 2(19)/78-L.C.
New Delhi-110 001,
February 2, 1979.

My dear Minister,

I forward herewith the Seventy-eighth Report of the Law Commission of India relating to congestion of undertrial prisoners in jails.

As mentioned in the first paragraph of the Report, the subject was taken up for consideration by the Law Commission at the instance of the Government.

I must place on record my appreciation of the assistance rendered by Shri P. M. Bakshi, Member-Secretary, in the preparation of this Report.

With kind regards,

Yours sincerely
(Sd./-)
(H. R. KHANNA).

SHRI SHANTI BHUSHAN,
Minister of Law, Justice and
Company Affairs,
NEW DELHI.

1—525 LAD ND/78

CONTENTS

CHAPTER 1

INTRODUCTORY

I. SCOPE AND GENESIS

Genesis of the Report.

1.1 The Government of India,[1] concerned at the large number of undertrial prisoners in Indian jails, has brought to the notice of the Law Commission the need for undertaking suitable judicial reforms and changes in the law, in order to deal with the problem posed thereby. The material forwarded to us in this behalf gives certain statistics as to undertrial prisoners in India. A preliminary examination has disclosed the appalling nature of the problem posed by the pressure of a large number of undertrial prisoners in jails and the inordinately long time they have to spend before the conclusion of trial. Further detailed examination was accordingly undertaken, and certain statistics were also collected and scrutinised.[2] This Report incorporates our recommendations on the subject.

Possible remedies to prevent intermixing.

1.2, There can be no doubt that a large percentage of the inmates of our jails today is constituted by undertrial prisoners. Jails should primarily be meant for lodging convicts and not for housing persons under trial. The evils of contamination in jail are well known. This renders it desirable that the two classess of prisoners should be housed sepearately—a matter to which we shall revert later.[3] However provision of separate arrangements for housing them may take some time. Moreover, even after such arrangements are made, it will be necessary to ensure that deprivation of liberty of the undertrial prisoners for a long time is avoided, if it is avoidable without injury to public interest.

Actual realities impel us to find solutions to the excessive number of undertrial prisoners in jails.

Scheme of discussion.

1.3. We shall first deal with certain matters of an introductory, historical and general character and the present law on the subject. Certain developments of comparative interest relating to detention pending trial will be briefly noticed. We then proceed to a consideration of the issues that arise.

Previous studies.

1.4. The general question of prison administration in India has been the subject-matter of study more than once during the last seventy years or so.[4] Some though not all, of these studies, discuss the question of overcrowding in prisons and the problem of the growing number of undertrial prisoners. When the Code of Criminal Procedure was last reviewed, the topic of bail, alongwith other topics forming part of that Code, received due attention in the Law Commission.[5] But the question now under consideration was not posed in the pointed form in which it has now presented itself.

II. MAGNITUDE OF THE PROBLEM

High Percentage of undertrial prisoners.

1.5. Figures made available to us[6] reveal not only that the number of undertrial prisoners in Indian jails is large, but also that their percentage is high enough. Thus, on 1st January, 1975, the total population of prisoners in Indian Jails was 2,20,146 as against a total capacity of 1,83,369. Out of these 2,20,146 the number of under trial prisoners was 1,26,772. This represents a percentage of 57.58.

Figures as on 1-4-1977 in the jails are as follows[7] :

Undertrials	1,01,083
Convicted	83,086
Total	1,84,169

[Undertrials thus constitute 54.9 percent of the total jail population on 1st April, 1977]

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[1] Papers forwarded by the Ministry of Home Affairs file No. V. 20012/3/78 GAP IV, under Home Ministry's note of 2nd November, 1978.

[2] For statistics, see para 1.5 and 1.6, *infra* and Appendix 2.

[3] Chapter 8, *infra*.

[4] Para 1.16 to 1.22, *infra*.

[5] Law Commission of India, 41st Report (Code of Criminal Procedure, 1898), Chapter 39, pages 315 to 322.

[6] Figures contained in the papers forwarded by the Ministry of Home Affairs file No. 20012/3/78-GAP-IV.

[7] Information obtained from the National Institute of Social Defence, New Delhi, on 18-1-1979.

We have also collected[1] figures from certain selected central jails as on 1st September, 1978. These figures substantially confirm the position stated above, namely undertrial prisoners constitute a large percentage of the total jail population.

Finance Commission's Report

1.6. We would also like to quote certain figures given by the Finance Commission in its Report.[2] The following is the relevant paragraph :

> "39. We turn now to the need for additional jail capacity. The information we have received on the jail population on different dates, and the jail capacities is given in Appendix V. 11 (ii). It is clear that the jails in several States are overcrowded. We have also taken care to look into the proportions of undertrials to the total jail population in the states. We find that this proportion is very high in several States, for instance, Assam, Bihar, Orissa, Uttar Pradesh, West Bengal, rising in some cases to 80 per cent of the total inmates. While making provisions for additional jail capacity for the long term, we cannot obviously allow for such high proportions of undertrials. For additions to jail capacity, we have limited the proportion of undertrials to a norm of not more than 40 percent of the total jail population. The basis adopted for making the provisions for additional jail accommodation has been indicated in Appendix V. 13."

Material forwarded by a senior Police officer.

1.7. We may also mention that a study made by a member of the National Police Commission[3] also bears out every aspect of jail conditions emphasised by us in this Chapter—the high percentage of undertrials, the overcrowding caused thereby, the long duration of detention and the unsatisfactory conditions.

III. INTERVAL AND BAIL

Interval between commencement of detention and final termination of proceedings.

1.8. Some interval of time must always elapse in the criminal process between the decision to hold a person for trial and the termination of the trial. What is to be done with the person who is charged with a crime but not yet convicted of it ? This question has engaged the serious attention of those who have had to formulate legislative policy in regard to the criminal process.

Principles of jurisprudence and penology.

1.9. Two countervailing principles of jurisprudence, and one principle from penology, seem to underlie the special provisions made for unconvicted persons in custody[4]. First, unconvicted prisoners must be presumed to be innocent.[5] As such, it is inappropriate that they should be subjected to greater harassment than is warranted by law, or that they should be detained with convicted persons, or that they should be deprived of any rights that pertain to non-accused persons other than those deprivations that are inherent in the very process of detention.

The presumption of innocence (on which these propositions are based) is, however, tempered by a second principle, namely, that the course of justice must proceed unhindered by the activities of those who would seek to subvert it.

These are the two countervailing principles of jurisprudence. Then, there is the basic principle of penology that those not contaminated should be protected from baneful contact with those who have been adjudged to be guilty of crime.

Conflicting considerations.

1.10. The question whether the detention of unconvicted persons is 'justified', is by its very nature, incapable of resolution in a simple manner. A judgment has to be made between several conflicting considerations, to some of which we have made a reference above.

IV. PROBLEM NOT CONFINED TO INDIA

Problem not confined to India.

1.11. The problem of a large number of undertrial prisoners does not seem to be confined to India. In regard to the U. S. A., for example, it has been stated[5]—

> "The negative by-products of judicial delay are many. The number of defendants incarcerated and awaiting trial is reaching alarming proportions in many large cities, and detention facilites are dangerously overcrowded. The law

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[1] Appendix 2.

[2] Eighth Finance Commission, Report (1978), page 103, Chapter 10, para 39.

[3] Letter addressed to Chairman of the Law Commission, received in Jaunuary, 1979.

[4] Compare King and Morgan, A Taste of Prison (1976), pages 31, 32, 33.

[5] Law Enforcement Assistance Administration, 1970 National Jail Census (1971), page 1, quoted by National Advisory Commission on Criminal Justice reproduced by Incairdi and Seigal (Ed.) Crime-Emerging issues (1977) pages 66-67.

Enforcement Assistance Administration National Jail Census in 1970 revealed that 52 *percent of the jail inmates were awaiting trial.* Pre-trial incarceration is costly to the individual, for it denies him income and, in fact may cause him to lose his job. Extended incarceration resulting from judicial delay is also costly to the public, since pre-trial detainees must be fed and supervised."

Bail-British Conference.

1.12. Some time ago, a conference on detention was held in England under the auspices of the British Institute of Human Rights (Human Rights Trust).[1] In his concluding address, the Chairman of the conference, Lord Kilbrandon made the following observations on the subject of delay, which are pertinent:—

"*Delays*

Again something must be said about the appalling delay that goes on awaiting trial. At the beginning of the eighteenth century the Scottish Parliament passed a law, which is strictly enforced to the present day, that once you have committed a man in custody for trial, his trial has to be completed within 110 days, otherwise he walks out a free man. Now if you made such a proposal in most jurisdictions today it would be said that it was impossible. But it is not impossible: it goes on in Scotland. It simply imposes a certain amount of discipline on prosecuting counsel to see they don't overload their indictments, and to see that they get on with the work. The delays that go on in England are not so bad as on the continent, but certainly they are had enough and really I think something of this sort is probably needed."

Decision on merits of bail.

1.13. In certain countries, the feeling has even been growing that the decision of the court on the merits may sometimes itself depend on the detention or release of the accused pending trial. "To continue to demand a substantial bond which the defendant is unable to secure, raises considerable problems for the equal administration of the law".[2]

U. N. Studies.

1.14. The question of persons in prison has received attention at length in the United Nations. The United Nations held the First United Nations Congress on the Prevention of Crime and Treatment of Offenders at Geneva in 1955, as a follow-up of the work of the earlier International Penal and Penitentiary Commission. The Congress on Prevention of Crime approved the United Nations Standard Minium Rules for the Treatment of Prisoners, offering guidelines on the basis of which member nations could modify their national practices in the treatment of prisoners.

Human Rights.

1.15. Thereafter, a number of developments have taken place in the international sphere. While it is not intended to burden this Report with details of such studies, it is appropriate to mention that increasing recognition of human rights in particular, civil liberties and human rights in the criminal process—lends interest to the subject-matter of this Report.

V. EARLIER STUDIES IN INDIA.

Earlier studies of prison problems.

1.16. In India the first comprehensive study[3] of prison problems was made by the Indian Jails Committee in 1919-1920. The Committee made several recommendations concerning prison administration, including a recommendation that *seperate jails should be set apart for the various categories of prisoners,* and a minimum floor area of 75 sq. yards should be provided per inmate in prison construction. The Committee deprecated overcrowding, and recommended strict limits for each prison, the creation of Children's Courts for hearing all cases of juvenile delinquents and their housing in Remand Homes instead of adult prisons, and the introduction of probation of offenders, in which voluntary individuals could also help. It suggested that short-term imprisonment should be replaced by probation, fine or warning or other substitutes such as work in lieu of imprisonment.

Developments in 1923 and upto 1947.

1.17. In 1923, section 562 of the Criminal Procedure Code, 1898, was amended to facilitate the suspension of sentences in selected cases. The Presidencies of Bombay, Calcutta and Madras enacted Children Acts in the early twenties.[4]

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[1] British Institute of Human Rights, Detention : Minimum Standards of Treatment (1975,) page xv.

[2] *Bandy* v. *U.S.* (1961) 7 L. Ed. 9, 11 : 82 S. C. 11 (opinion in Chambers —Mr. Justic Douglas).

[3] Material based on Working Group on Prisoner, Report (1972-1973), para 1.2.1 and 1.2.2.

[4] Working Group on Prisons, Report (1972-1973), para 1.2.3 and 1.2.4.

Developments between 1935 and 1948.

1.18. With the promulgation of the Government of India Act, 1935, prison became a transferred subject under the autonomous provinces. Bombay, Madras United Provinces and C.P. and Berar passed probation of Offenders Acts during 1936-1938, The United Provinces Jail Inquiry Committee, 1928-29, the Committee on Prison Reforms in Mysore, 1940-41, the U.P. Jail Reforms Committee, 1946, and the Bombay Jail Reforms Committee, 1946-48 were set up to devise measures to improve prison administration.

Post 1948 developments.

1.19. After independance, the Constitution of India included "Prisons, reformatories, Borstal Institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions" at entry 4 in the State list in the Seventh Schedule. More Jail Reforms Committees were appointed during the last 25 years. These include the East Punjab Jail Reforms Committee, 1948-49, the Madras Jail Reforms Committee, 1950-51, the Jail Reforms Committee, Orissa, 1952-55, the Jail Reforms Committee, Travancore Cochin State, 1953-55, the Uttar Pradesh Jail Industries Inquiry Committee, 1955-56, the Rajasthan Jail Reforms Commission, 1964, the Jail Manual Revision Committee, Delhi, 1969, the Bihar Jail Reforms Committee, 1972 and the Jail Code Revision Committee, West Bengal, 1972.

Report by Dr. Reckless.

1.20. In the fifties, Government of India invited technical assistance from the United Nations, and Dr. W. G. Reckless spent some time[1] in India in 1951-52 to suggest ways and means of prison reforms. He recommended, *inter alia*, the getting out of juvenile delinquents from adult jails, courts and police lock-ups; the development of whole-time probation and after-care services; the establishment of revising boards for the selection of prisoners for premature release; the establishment of new jails to perform specialised functions; revision of the jail manuals; training programmes for the warders and superior staff of prisons; introduction of legal substitutes for short sentences; *expedition in police and court action to reduce the number of undertrial prisoners and the period of their remand to jail;* establishment of an Advisory Bureau for Correctional Administration at the centre; development of a professional conference among the superior staff members concerned with the care and treatment of juvenile and adult offenders; and establishment of integrated departments or correctional administration, including jails, Borstal, probation and after-care.

Jail Manual Committee.

1.21. In 1957, the Government of India set up the All India Jail Manual Committee, which made a very detailed scrutiny of prison problems and drafted, along with their Report, a Model Prison Manual for the guidance of the State Governments in 1959.

Working Groups on Prisons.

1.22. In 1972-1973, the Working Group on Prisons gave a comprehensive Report on the subject of prison administration. The Working Group made the following comments in its Report[2] :

> "The prison administration in the country is generally in a depressing state. Most prison buildings are old and ill-equipped and many prisons are heavily overcrowded. *Convicts and undertrials are lodged in the same institutions throughout;* the adults, adolescents, juveniles, women and lunatics are also generally confined in common institutions and there is a serious lack of separate institutions for these various categories of prisoners".

VI. POSSIBLE REMEDIES

Measures to deal with prisoners.

1.23. This brief discussion shows the magnitude of the problem of overcrowded prisons as well as its importance in the international setting. The problem could be met, in part, by finding more effective ways of dealing with convicted offenders. This, however, is a matter with which we are not concerned in this Report. The Report is concerned with undertrial prisoners.

Relevancy of law of bail.

1.24. Detention in prison in the case of undertrial prisoners is generally the result of arrest for an alleged offence not followed by the grant of bail. It becomes, therefore, material to consider at some length the law relating to grant of bail. Accordingly we propose to consider in this Report the present law as to bail, and the changes that may be needed therein.

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[1] Working Group on Prisons, Report (1972-1973) , para 1.3.1 to 1.3.4.

[2] Working Group on Prisons, Report (1972-1973), para 1.1.1.

1.25. Under the present law, any answer to the question whether a person arrested for an offence would be able to secure release on bail mainly depends[1] on the offence with which he is charged (bailable or non-bailable), the discretion exercised by the officer or court (in respect of non-bailable offences) and (assuming that, in law, he can be released on bail), his capactity to furnish the security or personal recognisance required by the officer or court. It becomes therefore necessary to spread the canvas wide and to go into the law relating to bail in some detail. Factors determining right to bail.

1.26. There are three types of undertrial prisoners who are inmates of jails : Three types of undertrial prisoners.

(1) Persons being tried for non-bailable offences in respect of whom the courts have declined to pass an order for their release on bail.

(2) Persons being tried for non-bailable offences, in respect of whom courts have passed order for bail but who, because of the difficulty of finding appropriate surety or because of some other reason, do not furnish the bail bond.

(3) Persons who are being tried for bailable offences but who, because of the difficulty of finding appropriate surety or because of some other reason do not furnish the bail bond.

It is plain that if we want to reduce the burden of undertrial prisoners on jails we shall have to deal with all the above three categories.

VII. AVOIDANCE OF DELAY

1.27. We shall, in due course, make our recommendations as to the measures that could be adopted to reduce the number of undertrial prisoners in each of the categories mentioned above.[2] But we would, at this stage, like to emphasise the importance of one factor which is common to all these categories-the need to reduce the delay in the disposal of cases. We have, in an earlier Report, already made our recommendations[3] for reducing arrears and delay in the disposal of cases in trial courts. We shall later in this Report[4] mention a few important aspects of delay which have a vital bearing on the problem with which this Report is concerned. At this stage, we would like to reiterate the need for implementing our recommendations already made in that Report, which should go a long way in reducing the duration of detention. Importance of avoiding delay.

Later in this Report[5], we shall deal in detail with a few important aspects of delay having a vital bearing on the problem dealt with in the present Report. At this stage, we would merely like to reiterate the need for implementing the recommendations made by us in the earlier Report on delay and arrears in trial courts.

VIII. MEANING OF UNDERTRIAL

1.28. Before closing this introductory Chapter, we may make it clear that in this Report we are using the expression 'undertrial prisoners' in a wide sense even to include persons who are in judicial custody on remand during investigation. For statistical purposes, it would not be possible to treat them distinctly from persons whose trial has actually commenced. Meaning of undertrial in this Report.

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[1] Para 2.5, *infra*.

[2] Para 1.26, *supra*.

[3] Law Commission of India, 77th Report (Delay and Arrears in Trial Courts).

[4] Chapter 3, *infra*.

[5] Chapter 3, *infra*.

CHAPTER 2

PRESENT LAW, COMPARATIVE POSITION AND QUESTIONS FOR CONSIDERATION

I. BAIL : THE CONCEPT AND HISTORY

Legislative authority for detention and release.

2.1. Legislative authority for the *detention* of persons in prison for a suspected offence is provided by sections 167 and 309(2) of the Code of Criminal Procedure 1973. The Code, however, makes a clear distinction between detention in custody *before* taking cognizance and detention in coustody *after* taking cognizance. The former is covered by section 167, and the latter by section 309 of the Code. The two are mutually exclusive.

Legislative authority for the *release* of such persons is primarily to be sought in the provisions relating to bail-sections 436 *et seq.*, which deal with bail. We shall deal in due courses with the provisions relating to detention[1] and release.[2]

History of bail.

2.2. The concept of bail has a long history. It would appear that historically, at least in England, the institution of bail arose because of necessity. When the administration of justice was in its infancy, imprisonment for the purposes of preliminary inquiry continued at least till the Sheriff held his 'tourn', and in more serious cases, till the arrival of the justices, which might be delayed for years.

Trials were delayed by the infrequent visits of itinerant justices and many accused persons died because of insanitary conditions in the prisons. It was therefore a matter of the utmost importance to be able to obtain a provisional release from custody.[3] It was this necessity which led to the institution of bail-the need to free untried prisoners waiting for the delayed trials conducted by travelling justices. Certain *ad hoc* arrangements were made by the Sheriffs for release on personal recognizance with or without bond or on the promise of a third party to assume responsibility for the appearance of the accused. It was in 1275 that the practice of the Sheriffs to grant bail was standardised.[4] This power was later transferred to the justices in 1360—1361.[5] The Statute of Westminster (1275) specified the conditions under which pre-trial release was permissible and limited the power of the Sheriffs to determine sufficient security in each case.[6] The third party or surety had to assume a personal responsibility for the appearance of the accused, on penalty of forfeiture of his own property.

The Bill of Rights[7] guaranteed a right against "excessive bail".

The Habeas Corpus Act[8] made certain provisions for discharge on bail of persons who though "committed for high treason or felony plainly expressed in warrant shall not on petition be indicted as herein mentioned".

In course of time, the granting or denying of bail in England became almost completely a discretionary function of the judiciary, and (subject to certain special limitations) this substantially remained the position until 1976. In 1976 was passed the Bail Act, which confers a right to bail subject to certain exceptions. We shall mention its important provisions in due course.[9]

Aspects of necessity.

2.3. Thus, the problem with which we are now faced is not a new one, though the nature and dimensions of the problem may vary from time to time and country to country. It is necessity that requires a second look at the law.

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1 Para 2.6, *infra.*
2 Para 2.5 and 2.8, *et seq*, *infra.*
3 Stephen, History of the Criminal Law in England, Vol. 1, page 233.
4 The Statute of Westminster, 1275.
5 Statute of 13—1361, 34 Edward 3.
6 Note "Bail : An Ancient Practice Re-examined" (1961) 70 Yale L. J 966.
7 The Bill of Rights (1689) 1 Williams & Mary 10.
8 Section 6, Habeas Corpus Act, 1679.
9 Para 2.18 and 2.19, *infra.*

2.4. The position as to bail under the Code of 1898 was, in broad terms, as ollows : Position under Code of Criminal Procedure as to grant of bail.

(1) For bailable offences, bail was a matter of right.

(2) For non-bailable offences, it was a matter of discretion.

(3) Bail shall not ordinarily be granted by the Magistrate if the offence is punishable with death or imprisonment for life.

(4) The Court of Session and the High Court had a wider discretion in regard to bail.

The position has not been very materially altered by the Code of 1973, so far s the above broad propositions are concerned. In particular, the basic dichotomy etween bailable and non-bailable offences has been maintained.

II. PRESENT POSITION

2.5. We do not propose to quote the text of the various sections of the pre- ent Code of Criminal Procedure, because the manner in which the arrangement f matter appears in the Code, may not give a clear picture of the basic dichotomy etween bailable and non-bailable offences and salient features of the law applicable o offences in each category. For this reason, we prefer to analyse the contents f the relevant sections—an analysis which involves a certain re-arrangement of the natter. Present position.

The present position under the Code of Criminal Procedure, 1973, as to the grant f bail, may be thus stated, first generally, and secondly specially with reference to he High Court and Courts of Session. This dischotomy in treatment becomes ecessary in view of the content of the legislative provisions on the subject.[1]

General position

(1) For bailable offences, bail is a matter of right,[2] subject to certain qualifica- ons, to be stated in due course. The person arrested must be informed of his right o bail.[3]

The relevant provisions speak of a person other than one accused of a non-bail- ble offence, but, for brevity, we use the words "bailable offences"

(2) As regards non-bailable offences a person accused of, or suspected of the on-bailable offence, shall not be released on bail, if there appear to be reasonable rounds for believing that he has been guilty of any offence punishable with death- r imprisonment for life.[4] There is, however, an important exception to this. The ourt may direct that even in such a case a person under the age of sixteen years r any woman or any sick or infirm person accused of such an offence be released n bail.[5]

(3) In other cases of accusation or suspected commission of a non-bailable ffence, the court has a discretion to grant bail and the person may be released n bail[6] but the discretion is regulated by certain express provisions, many of which, n effect, lean in favour of the grant of bail, while some might operate in the cont- ry direction. These provisions are summarised below.

Provisions leaning in favour of bail

(4) The mere fact that an accused person may be required for being indenti- ed by witnesses during investigation shall not be sufficient ground for refusal to ant bail[7] "if he is otherwise entitled to be released on bail" and gives an under- king that he shall comply with such directions as may be given by the court.[7]

(5) If it appears to the officer or court concerned at any stage of the investi- ation, inquiry or trial (as the case may be), that there are no reasonable grounds r believing that the accused has committed a non-bailable offence but that there e sufficient grounds for further enquiry into his guilt, the accused shall, pending

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[1] Contrast section 337 with section 439, Cr. P.C. 1973.
[2] Section 436(1), main para, Cr.P.C. 1973.
[3] Section 50(2), Cr.P.C. 1973.
[4] Section 437(1), main para, Cr.P.C. 1973.
[5] Section 437(1), first proviso, Cr. P.C. 1973.
[6] Section 437(1), main para, Cr. P.C. 1973.
[7] Section 437(1), second proviso, Cr. P.C. 1973.

such enquiry, be released on bail (with sureties) or, at the discretion of such officer or court, on personal bond.[1]

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail, to the satisfaction of the Magistrate, unless, for reasons to be recorded in writing, the Magistrate otherwise directs.[2]

(7) There is a special provision for the grant of bail at the stage between conclusion of trial and judgment,[3] in certain cases.

Provisions restrictive of discretion

(8) Certain conditions can be imposed while granting bail in respect of non-bailable offences.[4]

(9) An officer or a Court releasing any person on bail for a non-bailable offence shall record in writing his or its reasons for so doing[5].

(10) Any Court which has released a person on bail for a non-bailable offence may, if it considers it necessary so to do, direct, that such person be arrested and commit him to custody[6].

(11) The amount of the bond must not be excessive[7].

High Court and Court of Session

(12) The High Court and the Court of Session have a wider discretion in respect of bail. These courts can grant bail even in respect of more serious offences[8].

In some cases, notice is also required to be given to the Public Prosecutor[9]. These courts can cancel bail granted to any person[10].

III. SOLICITUDE OF THE LAW

Provisions imposing time limits in regard to cases of trial for offences.

2.6. Our law of criminal procedure is not totally blind to the problem of time spent before or awaiting trial. Following provisions of the Code of Criminal Procedure, 1973 show its concern to keep that time within certain limits :

(1) Remand of the accused to custody during investigation is subject to an aggregate limit prescribed by law[11].

(2) As regards the time taken in investigation, the Code[12], in the Chapter dealing with investigation of offences, provides that every investigation 'under this Chepter' shall be completed without unnecessary delay.

(3) Remand of the accused to custody in the course of the trial is also regulated by another provision of the Code[13].

(4) If, in the case of an offence triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within 60 days, the Magistrate (unless the Magistrate, for reasons to be recorded, otherwise directs),[14] must release the accused on bail.

(5) Time spent by the accused in custody during investigation, inquiry or trial of the case is re-credited if the accused person is convicted and sentenced to imprisonment.[15]

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[1] Section 437(2), Cr. P.C. 1973.
[2] Section 437(6), Cr.P.C. 1973.
[3] Section 437(7), Cr.P.C. 1973.
[4] Section 437(3), Cr.P.C. 1973.
[5] Section 437(4), Cr.P.C. 1973.
[6] Section 437(5), Cr.P.C. 1973.
[7] Section 440(1), Cr.P.C. 1973.
[8] Section 439(1), Cr.P.C. 1973.
[9] Section 439(1), Cr.P.C. 1973.
[10] Section 439(2), Cr.P.C. 1973.
[11] Section 167(2), Proviso (a), Cr.P.C. 1973. See para 3.13, *infra*.
[12] Section 173, Cr.P.C. 1973.
[13] Section 309(2), first proviso, Cr.P.C. 1973.
[14] Section 437(6), Cr.P.C. 1973; para 2.4, *supra*.
[15] Section 428, Cr. P.C. 1973.

Time limit for certain proceedings relating to bonds for keeping the peace or good behaviour.

2.7. In regard to proceedings for security for keeping the peace or for maintaining good behaviour[1], the Code of Criminal Procedure directs that the proceeding shall stand terminated if not completed within six months unless the Magistrate, for reasons to be recorded, directs otherwise.

IV. MEANING OF 'BAIL'

Meaning of 'bail', whether it includes personal bond.

2.8. At this state, we may refer to the meaning of the word 'bail'. 'Bail' is a generic expression used to describe judicial release from *custodia legis*. Normally when a person is released on bail, he has not only to execute a personal bond, but has also to furnish the bond of a surety. The bond is for a certain sum of money which the surety undertakes to pay in case the person released on bail does not present himself during investigation or in court on the date of hearing in accordance with the terms of the bond. A question has, however, been raised whether 'bail' would cover the release of a person on his own recognizance without his furnishing a surety's bond. The Supreme Court in a recent case[2] has held that 'bail' covers both release on one's own bond without surety and release on bond with surety.

V. PRINCIPLES FOR RELEASE ON BAIL IN CASE OF NON-BAILABLE OFFENCES

Bail for non-bailable offences

2.9. As already noted,[3] in case of non-bailable offences, bail is not a matter of right, under the Code of Criminal Procedure. It is a matter of judicial discretion regulated, in part, by the provisions of the Code[4] and, in part, by certain principles that have been evolved in the case law.

2.10. The principles on which bail may be granted or cancelled have been laid down in several pronouncements of the Supreme Court and are conveniently collected in some judgments of High Courts also[5], and need not be discussed for the present purpose.

Principles of grant of bail—other judgements.

2.11. Whenever and application for Bail is made to a court, it has first to decide whether the offence is bailable or non-bailable. If the offence is bailable, there is no problem. If the offence is non-bailable, considerations such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, a reasonable possibility of the presence of the accused not being secured, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or the State and similar other considerations should be taken into account before granting bail[6].

Cancellation of bail.

2.12. The Code of 1898 made no express provision for cancellation of the bail granted under section 496. Nonetheless, it was held that if, at any subsequent stage, it is found that any person is intimidating, bribing or tampering with the evidence or attempting to abscond, the High Court has inherent power to cause him to be arrested[7]. This power could be invoked in exceptional cases[8] when the High Court is satisfied that the ends of justice would be defeated unless the accused is committed to custody. Such power was preserved by section 561A of the Cr. P.C. 1898. The person so committed could not (as a matter of right) ask for his release on bail, but the High Court may subsequently grant him bail. In the present Code the matter is governed by an express provision[9].

VI. PURPOSE AND AMOUNT

Purpose of bail.

2.13. The next question relates to the amount of bail bond. The purpose of bail and the question of amount are connected with each other.

2.14. The purposes of bail pending trial[10] in criminal cases are to avoid unnecessary hardship to accused persons some of whom may be ultimately found not guilty, and to permit the unhampered preparation of the defence and, at the sam time, to ensure his presence on the various dates of hearing.

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[1] Section 116(6), Cr.P.C. 1973.

[2] *Moti Ram* v. *State of Madhya Pradesh*, A.I.R. 1978 S.C. 1594 (November Issue).

[3] Para 2.5, *supra*.

[4] Para 2.5, *et seq.*

[5] *State* v. *Tukaram*, (1975) 78 Bom. L.R. 411 (reviews cases).

[6] *State* v. *Captain Jagjit Singh*, A.I.R. 1962 S.C. 253.

[7] *Talab Haji Hussain* v. *M. P. Mondkar*, A.I.R. 1958. S.C. 376.

[8] *Ratilal Bhauji* v. *Asstt. Collector of Customs*, Bombay, A.I.R. 1967 S.C. 1639.

[9] Section 439(2) Cr. P.C. 1973.

[10] Cf. Para 1.9. *supra*

Amount of bail.

2.15. Theoretically, the amount of bail should be set in the light of all the factors which bear upon the risk of the non-appearance of the accused for trial; the seriousness of the offence, the prima facie nature of case against him, the accused's character, history, reputation, antecedents and his capacity to secure bail. In practice, however, the paramount consideration which generally prevails is the nature of the offence.

VII. THE CRIMINAL LAW AMENDMENT ACT, 1932

Criminal Law Amendment Act, 1932.

2.16. We have so far concerned ourselves with the Code of Criminal Procedure In connection with the subject-matter of this Report, it is also pertinent to deal with an important provision contained in a special Act, namely, the Criminal Law Amendment Act, 1932.

Section 10, Criminal Law Amendment Act, 1932.

2.17. Section 10(2) of the Act provides that the State Government may, in certain contingencies, declare that an offence punishable under section 188 or section 506 of the Penal Code shall be non-bailable.

VIII. COMPARATIVE POSITION.

Right to bail in England.

2.18. In England, there is now, by the Bail Act, 1976, a general right to bail which can be refused only for reasons to be recorded by the court,[1] and only in circumstances set out in the First Schedule to the Act.[2] Leaving aside circumstances not very material for the present purpose, the defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would—

(a) fail to surrender to custody, or

(b) commit an offence while on bail, or

(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

The system of personal recognizance is replaced by a statutory duty to surrender to custody, violation thereof being an offence.[3]

Bail Hostels in England.

2.19. Further, the English law also provides for the establishment of bail hostels by probation and after-care committees, with financial assistance from the Home Office.[4]

IX. QUESTIONS FOR CONSIDERATION

Importance of financial deterrents in present law.

2.20. In the light of this brief survey of the position in India and England, let us now deal with the considerations that would be relevant in formulating the questions for determination. The principal object of bail is to ensure that the person released on bail will attend the trial. This object, as the law stands at present, is sought to be achieved by adopting a particular method, wherein the financial deterrent is an essential ingredient. The present provisions as to bail take into account the following postulates :—

(a) need for a financial deterrent to ensure attendance of the person released on bond;

(b) need to prevent tampering with evidence;

(c) desirability of not releasing on bail persons accused of serious offences.

Conflicting considerations and two approaches.

2.21. The crucial question that has arisen is how much importance is to be attached to each of these factors. There could be a stringent approach and there could be a liberal approach. In support of a stringent approach, it could, in the first place, be said that a person is not arrested unless there is some reliable material to indicate his guilt. Even after arrest, he is not prosecuted in the absence of a *prima facie* case, so that he can, with some justification, be regarded as one on whom restraint can be justly imposed in the interest of ensuring attendance and preventing tampering with the evidence, both being objectives vitally connected with the process of justice.

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[1] Section 4, Bail Act, 1976, read with the First Schedule.

[2] For history of English law, see para 2.2, *supra*.

[3] Sections 3 and 6, Bail Act, 1976.

[4] Section 53, Criminal Justice Act, 1972 (Eng.). See Appendix 4.

Secondly, it could be said that apart from the risk of failure to appear, there be risk that he will repeat the alleged offence or commit some other offence, if owed to remain free, so that there will be danger to human life or property.

Liberal approach.

2.22. These arguments support a stringent approach. On the other hand, favour of adopting a liberal approach, it could be stated that, in the first place, erson accused of crime is entitled to remain free until adjudged guilty, so long his freedom does not threaten to subvert the orderly process of criminal justice, that his freedom could have this adverse effect only if he deliberately fails to ap- ar at the time and place appointed for the purpose.

Secondly, pending formal adjudication of guilt, his status ought not to be imilated to that of a convicted person.

Thirdly, if kept in custody, he is impeded in preparing his defence, since, in cus- ly, unrestricted consultation with counsel is difficult.

Fourthly, if he is kept in custody, his earning capacity is impaired, thereby using hardship and economic deprivation.

Fifthly, there is a large class of persons for whom any bail is "excessive bail", ey are the people loosely referred to as indigents. For such persons, provisions bail prove more or less illusory.

These arguments would show that the question has to be decided on a balance conflicting considerations.

Reconciliation between liberty of the individual and demands of enforcement.

2.23. In fact, the need for such balancing seems to flow from the nature of the bject-matter. Like many other rules of law, rules as to bail are designed to re- ncile a conflict of interest —conflict of interests between accused persons, who ire to be at liberty before and during trial, and the State, which insists that they ould be present for proceedings in court.[1] The adjustment of the conflict between erest in personal freedom and interest in the efficient enforcement of criminal law a delicate one. No tendency should be encouraged to attach excessive weight to second consideration to the detriment of the first one.

Misuse of freedom by persons released on bail.

2.24. On the other hand, cases have also not been unknown where persons being ed for serious offences have, on being released on bail, misused their freedom intimidating the witnesses and thus defeated the ends of justice. In such cases, e remedy has been to deny them the benefit of bail. The possibility of persons used of serious offences absconding also cannot be avoided. This is especially e of foreigners and others given to trans-border offences, as also of those looking r asylum in foreign countries.

Points for consideration.

2.25. We can now briefly indicate the directions in which reform of the law uld be possibly considered. There are several matters which need to be discussed we have already indicated[2] and the problem requires to be considered in several pects, mentioned below :

1. Expeditious disposal of cases.[3]
2. Expansion of the category of bailable offences.[4]
3. Amount of bond.[5]
4. Release on bond without sureties.[6]
5. Penal provision for failure to appear and surrender.[7]
6. Arrangements for detention.[8]

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[1] See para 1.9, *supra.*
[2] Para 1.3, *supra.*
[3] Chapter 3, *infra.*
[4] Chapter 4, *infra.*
[5] Chapter 5, *infra.*
[6] Chapter 6, *infra.*
[7] Chapter 7, *infra.*
[8] Chapter 8, *infra.*

CHAPTER 3

EXPEDITIOUS DISPOSAL OF CASES

Earlier Report.

3.1. Besides recommendations which pertain to the law relating to bail, there are certain measures which should be taken up for reforming the present system relating to undertrial prisoners.

A matter of the greatest importance to which we would like the highest priority to be given is the reduction of delay and arrears in trial courts. In this context, we would like to draw attention to our Report on the subject which we have already forwarded to Government.[1] Some of the recommendations made in that Report are concerned with criminal courts. If the problem of undertrial prisoners is to be solved to any appreciable extent, implementation of those recommendations should be regarded as a measure of the first importance.

Group of recommendations.

3.2. Broadly speaking, the recommendations made in that Report can be classified into the following groups :—

(a) recommendations for strengthening the subordinate judiciary both in point of number and in point of its efficiency;

(b) recommendations for improving the machinery and equipment of trial courts;

(c) recommendations stressing the need to pay adequate attention to certain existing procedural provisions and administrative aspects, in order to avoid delay;

(d) recommendations for amending the procedural law in order to streamline the functioning of criminal courts.

Strengthening the subordinate judiciary.

3.3. We may first mention the recommendations made for strengthening the subordinate judiciary. These are :

(a) Long delays in filling up vacancies of judicial officers should be avoided.[2]

(b) Every recommendation of the High Court for increase in judicial strength should receive prompt consideration from the State Government and in the absence of some compelling reasons, should not be turned down.[3]

(c) To clear the heavy backlog, the services of retired judicial officers known for their integrity, efficiency and quick disposal should be utilised the appointment being made only on the recommendation of the High Court.[4]

(d) In addition, some special recruitment may have to be made from bright young members of the Bar who have practised for at least seven years, for the disposal of old cases. They should be given a higher start and, on satisfactory performance, be ultimately absorbed in service as District and Sessions Judges or Additional District and Sessions Judges.[5]

(e) Some of the serving judicial officers can also be asked to deal exclusively with old cases.[6]

(f) The number of additional courts should be such as to make it possible that all arrears are cleared within a period of about three years.[7]

We may state that these recommendations do not require elaborate changes in legislation and it should be possible to implement them by suitable administrative measures.

Improving machinery and equipment.

3.4. As regards improving the machinery and equipment of trial courts. We made certain recommendations in the earlier Report, the gist whereof may be thus stated—

(a) Judicial Officers should be provided with stenographers for dictating judgements.[8]

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[1] Law Commission of India, 77th Report (Delay and Arrears in Trial Courts).
[2] 77th Report, para 9.11.
[3] 77th Report, para 9.12.
[4] 77th Report, para 9.13 to 9.15.
[5] 77th Report, para 9.16.
[6] 77th Report, para 9.17.
[7] 77th Report, para 9.18.
[8] 77th Report, para 13.8.

(b) Evidence in courts of District and Sessions Judges should normally be typed, so that carbon copies of depositions can be supplied immediately to the parties.[1]

We may mention that these measures can also be implemented without legislative amendment. They may, at the first sight, appear to be of a minor character, but their implementation could make a substantial contribution in reducing the duration of cases in subordinate courts, thereby reducing the arrears as well as the number of undertrial prisoners.

isting provisions and administrative asures to avoidelay.

3.5. Then, several of our recommendations were intended to draw attention to existing provisions and certain administrative aspects relevant to the avoidence of delay in courts. These were as follows:—

(a) In criminal cases, it is particularly necessary that delay be eliminated, since the decision depends upon oral rather than on documentary evidence, and with the passage of time, the memory of witnesses fades.[2]

(b) Every criminal court should keep a register showing the number of witnesses summonéd for a date the number examined, the number sent back and reasons for sending them back without examination. The tendency of some criminal courts of sending back witnesses without examining them must be deprecated.[3]

(c) At least two police officials at every police station should be set apart for getting service of summonses effected upon witnesses for cases relating to that police station and for ensuring their presence on the date of hearing.[4]

(d) The police quite often deliberately refrain from producing all material witnesses on one date, the object being to fill up the lacunae in the prosecution evidence after the defence case becomes manifest by cross-examination. This practice is unfair and not warranted by the Criminal Procedure Code, and results in prolongation of the trial.[5]

[We shall deal with this aspect in detail later also in this Chapter.[6]]

(e) Officials at the police station who are concerned with investigation should concentrate on investigation. As far as possible, they should not be deputed for other purposes.[7]

[We shall deal with this aspect in detail later in this Chapter also.[8]]

(f) Desirability of separating the investigation agency of the police from that dealing with law and order may have to be considered. The question whether the investigating agency should be not susceptible to executive interference and, for that purpose, be independent of executive control, may also need consideration.[9]

[We shall deal with this aspect in detail later in this Chapter.[10]]

(g) The Motor Vehicles Act, 1939, section 130(1) provides for special procedure for certain traffic offences whereunder the accused can plead guilty to the charge by post and remit the specified fine. In the case of persons other than professional drivers, for some specified offences of a minor nature, the ticket issued by the policeman should also contain separately the amount of fine for various categories of traffic offences in respect of different types of vehicles, so that if the person committing the infraction of law is so inclined, he can plead guilty and also remit the amount of fine to the court concerned before the date of hearing.[11]

[While this recommendation may not directly concern undertrial prisoners, it is of great importance for reducing over-all congestion in criminal courts. It possesses, therefore, considerable relevance for undertrial prisoners, though indirectly]

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[1] 77th Report, para 13.9.
[2] 77th Report, para 12.1.
[3] 77th Report, para 12.2 and 12.8.
[4] 77th Report, para 12.8.
[5] 77th Report, para 12.8A.
[6] See *infra*.
[7] 77th Report, para 12.9.
[8] See *infra*.
[9] 77th Report, para 12.9A.
[10] See para 3.12, *infra*.
[11] 77th Report, para 12.8 to 12.12

(h) Disposal of cases in which there is a large number of accused, gets delayed because one of the accused absents himself on the date of hearing. The trial court in such contingencies should consider the advisability of directing representation of the absent accused by counsel.[1]

(i) Having regard to the importance attached to the framing of the charge, the trial magistrates should not leave it to the prosecutor to frame a charge.[2]

(j) In recording statements of the accused under section 313, Cr. P. C. the magistrate should ensure that all incriminating pieces of evidence are put to the accused.[3]

(k) Complaints have been heard that there are not enough number of prosecutors, particularly in cases under the prevention of Food Adulteration Act and those investigated by the Central Bureau of Investigation. Steps should be taken to ensure that there are as many prosecutors as there are criminal courts.[4]

(l) Where the same Judicial Officer exercises both civil and criminal powers normally he should not fix both the types of cases on the same day. If such a course cannot be avoided, he should set apart separate time for civil and criminal cases.[5]

(m) Cases in which there is possibility of death sentence should receive priority over all other cases.[6]

Amendment of procedural law.

3.6. Finally, we may refer to an important recommendation made in the earlier Report for amendment of the procedural law in order to streamline the functioning of the Court of Session. At present a Sessions Judge cannot act on evidence recorded by his predecessor, and this causes considerable delay in the disposal of sessions cases.[7] To avoid this, we recommended in the earlier Report[8] that the law should be amended so as to enable a Sessions Judge to act on evidence partly or wholly recorded by his predecessor. This recommendation, pertaining as it does to Courts of Session, is of direct importance in connection with the problem of number of undertrial prisoners and the duration of their detention, since a fairly large number of undertrial prisoners are persons charged with non-bailable offences triable by courts of Session.

Target for disposal and giving preference to cases involving undertrial prisoners.

3.7. An important measure for reducing the burden of undertrial prisoners on jails is to give preference to the disposal of those cases in which the accused are in custody. In our earlier Report,[9] we have suggested a target of six months for disposal of criminal cases. As regards cases in which the accused are in jail, the target in our opinion, should be four months.

Strictness in disposal.

3.8. Having mentioned the gist of the recommendations made in our earlier Report, we would like to deal with some of the aspects in detail. We noted in that Report that one of the main causes for delay in the disposal of criminal cases is that in the majority of them neither the prosecution nor the accused is interested in the early disposal of cases. The police take unduly long time to produce the presence of witnesses in the court on the dates of hearing.[10]

Complaints had also been made, as noted in that Report, that the police does not produce all prosecution witnesses on the first date of hearing. One reason for that is that the police officials want to know the defence case as revealed by the cross examination of the first witness and thus propose to make up any possible lacunae through the evidence of the remaining witnesses.[11] The accused too are quite often interested in prolonging the cases because the longer the cases last, the greater are

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1 77th Report, para 12.13.
2 77th Report, para 12.12A.
3 77th Report, para 12.12A.
4 77th Report, para 12.13.
5 77th Report, para 12.15.
6 77th Report, para 12.16.
7 Section 326, Cr. P.C. 1973.
8 77th Report, para 12.3 to 12.7.
9 77th Report, para 1.10.
10 77th Report, para 12.8A.
11 77th Report, para 12.8A.

the chances of prosecution witnesses being won over. It is plain that a certain amount of strictness would have to be enforced if cases are to be disposed of promptly.

We would like to re-emphasise this aspect of the matter.

Periodical statements.

3.9. We are also of the view that the trial magistrates should furnish periodical statements of cases in which the accused are in custody and which are not concluded within four months of the filing of the charge sheet. Such statements should give the reasons for the non-disposal of those cases. These statements should be scrutinised by the superior courts for such action as may be deemed necessary.

Arrests during agitation.

3.10. On occasions as a result of some agitation, hundreds and even thousands of persons defy the law and court arrest. At times like these, there is a sudden spurt in the number of undertrial prisoners. Many of such persons who deliberately defy the law and court arrest do so as a symbolic measure. It is plain that most of them would not offer bail and thus ask to be released pending their trial. Sometimes these persons are, as a result of Government decision, released without being put on trial. In case of trial, the sentence which is ultimately imposed upon them is generally of a nominal nature. It is desirable that they should be put up for trial soon after their arrest, so that the jails do not remain congested with these under trial prisoners.

Security proceedings.

3.11. Quite a substantial number of persons who are being proceeded against in security proceedings for keeping the peace or for good behaviour under Chapter VIII of the Code of Criminal Procedure are detained in jail as undertrial prisoners because of their inability to furnish the requisite bond under section 116 (3) of the Code. It is essential that the cases against these persons should be heard with due promptness and despatch and should not be allowed to linger on. Although an outside limit of six months has been prescribed by law for the completion of these proceedings,[1] efforts in our opinion, should be made to conclude these proceedings within three months.

Delay in investigation

3.12. Another reason for the large number of undertrial prisoners is the inordinate delay which sometimes takes place in the investigation of cases, with the result that the arrested persons who are remitted to judicial custody have to be kept in jail as undertrial prisoners. The delay in the investigation of cases takes place because quite often the police officials concerned with the investigation have to be deputed on other duties relating to problems of law and order. We have, in our earlier Report[2], stressed the need for not diverting the investigating official to other duties. Such diversion, in our opinion, not only results in delay in the investigation but also entails in its turn failure of justice. It was observed by us in this connection :

> "It is commonly said that the investigating agency now-a-days is not able to devote as much time as it should do to criminal cases pending in courts, because the police which constitute the investigating agency is over-burdened with manifold other duties, including those relating to maintenance of law and order. We are of the view that those officials of the police who are concerned with the investigation of cases should, as far as possible, concentrate upon investigation and looking after the progress of the cases even after they are filed in court. They should not, as far as possible, be deputed for other purposes. Piecemeal recording of evidence and delay in the disposal of cases undoubtedly causes hardship to the accused, but more than that, it results quite often in wrongful acquittals. Wrongful acquittals are as undesirable as wrongful convictions. Both shake the confidence of the public in the administration of justice. The beneficiaries of wrongful acquittals are undoubtedly the anti-social elements. It is plain that wrongful acquittals would give incentive and provide encouragement to criminals and the enemies of society.
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> It may have to be considered in the above context as to whether it is not desirable to separate the investigating agency of the police from that dealing with

[1] Section 116(6), Cr.P.C. 1973.

[2] 77th Report, para 12.9 and 12.9A.

general problem relating to maintenance of law and order. An investigating agency not burdened with other duties would not only ensure prompt and efficient investigation of crime, it would also help in the quick disposal of court case and prevent miscarriage of justice. It may be mentioned that the Law Commission presided over by shri Setalvad in the Fourteenth Report supported the idea of separation of the investigating agency. The question as to whether the investigating agency should be not susceptible to executive interference and for that purpose, be independent of the executive control may also need consideration".

Need for speedy investigation.

3.13. It is, therefore, essential that the investigation of cases should be completed as soon as possible. We may also refer to section 167(2) of the Code of Criminal Procedure, 1973, which provi des that if an investigation is not completed within the specified period, the accused should be released on bail.[1] All this highlights the need for quick and prompt investigation.

Of course, despite the above provision, there would be quite a number of arrested persons who are not able to furnish the requisite bail bond. While most of the rich criminals generally manage to furnish bail because of their resources, it is the poor persons who, being without sufficient resources, have generally to spend time as undertrials in jail. This aspect of the problem is possible of solution if the other measures[2] recommended in this Report are effectively implemented.

Adjournments.

3.14. We would also like to draw attention to the recommendation made by us in the earlier Report in regard to the adjournments of cases[3]. We would like to emphasise that adjournment of cases should not be granted where the accused is in jail, unless such adjournment is absolutely necessary.

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[1] See also para 2.6, *supra*, for section 167(2), Cr.P.C.
[2] Chapters 4 to 8, *infra*.
[3] 77th Report, paras 12.1 and 12.2.

CHAPTER 4

EXPANSION OF THE CATEGORY OF BAILABLE OFFENCES

Enlargement of number of bailable offences.

4.1. We are now in a position to deal with the various categories of undertrial prisoners.[2]

The first category[2] consists of those who are being tried for non-bailable offences and in respect of whom the court has declined to release them on bail. One possible suggestion to relieve congestion of undertrial prisoners in jails in such cases can be to enlarge the number of bailable offences. However, while resorting to this course, we have also to bear in mind that for certain types of serious offences it is not normally desirable to release the accused on bail. Many offences have already been made bailable under the existing Code of Criminal Procedure. The increase in the number of bailable offences would, in the very nature of things, be of a marginal nature. Nevertheless, the matter does require attention.

Non-bailable offences under the Indian Penal Code.

4.2. Whether an offence is bailable or not has to be ascertained with reference to the First Schedule to the Code of Criminal Procedure, 1973. The first part deals with offences under the Indian Penal Code while the second Part deals with offences under other laws.

I. OFFENCES UNDER THE I. P. C. PUNISHABLE WITH IMPRISONMENT UPTO 3 YEARS

General approach.

4.3. On an examination of the Schedule referred to above, we have come to the conclusion that many of the offences which are non-bailable could be made bailable without causing any serious adverse impact on the public interest. Our general approach in making the recommendation relating to expansion of the categories of bailable offences has been that where the maximum punishment prescribed for the offence does not exceed three years' imprisonment, then, the offence should ordinarily be bailable, unless there are any special features present in the nature of the offence or in its concrete manifestations in actual practice that justify a different approach. On the other hand, if the prescribed maximum punishment exceeds three years' imprisonment, the offence may not be made non-bailable unless there are compelling considerations why it should be made bailable.

Various considerations.

4.4. In deciding the question whether any particular offence should or should not be included in the list of bailable offences under this head, we have had due regard to the gravity or otherwise of the offence, the range and ambit of the offence being so wide as to include within itself situations of aggravation, the probability of repetition of the offence if the alleged offender remains at large, the effect, if any, of his remaining at large on public order and on even flow of the life of the community,[3] and other relevant considerations.

Recommendation as to certain offences under the I.P.C. punishable with imprisonment upto three years.

4.5. In the light of the above discussion, we would recommend that the offences under the Indian Penal Code listed by us separately[1] may be made bailable.

Counterfeiting of coins.

4.6. The list which we have given[5] includes some offences relating to counterfeiting of coins. We may state that these offences would not affect the national economy, as most of them would, in practice, be concerned with non-Indian coins. Moreover, as mentioned above,[6] the matter has to be considered on an over-all consideration of several factors and their cumulative effect, namely,—Is the release of the alleged offender likely to result in serious risks to society ? These offences, either in the abstract or in their concrete manifestations, do not, in our view, pose such a serious danger to society as to require that they should be non-bailable.

4.7. We now proceed to a consideration of the more serious offences.

II. OFFENCES UNDER THE INDIAN PENAL CODE PUNISHABLE WITH IMPRISONMENT FOR MORE THAN THREE YEARS

Offences punishable with imprisonment for more than three years.

4.8. As regards offences under the Indian Penal Code which are punishable with more than three years' imprisonment we do not consider it necessary to make bailable any of these offences which are at present non-bailable.

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[1] Para 1.26, *supra*.
[2] Para 1.26, *supra*.
[3] For example offences under sections 153A and 295A, Indian Penal Code.
[4] Appendix 1.
[5] Appendix 1 read with para 4.5.
[6] Para 4.4, *supra*.

Offences punishable with more than 3 years but less than 7 years.

4.9. We may incidentally mention here that there are certain sections of the Indian Penal Code prescribing punishment of imprisonment for more than 3 years and *less than 7 years.*[1]

III. OFFENCES UNDER OTHER LAWS

Offences under other laws.

4.10. In regard to offences under laws other than the Indian Penal Code, the position as to bail (in the absence of a provision on the subject in the particular law) is governed[2] by the First Schedule to the Code of Criminal Procedure, 1973, Part II, which reads as under :

"II.—CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or Non-Cognizable	Bailable or Non-Bailable	By what Court Triable
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable	Non-bailable	Court of Session.
If punishable with imprisonment for 3 years and upwards but not more than 7 years.	Cognizable	Non-bailable	Magistrate of the first class
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any Magistrate"

Need for amending the First Schedule, Part II, Cr.P.C., 1973.

4.11. We are of the opinion that the second paragraph of Part II of the First Schedule to the Code of Criminal Procedure[3] should be made more liberal so as to make bailable offences under the other laws which are punishable with 3 years' imprisonment[4], instead of 'for less than 3 years.

No serious impact on law and order.

4.12. The offences that are punishable with imprisonment upto 3 years do not, so far as we can see, seriously affect the maintenance of law and order. They have become non-bailable merely by reason of the automatic application of the general rule[5] laid down in Part II of the First Schedule to the Code of Criminal Procedure, 1973, governing offences punishable with imprisonment upto a certain term

Recommendation for amendment of law.

4.13. On a careful consideration of the matter, we have come to the conclusion that offences under special laws that are punishable with imprisonment for three years should be bailable. The one exception that we have carved to this general rule is ralating to offences under the Official Secrets Act, 1923. In the case of offences under other special laws, the legislature can, when it considers it necessary to do so, make an offence non-bailable even though the punishment prescribed for it is imprisonment for three years or less.

Official Secrets Act.

4.14. So far as offences under the Official Secrets Act, 1923 are concerned[6], the reasons which have weighed with us in keeping them non-bailable, even though the punishment prescribed for some of them is three years, are the same that weighed when the Official Secrets (Amendment) Act, 1967 was passed. In the Statement of Objects and Reasons for the Bill[7] which subsequently took the form of the Act[8], while making the offences under the Act non-bailable, it was stated as under:—

> "The protection of official secrets is regulated by the Indian Official Secrets Act, 1923. Except for a few minor amendments made in 1951, the Act has remained unmodified since it was enacted more than forty years ago. In view of the changed circumstances after the attainment of independence and the wide variety of unscrupulous methods which anti-national elements have of late been adopting to secure their ends, it has become necessary to amend the Act suitably to remove certain shortcomings and to make it more effective.
>
> * * * * * * * * *

[1] Sections 153 A, 153 B, 212, first para, 239, 250, 253, 292, 335, 429, 430, 431, 432, 440, 457, 497 and 505.

[2] First Schedule, Part II, Code of Criminal Procedure, 1973.

[3] Para 4.10, *Supra.*

[4] Para 4.15, *infra.*

[5] Para 4.10, *supra.*

[6] For other offences affecting national security, see Appendix 3.

[7] Bill No. 9 of 1967 introduced in Rajya Sabha on 23rd June, 1967.

[8] Statements of Objects and Reasons dated 8th June, 1967.

In the context of problems of internal and external security which the country faces at present, it is necessary to make offences under the Act cognizable *and non-bailable and* to enhance the maximum penalties prescribed for certain offences. It is, therefore, proposed to enhance the punishments for the offences suitably while ensuring, at the same time, that all offences under the Act become cognizable and *non-bailable.*"

4.15. It is, accordingly, our recommendation that Part II of the First Schedule to the Code of Criminal Procedure, 1973, should be amended so as to provide that offences under other laws should be bailable, where they fall within the ambit of the indicated above[1], and with the exception already mentioned.[2] Recommendation to amend Cr. P. C. 1973, First Schedule, Part II.

Here is a suggested formulation of the legislative provision that could be inserted on the subject.

In the First Scheduled to the Code of Criminal Procedure, 1973, Part II, entitled Classification of offences against other laws", the various paragraphs should be revised as under. (This Part will consist now of four paragraphs, since it is not intended to disturb the present position as to cognizability of offences) :—

Punishable with death, imprisonment for life or imprisonment for more than 7 years.	Cognizable	Non-bailable	Court of Session	[Existing first pragraph repeated without change].
Punishable with imprisonment *for more than 3 years but not* more than 7 years.	Cognizable]	Non-bailable	Magistrate of the first class.	[Existing second paragraph in part, modified].
Punishable *with imprisonment for* 3 years	Cognizable	*Bailable*	Magistrate of the first class.	[Existing second paragraph in part, modified].
Provided that offences under the Official Secrets Act, 1923, *shall be non-bailable.*				[Existing third paragraph without change].
Punishable with imprisonment for less than 3 years.	Non-cognizable	Bailable	Any Magistrate."	

[1] Para 4.13 , *supra.*

[2] Para 4.13 and 4.14, *supra.*

CHAPTER 5

AMOUNT OF BOND

Difficulties caused by demand for bail for excessive amount.

5.1. The recommendation made in the preceding chapter,[1] if implemented would reduce the number of undertrial prisoners falling within the first of the three categories mentioned by us.[2] They would then become entitled to bail and would fall within the third category.

But this would not, in itself, be an adequate solution to the problem under consideration. It is common knowledge that even persons accused of bailable offences—that is to say, those in the third category — are often unable to secure bail for the requisite amount because of poverty or other circumstance.

This difficulty is common also to the second category of persons, since, even where the order of the court releasing them on bail is passed, sometimes they cannot furnish the bail bond because of their inability to find appropriate surety for the requisite amount. This could happen if the amount of the bond for which they have to find surety is so excessive that it is difficult for them to get competent surety for the requisite amount.

5.2. The Code of Criminal Procedure does provide that the amount of bail bond shall not be excessive.[3] But, notwithstanding this specific directive in the Code of Criminal Procedure, there have arisen cases where a disproportionately high amount of bail was demanded. One such case even went upto the Supreme Cout.[4]

Foreigners or persons having propensity for absconding.

5.3. Of course, there are cases of those persons who are either foreigners or who have a propensity for absconding and because of that fact, the sureties are reluctant to furnish bail bonds on their behalf. Nothing much can be done for persons of this category. However, we may note that regarding the third category of undertrial persons (persons being tried for bailable offences), the policy of the law is that they be released on bail. This policy should not be defeated by demand of bail bonds of such excessive amount from those persons as might make it difficult for them to furnish the requisite bond. At the same time, it has to be borne in mind that the amount of bail bonds be not so low as might tempt them to jump the bail.

Legal maximum not favoured.

5.4. It was suggested to us that one possible device of ensuring that the legal provision prohibiting demand of excessive bail is properly enforced is to impose a limit—not as an unalterable maximum but as a guideline for minor cases.

Suggestion for statutory limit on amount of bail not favoured.

5.5. The suggestion was that some limit be imposed on amount of bail in minor cases, so as to ensure that the rule that bail should not be excessive is adhered to in practice, and with a certain amount of precision, at least in offences triable by Magistrates punishable with imprisonment not exceeding three years.

No change recommended.

5.6. We are, however, of the view that any such change might, in practice, favour rich persons rather than poor persons. The object would thereby be defeated. It is better, therefore, not to impose any limit on the discretion of the Magistrate.

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[1] Chapter 4, *supra*.

[2] Para 1.26, *supra*.

[3] Section 440(1), Cr. P.C. 1973

[4] Mati Ram V. State of M.P. A.I.R. 1978 S. C. 1594 (November issue).

CHAPTER 6

RELEASE ON BOND WITHOUT SURETIES

Bond without sureties.

6.1. Apart from the question of excessive amount of the bond,[1] another question which requires to be considered in regard to persons who are entitled to bail (the offence being bailable) or who are considered fit for release on bail (though the offence is non-bailable),—that is to say, the second and third categories of persons mentioned by us[2]—is the question of sureties. Although an order for release can be, or has been, passed, difficulties sometimes arise because the persons concerned cannot afford sureties. To meet such difficulty, the Code of Criminal Procedure even now contains certain provisions whereunder the officer or court can release a person on bond without sureties—sometimes called "personal recognizance".

The following is an illustrative list of provisions in the Code which *empower* the officer or court concerned—or, in one case, even require[3] the court concerned,[4] —to release a person accused of an offence on a bond without sureties.[5]:—

Sections 42(2), 88, 169, 389, 436(1), proviso, 437(2), 437(7).

Need to liberalise provisions for release on bond.

6.2. But the scope of these provisions is limited. It appears to us that there is need to widen the scope of the power to release on personal bond in certain respects. Experience shows that quite a large number of undertarial prisoners are unable to secure release because of their inability to find sureties. Such inability may arise because of their poverty, social conditions, want of contacts in the locality in which they are arrested or similar other factors over which they have no control. Prima facie, there is a case for liberalising the present provisions for release on bond without sureties. We propose to consider the matter first with reference to bailable offences[6] and next with reference to non-bailable offences.[7]

Outline of the amendment—Bailable offiences.

6.3. First, as to bailable offences, section 436(1), proviso of the Code of Criminal Procedure, 1973, gives a discretion to the officer or court to "discharge" the person concerned on a personal bond. As to these offences, we are of the view that if a person cannot furnish sureties within one month of arrest, that circumstance, in the absence of reasons to be recorded, should constitute a fit case for release on personal bond. If after one month a person cannot furnish sureties, it can be safely presumed that the failure was due to geneuine inability to find appropriate sureties. We may, however, add that the release of a person on own bond without sureties involves the risk of that person absconding. To obviate this risk and to provide a deterrent, we are making a separate recommendation,[8] so as to make non-appearance and failure to surrender to custody a non-bailable offence.

Non-bailable offences.

6.4. As to non-bailable offences, we recommend that section 437(1) of the Code should be amended, and the officer or court should have a discretion to release the person concerned on bond without sureties, but in this case, our proposal regarding the effect of expiry of one month after arrest[9] should not be made applicable. It is enough to confer a discretion to release on bond, without rendering its exercise mandatory in any form[10].

Recommendation to amend section 436(1) and section 437, Cr. P. C., 1973.

6.5. The following is our concrete recommendation for amending the Code to carry out the points made in the preceding parapgraphs.—

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[1] Chapter 5. *supra.*
[2] Para 1.26 *supra.*
[3] Section 437 (7), Cr. P. C. 1973.
[4] For a list of these sections, see Appendix 5.
[5] The list is illustrative only.
[6] Para 6.3, *infra.*
[7] Para 6.4, *infra.*
[8] Para 7.2, *infra.*
[9] Para 6.3, *supra.*
[10] Para 6.3 and 6.4, *supra.*

"Section 436(1)

Explanation to be added

Explanation.—If such person is unable to furnish bail within one month of the date of arrest, that circumstance shall, in the absence of reasons to be recorded by such officer or court, be a fit ground for the release of such person on his executing a bond without sureties."

Section 437(1)

Third proviso, to be added

"*Provided also that such officer or court, if he or it thinks fit, may instead of taking bail from such person, release him on his executing a bond without sureties for his appearance as hereinafter provided.*"

Recommendation to amend section 436(1), proviso, Cr.P.C.

6.6. In the Explanation[1] recommended by us to be added to section 436(1), proviso, we have deliberately used the word 'release' instead of the word 'discharge' which at present occurs in the proviso, since, in our opinion, the word 'discharge' as used in the Code has a particular connotation. The appropriate word, in our opinion, is 'release'. We also recommend that in the existing proviso, the woud 'discharge' should be replaced by the word 'release'.

Definition of "bail" to be inserted in section 2, Cr.P.C.

6.7. Our recommendation above[2] to enlarge the scope of the power to release on a bond without sureties has been made as a matter of policy. It is now necessary to deal with a question of language, connected with this very subject. Our recommendation for inserting provisions for the release of a person on his bond without sureties in certain contingencies,[3] will add to the existing provision[4] in the Code of Criminal Procedure which permits such release.

In this position, it is necessary to introduce in the Code a clarification applicable to other provisions of the Code which make a reference to 'bail'. We have, in mind, provisions which do not themselves give a power of release, but refer to other provisions under which bail is granted. A clarification to the effect that references (in such provisions) to "bail" include release on a bond without sureties, when such release is permitted by the Code is, in our view, needed to give full effect to the scope of such provisions.

Accordingly, we recommend that the following clause should be inserted as clause (aa) in section 2 of the Code of Criminal Procedure, 1973 which contains the definitions :

"(aa) *references to 'bail' include release on a bond without sureties, where such release is permitted by this Code.*"

Recommendation to amend section 395(3) and section 439(1)(b), Cr.P.C.

6.8. There are certain sections of the Code in which it is necessary to confer expressly a power to release the person concerned on bond without surety.[5] We have already recommended the necessary changes in section 436(1) and section 437(1).[6] Apart from this, section 395(3) and section 439(1)(a), Cr. P. C. 1973 also should be amended so as to give such a power.

Section 395(3) needs no comments. It deals with a reference made by a subordinate court to the High Court and with release on bail pending the decision of such reference.

As to section 439(1)(a), it provides that the High Court or a Court of Session may direct that "any person accused of an offence and in custody be released on bail....".

We are of the opinion that this provision should be wide enough to cover release on personal bond, having regard to the fact that this is the principal section under which release by the High Court or the Court of Session would be ordered, both in regard to cases of persons under trial before those courts and in regard to cases of persons under trial in courts subordinate thereto.

We, therefore, recommend that in both these sections, after the word 'bail', the words '*or on bond without sureties*' should be inserted.

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[1] Para 6.5, *supra.*
[2] Para 6.5, *supra.*
[3] Para 3.3 to 6.5 *supra.*
[4] Section 435 (1), Proviso, Code of Criminal Procedure, 1973.
[5] See sections 56, 58, 78 (2), 81, 1st and 2nd provisos, 167(2), proviso (a), 187 (1), 209(b), 306(4)(b), 330(1), 437(4) and (5), 439(1)(b), 439(2), 441(2), 441(3) and 442(1). The list is illustrative only.
[6] Para 6·3 and 6·4, *supra.*

CHAPTER 7

OBLIGATION TO APPEAR AND SURRENDER—VIOLATION TO BE AN OFFENCE

Insertion of new section in the Cr. P.C. recommended.

7.1. Consequential on the recommendations made in this Report to liberalise the law relating to bail[1], it will be necessary to create an offence of failure, on the part of a person released on bail or on bond without sureties, to appear in compliance with the terms of the bond and surrender to custody.

In the first place, in order to make it mandatory for the person so released to appear and surrender, we recommend that a new section should be inserted in the Code of Criminal Procedure, 1973, as follows :—

"441A. *A person released on bail*[2] *or on bond without sureties in criminal proceedings shall be bound to comply with the terms of the bond executed for the purpose in the matter of appearance in court or before the police officer and surrender to custody.*"

Amendment of I.P.C. recommended.

7.2. The obligation so undertaken should be made enforceable by a suitable penal provision. The penal provision could be appropriately inserted in the Indian Penal Code, somewhat on these lines:—

Section to be inserted in the Indian Penal Code

Failure to comply with terms of bond.

"229A. (1) *If a person who has been released on bail or on bond*[2] *without sureties in criminal proceedings fails without reasonable cause to appear or surrender to custody, in compliance with the terms of the bond executed for the purpose, he shall be guilty of an offence.*

(2) *If a person who—*

(a) *has been released on bail or bond without sureties in criminal proceedings, and*

(b) *having reasonable cause therefor, has failed to appear or surrender to custody in compliance with the terms of the bond executed for the purpose,*

fails to appear and surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, he shall be guilty of an offence.

(3) *It shall be for the accused to prove that he had reasonable cause for his failure to appear or surrender to custody.*

(4) *An offence under sub-section* (1) *or* (2) *shall be punishable with imprisonment for a term not exceeding two years or with fine or both.*

Explanation.—The punishment under this section is—

(a) *in addition to the punishment to which the offender would be liable on a conviction for the offence which is the subject-matter of the criminal proceedings, and*

(b) *in addition to the power of the court to order forfeiture of the bond.*"

Amendment of First Schedule, Part I, Cr. P.C. 1973.

7.3. The proposed offence should be—

(a) cognizable;

(b) non-bailable; and

(c) triable by any Magistrate.

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[1] Chapters 4 to 6, *supra*.

[2] If a definition of "bail" is inserted, then reference to bond is not necessary.

The punishment which we have proposed is imprisonment upto two years.[1] Although the general approach adopted by us in this Report[2] would suggest that the offence should be bailable, that principle cannot, for obvious reasons, be applied to this offence.

Accordingly, we recommend that the Code of Criminal Procedure, 1973, first Schedule, Part I, should be amended for this purpose, by adding, after the entry in that Schedule pertaining to section 229, I.P.C., the following entry:—

"229A.	*Failure to comply with the terms of bond.*	*Imprisonment upto two years or fine or both.*	*Cognizable*	*Non-bailable*	*Any Magistrate."*

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[1] Para 7.2 *Supra.*

[2] Para 4.1 to 4.5 *Supra.*

CHAPTER 8

ARRANGEMENTS FOR DETENTION

Separate arrangements for detention of undertrial prisoners.

8.1. We would also like to make a few observations as to the place of detention of undertrial prisoners. Undertrial prisoners are, at present, housed in the same building as convicts. In our opinion, undertrial prisoners should not be sent to jails with convicts. The evils of contamination are too well known to require emphasis.[1]

The induction of a large population of undertrial prisoners in a building essentially meant for convicts, is, in the very nature of things, undesirable. Despite all the precautions that may be taken, the contact between, and the intermingling of, undertrial prisoners and convicts cannot be avoided if both are inmates of the same building. Such contact has the most deleterious effect on the undertrial prisoners. Even if some of them are ultimately acquitted, their association with the convicts some of whom are hardened criminals, leaves a bad trail on their mind.

Separate places of detention.

8.2. There should therefore be separate institutions for their detention. We may also note that a recommendation for separate place of detention was made long ago in India.[2]

Under the Code of Criminal Procedure[3], the place of detention is thus specified:—

> "417(1). Except when otherwise provided by any law for the time being in force, the State Government may direct in what place any person liable to be imprisoned or *committed to custody under this Code shall be confined.*"

This provision thus leaves the place of confinement to be specified by the State Government, subject to the provisions of any law for the time being in force. There should be therefore no legal difficulty.

Creating such institutions would, however, require a policy decision and involve financial commitments and long-term planning. Till such time as this is done, actual realities impel us to find solution of the problem created by the excessive number of undertrial prisoners in jails, as already mentioned.[4]

Bail Hostels.

8.3. The question[5] whether bail hostels should be established, as in England[6], for persons who have been ordered to be released on bail but who are not actually released because of their inability to furnish a bond with sureties, is another matter which also involves financial implications and long-term planning and the prospects of which are, at present, rather remote. Consequentially, we have not considered it appropriate to deal with that matter in this Report.

Conditions of detention.

8.4. We are also of the view that a lot needs to be done to improve the conditions of detention in prisons, apart from relieving congestion of undertrial prisoners. We have, however, refrained from going into this matter, as that aspect was outside the scope of the matter referred to us.

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[1] Para 1·2, *supra.*

[2] Para 1·16, *supra.* Also see para 1·22, *supra.*

[3] Section 417 (1), Code of Criminal Procedure, 1973.

[4] Chapter 1, *supra.*

[5] See Para 2·19, *supra.*

[6] Section 53, Criminal Justice Act, 1972 (Eng.) See Appendix 4.

CHAPTER 9

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

We give below a summary of the conclusions reached and recommendations made in this Report.

1. Introductory

(1) The problem of undertrial prisoners in jails has assumed magnitude, as is evident from figures collected from various sources. The problem is not confined to India; nor is it new. Several recommendations made in the past in various studies and reports have placed emphasis on various aspects of the problem. A high percentage of jail population comprises persons under trial. This is not a satisfactory situation[1].

In dealing with the problem, three types of prisoners have to be considered—

(a) Persons being tried for non-bailable offences, in respect of whom the courts have declined to pass an order for their release on bail.

(b) Persons being tried for non-bailable offences, in respect of whom courts have passed order for bail but who, because of the difficulty of finding appropriate surety or because of some other reason, do not furnish the bail bond.

(c) Persons who are being tried for bailable offences but who, because of the difficulty of finding appropriate surety or some other reasons, do not furnish the bail bond.

For reducing the burden of undertrial prisoners on jail, all the above three categories should be dealt with[2].

(2) The various measures recommended in the 77th Report of the Law Commission to reduce delay and arrears in trial courts should be implemented in order to deal effectively with the problem of large number of undertrial prisoners[3]. Other remedies suggested in this Report should also be adopted.

2. Present law, comparative position and questions for consideration

(3) An examination of the concept of bail[4], the present law as to bail[5], the various statutory time limits connected with the investigation or trial of offences[6] and the issues that fall to be considered[7], shows that in formulating legislative policy in relation to release on bail, several conflicting considerations have to be balanced. It also shows that the problem of undertrial prisoners has to be dealt with on several fronts[8].

(4) In England, there is now a presumption in favour of the right to bail for all offences. Further, a discretion is given to the Court to release a person without surety. There is no personal recognizance. A duty to surrender to custody is created, and its violation is made an offence. On release on bail, certain conditions can be imposed[9].

3. Disposal of cases

(5) For dealing with the problem of large number of undertrial prisoners implementation of recommendations made in the 77th Report of the Law Commission (delay and arrears in trial courts) is a measure of the first importance[10].

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[1] Para 1·1 to 1·22.
[2] Para 1·26.
[3] Para 1·27.
[4] Para 2·1 to 2·4.
[5] Para 2.5 to 2·17.
[6] Para 2·6.
[7] Para 2·20 to 2·25.
[8] Para 2·25.
[9] Para 2·18 and 2·19.
[10] Para 3·1 to 3·6.

(6) Cases in which the accused persons are in jail should be given preferance and the target for their disposal should be four months—instead of six months recommended in the 77th Report[1].

(7) In order to prevent interested parties from prolonging pendency of cases, a certain amount of strictness is necessary to ensure prompt disposal[2].

(8) Trial Magistrates should furnish periodical statements of cases in which the accused are in custody and which are not concluded within the prescribed time.[3]

(9) In times of some agitation, numerous persons defy law and court arrest, causing a sudden spurt in the number of undertrial prisoners. Most of them would not offer bail. Such persons should be put up for trial soon after their arrest in order to avoid congestion in jails[4].

(10) Quite a substantial number of persons who are being proceeded against in security proceedings for keeping peace and for good behaviour are detained in jail as undertrial prisoners because of their inability to furnish the requisite bond. The cases against those persons should be heard with due promptness and despatch. Efforts should be made to conclude these proceedings within 3 months[5].

(11) Inordinate delay in the investigation of cases should be avoided. The diversion of police officials concerned with investigation to other duties relating to law and order should be avoided[6]. It causes delay in investigation, as pointed out in 77th Report.

(12) Investigation of cases should be completed as soon as possible. The law provides that if an investigation is not completed within the specified period, the accused should be released on bail, thus highlighting the need for prompt investigation.[7]

(13) Where the accused is in jail, adjournments of cases should not be granted unless absolutely necessary.[8]

4. Expansion of the category of bailable offences

(14) Certain offences under the Indian Penal Code, as listed in the Report, which are at present non-bailable, should be made bailable. The Code of Criminal Procedure, First Schedule, Part I, should be amended accordingly.[9]

(15) Offences under laws other than the Indian Penel Code punishable with 3 years' imprisonment should be made bailable, with the exception of offiences under the Official Secrets Act, 1923. The Code of Criminal Procedure, 1973, First Schedule, Part II, should be amended accordingly[10].

5. Amount of bond

(16) The statutory requirement that the amount of bond shall not be excessive,[11] should be observed.

(17) There is, however, no need to impose a statutory ceiling on the amount of bail.[12]

6. Release on bond without sureties

(18) In regard to bailable offences, section 436(1), Code of Criminal Procedure, 1973, which empowers the officer or court to "discharge" a person on bond without sureties, should be amended by adding an Explanation to the effect that where a period of one month expires after arrest without the accused furnishing sureties, that shall (in the absence of reasons to the contrary as recorded) be a fit ground for release on bond without sureties.[13] The word 'discharge' should be replaced by the word 'release'.[14]

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[1] Para 3·7.
[2] Para 3·8.
[3] Para 3·9
[4] Para 3·10.
[5] Para 3.11.
[6] Para 3.12.
[7] Para 3.13. See section 167(2), Cr.P.C. 1973.
[8] Para 3.14.
[9] Para 4.5 read with Appendix 1.
[10] Para 4.11 to 4.15.
[11] Para 5.1 and 5.2.
[12] Para 5.3 to 5.5.
[13] Para 6.3 to 6.5.
[14] Para 6.6.

(19) In regard to non-bailable offences, a discretion should be given to the officer or court to release a person on bond without sureties. Section 437(1), Code of Criminal Procedure, 1973 should be amended for the purpose.[1]

(20) A definition of "bail" should be inserted[2] as section 2(aa) in the Code of Criminal Procedure, 1973 to make it clear that references to "bail" include references to a person released on bond without sureties, where such release is permitted by the Code.

(21) Further, in sections 395(3) and 439(1)(a) of the Code, power to release on bond without sureties should be experessly provided for.[3]

7. Obligation to appear and surrender—violation to be an offence

(22) A provision should be inserted in the Code of Criminal Procedure, 1973 to the effect that a person released on bail shall be bound to appear and to surrender to custody.[4]

(23) There should be inserted in the Indian Penal Code a Provision[5] creating a new offence punishing violation of the obligation so undertaken with imprisonment upto 2 years or fine or both.

(24) The new offence to be created as above should be—

(a) cognizable;

(b) non-bailable;

(c) triable by any Magistrate.

The Code of Criminal Procedure, 1973, First Schedule, Part I, should be appropriately amended for the purpose.[6]

8. Arrangements for detention

(25) There should be separate institutions for the detention of undertrial prisoners, the induction of a large population of undertrial prisoners in a building essentially meant for convicts being undesirable. However, the creation of such institution is a matter of long-term planning and of financial implications. Other steps to reduce the number of undertrial prisoners may therefore have to be taken.[7]

(26) The question of providing for bail hostels for persons who, though ordered to be realeased on bail, cannot offer bail, has not been considered in the Report as a part from its financial implications and need for long-term planning, its prospects in the present conditions are rather remote.[8]

(27) A lot needs to be done to improve the conditions of detention in prisons. The Report, however, refrains from going into this matter, being outside the scope of the reference.[9]

H. R. KHANNA,
Chairman.

S. N. SHANKAR,
Member.

T. S. KRISHNAMOORTHY IYER,
Member.

P. M. BAKSHI,
Member-Secretary

NEW DELHI,
Dated, the 2nd February, 1979.

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[1] Para 6.5.
[2] Para 6.6 and 6.7.
[3] Para 6.8.
[4] Para 7.1.
[5] Para 7.2.
[6] Para 7.3.
[7] Para 8.1 and 8.2.
[8] Para 8.3.
[9] Para 8.4.

APPENDIX 1

LIST OF OFFENCES UNDER THE INDIAN PENAL CODE WHICH ARE NON-BAILABLE AT PRESENT AND WHICH SHOULD BE MADE BAILABLE ACCORDING TO THE RECOMMENDATIONS IN THE REPORT

Section	Offence	Punishment
161	Being or expecting to be a public servant and taking a gratification other than legal remuneration in respect of an official act.	Imprisonment for three years or fine or both.
162	Taking a gratification in order by corrupt or illegal means, to influence a public servant.	Imprisonment for three years or fine or both.
163	Taking a gratification for the exercise of personal influence with a public servant	Simple imprisonment for one year or fine or both.
164	Abetment by public servant of the offences defined in sections 162 and 163 with reference to himself.	Imprisonment for three years or fine or both.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or transaction by such public servant.	Imprisonment for three years or fine or both.
65A	Abetment of offences punishable under section 161 or 165	Imprisonment for three years or fine or both.
170	Personating a public servant	Imprisonment for two years or fine or both.
233	Making, buying or selling instrument for the purpose of counterfeiting coins	Imprisonment for three years *and* fine.
235 first para	Possession of instrument or material for the purpose of using the same for counterfeiting coin (not being Indian coin)	Imprisonment for three years *and* fine.
237	Import or export of counterfeit coin, knowing the same to be counterfeit	Imprisonment for three years *and* fine.
241	Knowingly delivering to another any counterfeit coin as genuine which when first possessed the deliverer did not know to be counterfeit	Imprisonment for two years or fine or 10 times the value of the coins counterfeited or both.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he becomes possessed thereof	Imprisonment for three years *and* fine.
246	Fraudulently diminishing the weight or altering the composition of any coin	Imprisonment for three years *and* fine.
248	Altering appearance of any coin with intent that it shall pass as coin of a different description	Imprisonment for three years *and* fine.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof	Imprisonment for three years *and* fine.
254	Delivery to another of coin as genuine which, when first possessed the deliverer did not know to be altered	Imprisonment for two years or fine or ten times the value of the coin.
267	Making or selling false weights or measures for fradulent use	Imprisonment for one year or fine or both.
303 1st para	Attempt to commit culpable homicide (where no hurt caused)	Imprisonment for three years or fine or both.
406	Criminal breach of trust	Imprisonment for three years or fine or both.
411	Dishonestly receiving stolen property knowing it to be stolen	Imprisonment for three years or fine or both.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen	Imprisonment for three years or fine or both.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property	Imprisonment for two years or fine or both.

APPENDIX 2

FIGURES OF UNDERTRIAL PRISONERS IN CERTAIN JAILS

Central Jail, Ambala

Information about prisoners and undertrial prisoners[1] :

(a) 254 [Total number of prisoners in the Central Jail, Ambala on the 1st September, 1978].

(b) 23 [Out of (a) above, total number of persons who are convicted persons undergoing any sentence of imprisonment].

(c) 231 [Out of (a) above, total number of persons who are undertrial and no under going any sentence of imprisonment].

(d) 22 [Out of (c) above, total number of persons who are under trial for bailable offences], and

(e) Either the prisoners did not apply for bail, or could not furnish surety.

[This gives as regards persons at (d) above, the main reason why the persons could not furnish bail].

NOTE :—The figures at (c) above,—i.e., undertrial prisoners—constitute 90.944 per cent of figures at (a) above,—i.e. total prisoners.

Central Jail, New Delhi

(a) Total number of prisoners in the Central Jail, New Delhi, as on 1-9-1978 is 2,373.

(b) Out of these 2,373[(a) above], the number of persons who were convicted persons undergoing sentence of imprisonment was 267.

(c) Out of (a) above, the total number of persons who were undertrial and not undergoing any sentence of imprisonment was 2,106.

(d) Out of 2,106 [(c) above], the number of persons who were under trial for bailable offence was 1,156.

(e) As regards persons at (d) above, the main reasons why they could not furnish bail are given as below :

(i) Want of sureties,

(ii) Absence of family members as being not the residents of Delhi,

(iii) Delay in contacting the family members,

(iv) Poverty, not being able to get legal assistance.

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1. As per letter No. 43/75/78-JJ(2), dated 29th November, 1978, from the secretary, Jails Department, Government of Haryana to Member-Secretary, Law Commission of India.

APPENDIX 3

PRESENT POSITION AS REGARDS CERTAIN OFFENCES AFFECTING NATIONAL SECURITY OR ECONOMY UNDER SPECIAL LAWS

Act and Section	Offence	Punishment-Imprisonment upto :
1. The Foreign Recruiting Act, 1874, Section 6.	Violation of the prohibition or condition for permission to recruit persons for service of any foreign State.	7 years.
2. The Official Secrets Act, 1923, Section 3.	(1) If any person for any purpose prejudicial to the safety or interests of the State— (a) approaches, inspects, passes over, or is in the vicinity of, or enters, any prohibited place; or (b) makes any sketch, plan, model or note which is calculated to be or might be or is intended to be, directly or indirectly useful to an enemy; or (c) approaching prohibited place, making sketch, obtaining, collecting, recording or publishing or communicating to any other person any secret official code or password, or any sketch, plan, model article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States.	Imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government, or in relation to any secret official code, to fourteen years, and in other cases to three years.
Section 5	Wrongful communication, etc. of information	3 years.
Section 6	Unauthorised use of uniforms, classification of reports, forgery, personification and false documents.	3 years.
Section 7	Interfering with officers of the Police or members of the Armed forces of the Union.	3 years.
Section 8	Violation of duty of giving information as to the commission of offence.	3 years.
Section 9	Attempts, incitement etc.	Same as that for the offence.
Section 10	Penalty for harbouring spies	3 years.
3. Criminal Law Amendment Act, 1938 Section 2	Dissuading the public from enlistment to the Military, Navy or Air Forces or instigating to Mutiny or insubordination after enlistment.	1 year
4. The Foreigners Act, 1946, Section 14	Contravention of provisions of this Act.	5 years.
5. The Criminal Law Amendment Act 1961. Section 2	Questioning the territorial integrity or frontiers of India in a manner projudical to the interests of safety and security of India	3 years.
Section 3]	Statements etc. in a notified area prejudicial to maintenance of public order or safety, security of India etc.	1 year.
6. The Atomic Energy Act, 1962 Section 24(1).]	Contravention of any— (a) order made under S. 14, (b) rules under S.17, as to safety, (c) obstructing any person authorised by the Central Government under S. 17(4), or (d) contravation of S. 18(2) regarding disclosure of restricted information.	5 years.*
7. The] Unlawful Activities Prevention Act, 1967.]	Unlawful activity	7 years.
8. Section]13(1).	Assisting in unlawful activity of any association declared unlawful.	5 years.

APPENDIX 4

SECTION 53. CRIMINAL JUSTICE ACT, 1972 (Eng.):—PROVISION OF DAY TRAINING CENTRES, BAIL HOSTELS, PROBATION HOSTELS ETC.]

(1) A probation and after-care committee may, with the approval of the Secretary of State, provide and carry on day training centres, bail hostels, probation hostels, probation homes and other establishments for use in connection with the rehabilitation of offenders.

(2) The Secretary of State may approve bail hostels; and in relation to hostels approved by him under this sub-section :—

(a) Section 46(2) of the Criminal Justice Act, 1948 (Secretary of State's power to make rules as to management etc.) shall apply as it applies in relation to approved probation hostels and approved probation homes; and

(b) section 47 of that Act (certain residential institutions to be subject to inspection by Secretary of State) shall apply as it applies in relation to the institutions mentioned in that section.

(3) The Secretary of state may, with the approval of the Treasury and subject to such conditions as he may with the like approval determine, make payments to a probation and after-care committee towards any expenditure of the committee in exercising their powers under this section in respect of bail hostels, probation hostels and probation homes.

(4) The conditions subject to which any payments are made to a probation and after-care committee under sub-section (3) of this section may include conditions for securing the repayment in whole or in part of the sums received by the committee if the hostel or home in question ceases to be used as such.

(5) Sub-section (3) (b) of section 77 of the said Act of 1948 (contribution out of moneys provided by Parliament towards expenditure of any society or person in respect of approved probation hostels or homes) shall have effect as if references to approved probation hostels or homes included reference to bail hostels; and sub-section (5) of that section (provisions as to conditions imposed in relation to grants under the said sub-section (3) (b) shall, in relation to any grant made by virtue of this sub-section, have effect as if the reference to an approved probation hostel or home ceasing to be approved were a reference to a bail hostel ceasing to be used as such.

(6) In this section :—

"day training centres", means premises at which persons may be required to attend by a probation order containing a requirement under section 20 of this Act ;

"bail hostels", means premises for the accommodation of persons remanded on bail;

"probation homes" means premises for the accommodation of persons who may be required to reside there by a probation order, not being such persons as are mentioned below in the definition of "probation hostels";

"Probation hostels", means premises for the accommodation of persons who may be required to reside there by a probation order, being persons who are employed outside the premises or are awaiting such employment,

APPENDIX 5

SECTIONS PROVIDING FOR RELEASE ON PERSONAL BOND[1]

At present, there are certain provisions in the Code of Criminal Procedure, 1973, which empower the officer or court concerned or, in one case, even *require*[2] the court concerned, to release a person accused of an offence on a bond without sureties. The following is an illustrative list :

Section 42(2). (Non-cognizable offences).	Person who commits in the presence of a public officer a non-cognizable offence refusing on demand to give his true name and residence may be arrested for ascertaining the name etc. When the true name etc. has been ascertained, he will be released "on his executing a bond, *with or without sureties*, to appear before a Magistrate if so required."
Section 88. (All offences).	Officer presiding in any Court may, in respect of a person present in Court, require such person to execute "a bond, with or without sureties, for his appearance in such Court"
Section 169. (All offences)	Release where evidence deficient—"bond with or without sureties".
Section 436(1), proviso. (Bailable offences)[3]	In the case of a person accused of a bailable offence, the officer or court may, instead of taking bail, discharge such person on his executing a bond *without sureties* for appearance etc.
Section 437(2). (Non-bailable offences)	If at any stage, it appears there are not reasonable grounds for believing that the accused committed a non-bailable offence, but that there are sufficient grounds for further enquiry into his guilt, the accused shall be released on bail or, at the discretion of the officer or court, *on the execution of a bond without sureties* for appearance etc. (This provision applies to person accused of non-bailable offences).
Section 437(7). (Non-bailable offences)	If at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the court is of opinion that there are reasonable grounds for believing that the accused is not guilty, it shall release the accused if in custody on the execution by him *of a bond without sureties* for his appearance to hear judgement delivered.

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1. See para 6.1 of body of the Report.
2. Section 437(7), Cr. P.C. 1973.
3. This proviso applies also to persons ordered to give security for peace or good behaviour, subject to section 116(3)

GIPN—S 1—525 LAD/ND/78—14-5-79—2,000