

## **Social circumstances and judicial backlog 'forcing' guilty pleas**

***By Frederick Piggot, Consultant, Prison Reforms Programme, Commonwealth Human Rights Initiative***

A recent RTI application filed by the National Anti-Corruption and Crime Prevention Council (NACCPC) has revealed 72 per cent of prisoners in Mumbai's Arthur Road prison to be there awaiting trial for bailable offences. At least 1,660 of the 2,296 inmates at the Arthur Road prison are held, some for months or years, awaiting trial for offences for which they could be bailed; not needing to be there. Arthur Road - a prison built for 800 - runs at three times capacity because those accused of bailable, sometimes relatively minor offences, are not granted bail, often because they either have no lawyer to take forward their request for bail or they cannot afford the surety. Activists and prisoners rights groups are calling on empowered sectors to address this problem and expedite the release of accused pending trial. The NACCPC has sent letters to the chief justice of the Bombay High Court, the chairman of the state human rights commission, and the state home department asking them to expedite the release of these undertrials.

The situation in Arthur Road is not unique to Mumbai, or to Maharashtra, but reflective of a general trend across the country that is seeing prisoners unable to get bail, having spent months if not years in jail awaiting trial forced to plead guilty to escape the horrors of prison life.

Overcrowding in Indian jails is as high as 80 per cent in some states, with undertrials making up 70 per cent of the prison population nationally. Often prisoners will spend months, if not years, awaiting trial, sometimes for petty offences for which they serve the entire maximum sentence awaiting trial. It is not unknown for undertrials to spend as long as 5 to 10 years or more in this position. These undertrial populations are overwhelming lower-class with many unable to afford even the lawyer to properly take forward their bail application. Even where an application for bail is registered, many do not have the money to put up for surety. While those who can afford the lawyers' fees and the provision of surety are bailed, the prisons fill with under-class and illiterate prisoners, contributing to the number of undertrials in Indian prisons vastly outnumbering convicted prisoners.

Recognising the scale of the problem, some non-governmental organizations and prisoners' rights groups have stepped in, in certain cases, to provide the surety for bail to allow defendants respite and (at least temporary) release pending trial. There have also been legislative measures introduced to address the situation including a provision for the automatic release on bail for those prisoners awaiting trial having spent longer than half the maximum sentence of the crime for which they are accused languishing in prison. However the problem remains acute with many of those arrested for bailable offences remanded to await trial in prison.

Denied, or unable to afford bail, and with the judiciary in many states having ground to a near halt, defendants face the prospect of months or years in prison before going to trial. Faced with the urgent need to expedite the cases of these prisoners the judiciary has been forced to take measures of its own to mitigate the problem; holding 'jail adalats' in prisons housing high numbers of undertrials to dispose of cases involving relatively minor, 'petty', offences where those accused are willing to plead guilty in return for a conviction and a sentence of time already served - allowing them to be released if not immediately, within a matter of days. Instead of expediting the release of undertrial prisoners on bail pending trial, a measure which would address both the problem of overcrowding and spare the individual the torture of languishing in jail awaiting trial, the system of jail adalats serves to expedite the release of prisoners held for bailable offences through final disposal of the case against them; subject to one important proviso- that they agree to plead guilty.

Prisoners are given the 'choice' between pleading guilty, having their case disposed of and a conviction recorded, but with the chance to walk out of prison either the same day or after a matter of days, or waiting languishing in jail for months if not years for the chance to contest their case (usually without adequate legal representation); faced with this prospect it is not surprising that prisoners opt for the former.

These are courts significantly weak on procedure, negating the presumption of innocence and resorted to as symptomatic treatment for a criminal justice system that is failing the poorest. Those prisoners are forced into an alternative justice delivery system in which they have to plead guilty just to get out of jail; an alternative system which might be questioned as to whether it is really delivering justice at all. Arguably these courts would not be needed if bail was used to its fullest to ensure accused do not face months or even years awaiting trial languishing in prison.