

## CHAPTER II

### THE STATE OF AFFAIRS

#### **2.1 The National Crime Records Bureau**

The reports of the National Crime Records Bureau (NCRB) are asserted to be the principal databank available with the Government of India on the criminal justice system<sup>33</sup>. The bureau has as an important objective, the collection and processing of crime statistics at the National level<sup>34</sup>. Data collected from the Prison Headquarters of all States and Union Territories has been published annually in a publication called *Prison Statistics*. Two other annual publications *Crime in India* and *Accidental Deaths and Suicides in India* contain data collected from State and District Crime Records Bureaux<sup>35</sup>. In spite of the general lament by scholars regarding the lack of

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<sup>33</sup>See the National Crime Record Bureau website at [ncrb.nic.in](http://ncrb.nic.in). The Ministry of Home Affairs constituted the Task Force in 1985 with regard to the NCRB; the Government of India accepted the recommendations of the Task Force and constituted the NCRB with headquarters at New Delhi in January 1986. Prisons and Police are State subjects under Entry 2 ("Police (including railway and village police) subject to the provisions of entry 2A of List I") and Entry 4 ("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") of List II of the Seventh Schedule to the Constitution but the Union Government does involve itself in these matters.

<sup>34</sup>As per the GO dated 11-03-1986 the objectives of the NCRB are:

- To act as a clearing house of information on crime and criminals to assist investigators;
- To store, co-ordinate and disseminate information on criminals without having to refer to police station records;
- To collect and process crime statistics at National level;
- To receive from and supply data to penal and correctional agencies;
- To assist the functioning of State Crime Records Bureaux.

<sup>35</sup>The NCRB website states that there are 762 server-based computer systems across the country in every State and District Crime Records Bureaux. The data is collected and sent to NCRB at the end of the year. *Prison Statistics* is available in digitized form from 1995 onwards whilst *Crime in India* is available from 1953 onwards and *Accidental Deaths and Suicides in India* is available from 1967 onwards.

adequate statistical data in India<sup>36</sup>, the NCRB reports continue to be a valuable source of statistical information at the national level.

## 2.2 Under-trials crowd India's jails and continue to swell in numbers

The NCRB defines an *Under-trial* prisoner as "a person kept in prison (judicial custody) while the charges against him are being tried".<sup>37</sup> *Detenués* however, are those "in prison on the orders of competent authority under the relevant preventive detention law."<sup>38</sup> Besides these two categories of inmates, there are of course *Convicts*- those who have been convicted by the courts and are undergoing sentences of imprisonment. Lastly, NCRB data names a fourth category: *Others* – which includes persons who are *Civil Prisoners* sent to jail for things like not paying maintenance, not paying fines or debts and bail-money sureties.

There were 1391 jails in the country by the end of 2013, with the total number of inmates being to the tune of 4,11,992. Out of these, under-trials were to the tune of 2,78,503 thus constituting 67.6% of the total incarcerated population. The detailed break-up of the occupants was as shown in Table No. 1 below:

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<sup>36</sup>See for example: *The State of Judicial Statistics in India*, Aparna Chandra, February 10, 2015, <http://blog.dakshindia.org/2015/02/the-state-of-judicial-statistics-in.html>. Curiously, data collected from the NCRB does not coincide with other principal sources of data on the criminal justice system for example, the statistics published by the Supreme Court. This is indeed acknowledged by the Supreme Court itself. *National Court Management Systems : Policy and Action Plan*, released by the Chief Justice of India, 27/09/2012, prepared by the NCMS Committee in consultation with the Advisory Committee, Para 2.1.

<sup>37</sup> Glossary, *Prison Statistics 2007*, NCRB, Ministry of Home Affairs.

<sup>38</sup>*Ibid.*

**TABLE No. 1**  
**INMATE POPULATION BREAK-UP AS ON 31-12-2013 WITH**  
**PERCENTAGES<sup>39</sup>**

<b>Type of Inmate</b>	<b>Number of Inmates</b>	<b>% of total</b>
Under-trials	2,78,503	67.6%
Convicts	1,29,608	31.5%
Detenues	3,113	0.8%
Others	568	0.2%
<b>TOTAL</b>	<b>4,11,992</b>	<b>100%</b>

Thus, under-trials constituted the largest category of inmates, being a shocking 67.6% of total inmates.

The same trend can be seen for the past 10 years, with under-trials ranging from 64.7% to 67.6% of the total inmate population over the past 10 years. In absolute terms, under-trials grew from 2,17,130 incarcerated at the end of the year 2004 to 2,78,503 incarcerated at the end of the year 2013, with an increase by 28.3% over the past decade.

The trend for the past 10 years is seen in Table No. 2 below:

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<sup>39</sup>Prison Statistics India 2013

**TABLE NO. 2**  
**UNDER-TRIAL POPULATION IN ABSOLUTE TERMS AND IN**  
**PERCENTAGES FOR THE PERIOD 2004 TO 2013<sup>40</sup>**

Year	Number of under-trials	% of total inmates
2004	2,17,130	65.5%
2005	2,37,076	66.2%
2006	2,45,244	65.7%
2007	2,50,727	66.6%
2008	2,57,928	67%
2009	2,50,204	66.4%
2010	2,40,098	65.1%
2011	2,41,200	64.7%
2012	2,54,857	66.2%
2013	2,78,503	67.6%

It would not be an exaggeration to say therefore, that the prison system in India is being run, by-and-large, for the imprisonment and housing of under-trials instead of for the imprisonment of convicts, thereby causing a constant drain on the States' resources (prisons and their administration fall under the State List in Item No. 4, List II of the 7<sup>th</sup> Schedule to the Constitution).

Under-trials have always constituted the largest segment of India's incarcerated population<sup>41</sup>. The question of delay in criminal process and consequently the large numbers of under-trial prisoners have been a

<sup>40</sup>This table has been compiled by the researcher from data available in *Prisons Statistics 2004 to 2013*.

<sup>41</sup>A similar trend can be seen for the period 1995 to 2003, for which period NCRB data is available. It may not be unsafe to assume a similar trend for the years preceding 1995, for which period data is unavailable from the NCRB; *Prison Statistics* having been published only from 1995.

persistent concern ever since Independence, as borne out by Law Commission Reports.<sup>42</sup>

### 2.3 Trends in other countries

India may take some consolation only from the fact that other developing countries also seem to be suffering from the same problem. Developing countries seem to generally have a very high percentage of under-trial inmates, when compared with developed, richer countries. See Table No. 3 below:

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<sup>42</sup> As early as in the year 1958, MC Setalvad went into the question of delays in the 14<sup>th</sup> *Report of the Law Commission on Reform of Judicial Administration*, September 1958. The concern over the large numbers of under-trials was intensified in the 78<sup>th</sup> *Report of the Law Commission on Congestion of Under-trial Prisoners in Jails*, February 1979. Several of the Law Commission Reports address the question of delays in the criminal justice system and the plight of under-trials. But it needs to be noted that prison reforms have been the subject of study by the government even prior to Independence. The first comprehensive study of prison problems is supposed to have been undertaken by the *Indian Jails Committee 1919-1920*. With the promulgation of the Government of India Act, 1935, prisons became a transferred subject under the autonomous provinces and several regional committees were formed to research prison reforms: the *United Provinces Jail Inquiry Committee 1928-1929*, the *Committee on Prison Reforms in Mysore 1940-1941*, the *Uttar Pradesh Jail Reforms Committee 1946* and the *Bombay Jail Reforms Committee 1946-1948*. After Independence, the Constitution included prisons in the State List and several more jail reform committees were set up : the *East Punjab Jail Reforms Committee 1948-1949*, the *Madras Jail Reforms Committee 1950-1951*, the *Jail Reforms Committee Orissa 1952-1955*, the *Jail Reforms Committee Travancore-Cochin State 1953-1955*, the *UP Jail Industries Inquiry Committee 1955-1956*, 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*.

**Table No. 3**  
**PERCENTAGES OF PRE-TRIAL DETAINEES IN SELECTED**  
**COUNTRIES<sup>43</sup>**

Country	% of under-trial inmates
United Kingdom (England & Wales)	13.8%
Germany	18%
USA	21.6%
France	25.9%
Canada	35%
Italy	35.7%
Switzerland	40.6%
India	66%
Pakistan	66%
Venezuela	67%
Bangladesh	68%
Nigeria	69%
Congo	82%
Bolivia	83%
Libya	87%
Comoros	92%

<sup>43</sup>*World Pre-Trial/Remand Imprisonment List, Roy Walmsley, published 18-06-2014, International Centre for Prison Studies, University of Essex. The list shown above is selective: some developing countries do have small percentages of pre-trial detainees. For examples: Brazil- 38%, Colombia- 33.7%, Rwanda- 7.1%. Obviously, the percentage of pre-trial detainees depends on various factors and it would be too simplistic to suggest that the poorer the country, the larger the percentage of pre-trial detainees. Nonetheless, the table might be instructive.*

Roy Walmsley of the *International Centre for Prison Studies (University of Essex)* has found that there are excessively high numbers of pre-trial/remand prisoners in the world- a figure close to 3 million people world-wide; many of whom are held unnecessarily for exceptionally long periods and in conditions which fall short of internationally agreed standards<sup>44</sup>.

If we look not at percentages, but at absolute figures, India has the highest numbers of under-trial detainees in the world after the United States<sup>45</sup>. See Table No. 4 below:

**Table No. 4**  
**NUMBERS OF PRE-TRIAL DETAINEES IN SELECTED COUNTRIES IN**  
**2014<sup>46</sup>**

COUNTRY	NUMBERS (Descending order)
United States	4,80,000
India	2,55,000
China (believed)	2,50,000
Brazil	1,95,000
Russia	1,16,000
Mexico	1,07,000
Phillipines	70,000
Thailand	66,000

<sup>44</sup>*World Pre-Trial/Remand Imprisonment List*, Roy Walmsley, published 18-06-2014, International Centre for Prison Studies, University of Essex.

<sup>45</sup>We must also keep in mind *rates* of under-trial detention i.e., numbers of under-trials detainees per 1 lakh of the population. Here India does not seem to have one of the highest rates whereas the United States figures amongst the countries with the highest rates of pre-trial detainees. Ibid.

<sup>46</sup>Ibid.

Iran	55,000
Indonesia	50,000
Pakistan	50,000
Turkey	48,000
Bangladesh	47,000
South Africa	44,000

Here again, rich countries seem to have lesser numbers of under-trials, with the exception of the United States<sup>47</sup>.

#### **2.4 Under-trials grow in numbers in spite of large numbers of bail releases**

It is to be noted that there are several lakh releases of under-trials each year by the various criminal courts in the country due to acquittals and the grant of bail. In spite of this, a huge population of under-trials remains. The details of the numbers of releases in 2013 are given in Table No. 5 below.

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<sup>47</sup>The US penal system, it is argued, has uniquely created a situation of having a large number of incarcerated, partly due to its regime of drug-related laws. See *The Caging of America: Why do we lock up so many people?*, Adam Gopnik, January 30, 2012, The New Yorker, <http://www.newyorker.com/magazine/2012/01/30/the-caging-of-america>.

**Table No. 5**

**RELEASES/TRANSFERS OF UNDER-TRIALS DURING 2013<sup>48</sup>**

<b>Type of Release</b>	<b>Numbers</b>
Acquitted	65,486
Released on Appeal	51,362
Released on Bail	12,47,721
Transfers to other states	3,749
Extradited	19
Other releases	27,657
<b>TOTAL</b>	<b>13,95,994</b>

The question poses itself: why does India have such a huge incarcerated under-trial population of 2,78,503 (by the end of 2013), in spite of releases to the tune of 13,95,994 in the year 2013?<sup>49</sup> One can only suppose that the incarcerated under-trials who make up these figures would either be persons whose bail applications have been refused, or persons who have been unable to furnish bail, or persons so uninformed and impoverished that no bail applications have been made for them<sup>50</sup>. The demographic profile of incarcerated under-trials indeed supports this assumption: most incarcerated under-trials are accused of heinous/serious crimes, where bail is likely to have been refused; they also belong by-and-large, to the poor and underprivileged sections of society.

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<sup>48</sup>*Prison Statistics 2013*

<sup>49</sup> The same trend obtains for the previous 10 years: *Prison Statistics 2004 to 2013*.

<sup>50</sup> In the absence of disaggregated data on *why* these persons have remained incarcerated, we can only make reasonable assumptions.

## 2.5 The majority of incarcerated under-trials are accused of serious crimes

The NCRB data divides crimes into two main categories: *Indian Penal Code Offences (IPC Crimes)* and *Offences under Special and Local Laws (SLL Crimes)*. The categorization of incarcerated under-trials for the last 10 years (2004 to 2013) on the basis of the crimes which they have been accused of is shown in Table No. 6 (IPC Offences) and Table No. 7 (SLL offences) below:

**Table No. 6**  
**PERCENTAGES OF INCARCERATED UNDER-TRIAL PRISONERS BY**  
**TYPES OF IPC OFFENCES FOR THE PERIOD 2004 TO 2013<sup>51</sup>**

A	B	C	D	E	F	G
Year	Murder & related Offences <sup>52</sup>	Rape	Kidnapping and Abduction	Dacoity & Robbery <sup>53</sup>	Total Heinous/Serious Crimes (total of B to E)	Others <sup>54</sup>
2004	46.8	5.9	4.7	11.4	68.9	31.1
2005	46.3	5.7	4.6	11.4	68	32
2006	48.4	5.6	4.8	10.6	69.4	30.6
2007	48	5.5	4.5	10.7	68.7	31.3
2008	46.2	6	4.9	9.9	67	33

<sup>51</sup> This table has been compiled from data obtained from *Prison Statistics India 2004-2013*.

<sup>52</sup> Murder, Attempt to Murder, Culpable Homicide Not Amounting to Murder and Dowry Deaths are clubbed together for the sake of convenience.

<sup>53</sup> Dacoity and Robbery have been clubbed together for the sake of convenience.

<sup>54</sup> "Other crimes" in Column "G" relate to offences such as Theft, Burglary, Cheating, Criminal Breach of Trust and Other IPC Crimes.

<b>2009</b>	46.9	6.1	4.7	10.3	68	32
<b>2010</b>	47.1	6.2	4.9	9.9	68.1	31.9
<b>2011</b>	46	6.7	5	10.3	68.1	31.9
<b>2012</b>	46.3	7.4	5.3	10.1	69.1	30.9
<b>2013</b>	46.1	8.7	5.1	9.5	69.3	30.7

It is seen that for the past decade, between 46% to 48.4% of incarcerated under-trials were accused of Murder and related offences; between 5.5 % to 8.7% of incarcerated under-trials were accused of Rape; between 4.5% to 5.3% were accused of Kidnapping and Abduction; and between 9.5% to 11.4% of incarcerated under-trials were accused of Dacoity and Robbery. "Other crimes" in Column "G" relate to offences such as Theft, Burglary, Cheating, Criminal Breach of Trust and Other IPC Crimes. Even if we optimistically assume that all the offences under Column "G" relate to non-serious, non-heinous crimes, it would still show that between 67% to 69.4% of all incarcerated under-trials were accused of heinous and serious crimes over the past decade. Thus, the majority of incarcerated under-trials are accused of serious or heinous crimes. This might partly explain why they are incarcerated in the first place: the seriousness of the offence is a factor that courts take into account for granting bail and courts are generally averse to granting bail to persons accused of serious or heinous crimes.

The trend is similar with regard to SLL crimes:

**Table No. 7**

**PERCENTAGES OF INCARCERATED UNDER-TRIAL PRISONERS BY  
TYPES OF SLL OFFENCES FOR THE PERIOD 2004 TO 2013<sup>55</sup>**

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>Others</b>
<b>Year</b>	<b>Arms Act<sup>56</sup></b>	<b>NDPS Act<sup>57</sup></b>	<b>Gambling Act<sup>58</sup></b>	<b>Excise<sup>59</sup></b>	<b>Indian Rail- ways Act<sup>60</sup></b>	<b>Dowry Prohibition Act<sup>61</sup></b>	
<b>2004</b>	18.8	23.8	-	11.2	6	6.6	29.4
<b>2005</b>	17.6	21.4	3.7	11.7	6.8	9.3	29.5
<b>2006</b>	19	20.3	3.8	10.8	6.7	7.8	31.5
<b>2007</b>	18.1	21.8	4.5	11.1	6.1	6.5	32
<b>2008</b>	19.5	19.8	4.6	11.1	6.4	6.9	31.7
<b>2009</b>	18.9	22.1	2.6	11.1	6	6.4	32.9
<b>2010</b>	19.4	23.4	3.2	10.8	5.9	6	31.3
<b>2011</b>	18.6	24.2	3.5	12	5.2	6.2	30.3
<b>2012</b>	17.6	27.6	3.2	11.8	5.5	6.1	28.2
<b>2013</b>	18.1	31.6	2.9	10.4	5.2	4.6	27.3

Even if we assume, very optimistically, that “Other” SLL Crimes constitute non-serious offences, we would still be left with between 67.1% to 72.7% of SLL under-trials being accused of serious offences<sup>62</sup>.

<sup>55</sup> This table has been compiled from data obtained from *Prison Statistics India 2004-2013*.

<sup>56</sup> Offences under the Arms Act, 1959, including the use and possession of illegal weapons.

<sup>57</sup> Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, which makes it illegal for a person to produce/manufacture/cultivate, possess, sell, purchase, transport, store, and/or consume any narcotic drug or psychotropic substance.

<sup>58</sup> Offences under the Public Gambling Act, 1867. Figures for 2004 are not available from NCRB data.

<sup>59</sup> Offences under the Central Excise Act, 1944.

<sup>60</sup> Offences under the Indian Railways Act, 1989.

<sup>61</sup> Offences under the Dowry Prohibition Act, 1961.

The fact that a large majority of incarcerated under-trials are accused of serious or heinous crimes under IPC/SLL is quite significant. Persons accused of serious and heinous crimes would find it more difficult to obtain bail in courts since the seriousness of the offence is a major factor in determining whether bail will be given. This would probably explain why the large majority of the incarcerated under-trials are accused of serious crimes. As we shall see in subsequent chapters, the Supreme Court has been extremely reluctant to quash proceedings against persons accused of serious crimes on the ground of violation of the right to speedy trial.

## **2.6 The majority of convicts undergoing sentences are also convicted of serious crimes**

It is interesting to note that even amongst convicted prisoners, the large majority has been convicted for serious/heinous crimes. Tables Nos. 8 and 9 below show the break-up for IPC and SLL crimes.

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<sup>62</sup>It is quite difficult to differentiate between serious and non-serious crimes under SLL crimes since disaggregated data under each section of each Act is unavailable; further, where the enactments relate to national security, the economy or matters of public policy, it might not be possible to make the differentiation effectively.

**Table No. 8**

**BREAK-UP OF CONVICTED PRISONERS UNDER IPC CRIMES BY THE  
END OF 2013<sup>63</sup>**

<b>Offence</b>	<b>Percentage (of total IPC convicts)</b>
Murder	60
Rape	7.2
Attempt to Murder	6.2
Dowry Deaths	4.7
Culpable Homicide not amounting to Murder	3.3
Thefts	3.4
Others	15.3

Even assuming that "Others" and Thefts involve non-heinous/serious crimes, 81.3% of convicted IPC prisoners have been convicted for heinous crimes such as murder and rape.

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<sup>63</sup>Prison Statistics India 2013

**Table No. 9**

BREAK-UP OF CONVICTED PRISONERS UNDER SLL CRIMES BY THE  
END OF 2013<sup>64</sup>

<b>Offence</b>	<b>Percentage (of total SLL convicts)</b>
Narcotic Drugs and Psychotropic Substances Act	43.9
Arms Act	10.9
Excise Act	5.6
Indian Railways Act	4.7
Gambling Act	1.7
Others	33.2

66. 8% of SLL convicts have been convicted of serious offences, even assuming that offences under the Gambling Act and Other offences are non-serious/non-heinous offences.

Since the majority of convicts have been convicted of serious/heinous crimes, it follows that the majority of the convicts are serving sentences above 5 years. See Table No. 10 below.

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<sup>64</sup>Prison Statistics India 2013

**Table No. 10**

**BREAK-UP OF CONVICTED PRISONERS VIDE PERIODS OF SENTENCE  
BY THE END OF 2013(percentages)<sup>65</sup>**

<b>Offence</b>	<b>Percentage (of total SLL convicts)</b>
Death Penalty	0.3%
Life Imprisonment	54.5%
Between 10 -13 years	13.5%
Between 7 – 9 years	8.8%
Between 5 to 6 years	6.5%
Between 2 to 4 years	5.8%
Between 1 to 2 years	3.9%
Between 6 months to 1 year	2.8%
Between 3 to 6 months	2%
Less than 3 months	1.9%

83.6% of the convicts were serving terms of more than 5 years, with 54.5% serving Life Imprisonment.

### **2.7 Large proportion of incarcerated under-trial prisoners are uneducated and belong to weaker sections of society**

Table No. 11 below shows the percentages of incarcerated under-trials who were either illiterate or uneducated (had studied less than Class X) for the last decade (2004 to 2013).

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<sup>65</sup>Prison Statistics India 2013

**Table No. 11**

**PERCENTAGES OF ILLITERATE AND UNEDUCATED INCARCERATED UNDER-TRIALS FOR THE PERIOD 2004 TO 2013<sup>66</sup>**

<b>Year</b>	<b>Percentages of illiterate or uneducated under-trials</b>
2004	79.5
2005	82.9
2006	80.2
2007	78.5
2008	77.1
2009	76.2
2010	75.3
2011	73.4
2012	73.4
2013	71

The table above shows that incarcerated under-trials who were either illiterate or uneducated, ranged from 71% to 82.9% of the total incarcerated population over the last decade<sup>67</sup>. Thus, the majority of incarcerated under-trials were either illiterate or uneducated. This is significant since it might explain in part why these persons remain incarcerated in the first place. Studies by organisations such as the Commonwealth Human Rights Initiative show that several incarcerated under-trials are ignorant of and uninformed about beneficial bail provisions and consequently languish in jail<sup>68</sup>.

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<sup>66</sup> This table has been compiled by the researcher from data available from *Prison Statistics India 2004 to 2013*.

<sup>67</sup> Even among Convicts, 71.2% of Convicts in jail at the end of 2013 were either illiterate or uneducated. *Prison Statistics 2013*, page 95.

<sup>68</sup> See para 2.11

Table No. 12 below shows the percentages of persons belonging to either SC/ST/OBC or Minority Religions for the past 10 years.

**Table No. 12**  
**PERCENTAGES OF SC/ST/OBC/MINORITIES INCARCERATED UNDER-  
 TRIAL PRISONERS FOR THE PERIOD 2004 TO 2013** <sup>69</sup>

Year	Percentages of SC/ST/OBC/MINORITIES <sup>70</sup>
2004	72.58
2005	71.9
2006	74.7
2007	74.4
2008	75
2009	77.8
2010	75.5
2011	75.3
2012	75.9
2013	75.3

The table above shows that SC/ST/OBC/MINORITIES have ranged from 71.9% to 77.8% of the total incarcerated under-trial population over the last decade. Thus, it is clear that the majority of incarcerated under-trials belong to disadvantaged groups or minorities<sup>71</sup>.

<sup>69</sup> This table has been compiled by the researcher from data available from *Prison Statistics India 2004 to 2012*.

<sup>70</sup> Scheduled Castes, Scheduled Tribes, Other Backward Classes and Religious Minorities have been clubbed together for the sake of convenience.

<sup>71</sup> The same trend is reflected for Convicts as well.

Studies by the Commonwealth Human Rights Organisation further show that the majority of incarcerated under-trials belong to the poorer sections of society<sup>72</sup>.

## 2.8 Incarcerated under-trials fall largely within the working age group of 18 to 50 years

**Table No. 13**

BREAK-UP OF INCARCERATED UNDER-TRIAL PRISONERS BY AGE-GROUP BY THE END OF 2013 (PERCENTAGES)<sup>73</sup>

Age-Group	Percentage (of total under-trial prisoners ) <sup>74</sup>
18 to 30 years	46.7%
30 to 50 years	42.3%
More than 50 years	11%

Thus, 89%of under-trials were between the ages of 18 and 50 years, incarceration being a huge economic loss to them and their families, as well as to the economy.

<sup>72</sup> See para 2.11. Curiously, NCRB data does not contain any references to the income groups of prison populations- which is obviously an important demographic.

<sup>73</sup>Prison Statistics India 2012

<sup>74</sup>Percentages have been rounded off.

## 2.9 Periods of detention

Table No. 14 below shows the periods for which incarcerated under-trials had been detained during the last decade.

**Table No. 14**  
**PERCENTAGE BREAK-UP OF UNDER-TRIALS BY PERIODS OF**  
**DETENTION FOR THE PERIOD 2004 TO 2013<sup>75</sup>**

Year	Less than 1 year	Between 1 to 2 years	Between 2 to 5 years	More than 5 years
2004	78.3	12.9	7.8	1
2005	80.9	11	7.3	.8
2006	81.4	11	6.9	.6
2007	79.5	11.5	8.2	.8
2008	79	11.8	8.3	.8
2009	78.4	12.1	8.5	1
2010	78	12.5	8.7	.7
2011	78.1	12.5	8.8	.6
2012	77.4	12.4	9.3	.8
2013	76.8	12.4	9.7	1.1

The table above shows that most under-trials were released in less than a year: between 77.4% to 81.4% of incarcerated under-trials were released within one year during the last decade. Hearteningly, only between 0.6% to 1.1% of incarcerated under-trials were detained for periods exceeding 5 years. Between 11% to 12.9% of under-trials were detained for periods between 1 to 2 years and between 6.9% to 9.7% of incarcerated under-trials

<sup>75</sup> This table has been compiled by the researcher from data available from *Prison Statistics India 2004 to 2013*.

were detained for period between 2 to 5 years. These statistics are very significant because they provide clues as to the manner in which time-limits can be imposed by courts for conclusion of trials – should they wish to do so. This is considered further in the last chapter.

## **2.10 Special vulnerable categories of incarcerated under-trials: women, women with children, the mentally ill and civil prisoners**

Women constituted 4.6% of total incarcerated under-trials numbering 12,688 out of the total of 2,78,503 under-trial inmates by the end of 2013<sup>76</sup>. Shockingly, 1,252 under-trial women had their children residing with them in jails, numbering 1,518 children by the end of 2013<sup>77</sup>.

Mentally-ill inmates constituted 0.9% of incarcerated under-trials by the end of 2013.<sup>78</sup>

There were 66 incarcerated under-trial Civil Prisoners by the end of 2013<sup>79</sup>.

## **2.11 The appalling conditions under which under-trials are confined in India**

“With imprisonment, a radical transformation comes over the prisoner, which can be described as prisonisation. He loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions,

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<sup>76</sup>*Prison Statistics India 2013*, page (i).

<sup>77</sup>*Ibid.*

<sup>78</sup>*Prison Statistics India 2013*, page 31.

<sup>79</sup>*Ibid.*, page 32.

dignity and autonomy of personal life”: *A Convict Prisoner in the Central Prison vs. State of Kerala*.<sup>80</sup>The physical and psychological deprivations of jail life are well-known and documented<sup>81</sup>. The least the prisoner can expect is humane treatment, with respect for basic rights and needs.

Internationally agreed standards on the use of imprisonment and conditions of detention have been detailed in the *Handbook for Prison Staff*<sup>82</sup> released by the *International Centre for Prison Studies*. These standards relate to every aspect of jail life and try to ensure humane living conditions for under-trial prisoners<sup>83</sup>. *Standards behind Bars: Prescribed Rules and Recommendations for Prisons*<sup>84</sup> is a compilation by the Commonwealth Human Rights Initiative<sup>85</sup> that seeks to provide a comprehensive collection of basic standards and rules that need to be enforced in India to ensure humane conditions of incarceration. The compilation is based on recommendations made by *inter alia*, the *All India Committee on Jail Reforms (Mulla Committee) 1980-1983* and the *Model Prison Manual 2003* drafted by the Bureau of Police Research and Development.

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<sup>80</sup>1993 Cri LJ 3242

<sup>81</sup>See for example *Minds Imprisoned: Mental Health Care in Prisons*, published by the National Institute of Mental Health and Neurological Sciences, 2011, Editors: Suresh Bada Math, Pratima Murthy, Rajani Parthasarathy, C. Naveen Kumar and S. Madhusudhan, NIMHANS, Deemed University, Publication No. 79

<sup>82</sup>*A Human Rights Approach to Prison Management: Handbook for Prison Staff*, ICPS Publication, 2002

<sup>83</sup>International Standards include the rules laid down by the *First UN Congress on the Prevention of Crime and Treatment of Offenders*, Geneva, 1955 and the *UN Standard Minimum Rules for the Treatment of Prisoners*.

<sup>84</sup>Commonwealth Human Rights Initiative, 2010

<sup>85</sup>The CHRI is an independent, non-profit, international non-governmental organization founded in 1987 by several commonwealth associations. It is supported by *inter alia*, the British High Commission, the Ford Foundation and UNDP.

In spite of the existence of these international and national standards, it is generally accepted that Indian law is outdated<sup>86</sup>. In India the law relating to the governance and maintenance of prisons is contained in age-old enactments such as the Prisons Act, 1894, as well as in State Acts such as the Karnataka Prisons Act, 1963, and the rules made under the Acts. Prisons being in the State List, each State has its own Prison Manual. The Prisons Act, 1894, is based upon the earlier Act 26 of 1870. Related enactments such as the Identification of Prisoners Act, 1920, Prisoners Act, 1900, Prisoners (Attendance in Courts) Act, 1952 and the Transfer of Prisoners Act, 1950, were either passed before Independence or shortly thereafter. The Prisons Act, 1894, still refers to punishments for inmates such as substitution of gunny bags for clothes<sup>87</sup>. Some prisons manuals do not even refer to the existing categories of jails<sup>88</sup>. There is no reference to psychiatric care and other modern practices.

In addition to having deficient standards, India's actual jail conditions for under-trial prisoners are depressing and appalling. *Baxi*<sup>89</sup> had pointed out in the 1980s that the British Raj prisons involve an unfought battle for human dignity: Indian prisons are by-and-large filled with people from the poor strata of society; this accounts for the lack of concern by the governing and professional elites. Jails are overcrowded; with old buildings built during the British era; they are ill-equipped, ill-furnished and lack sufficient ventilation, sanitation and water facilities. Special treatment for educated and high-class prisoners is not uncommon. Under-trials are often housed together with convicted prisoners, contrary to the rules. Medical and psychiatric care is extremely poor. Corruption is endemic. Many of the prison manuals provide

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<sup>86</sup>See for example *The Crisis of the Indian Legal System*, Upendra Baxi (1982), Chapter 6, wherein he points out that the jail system in India is still based on old colonial laws.

<sup>87</sup>Section 46.

<sup>88</sup>Such as the *Orissa Prison Manual 1942*.

<sup>89</sup>In *The Crisis of the Indian Legal System*, Chapter 6.

for outdated modes of punishment such as whipping. Custodial violence is common.

More than three decades after Baxi's expose, it is clear that the conditions of detention for under-trial and other categories of prisoners have not been ameliorated. Recent studies have highlighted the state of affairs. In their report *Pre-Trial Detention and Access to Justice in Orissa*<sup>90</sup>, the CHRI sought to *inter alia* assess the implementation of sections 436 and 436A of the Code of Criminal Procedure, 1973. Section 436 CrPC provides for the right to bail when a person is accused of a bailable offence. Section 436A, provides for release on personal bond with or without sureties if an under-trial has undergone detention for a period equal to one-half of the maximum period of imprisonment specified for that offence<sup>91</sup>. The CHRI found, after interviewing 66 under-trial prisoners and studying prison records from 17 prisons in Orissa, that 37% of the interviewees had filed bail applications which had been rejected, 27% had not even filed bail applications, and 30% did not even know whether bail applications had been filed on their behalf or not!<sup>92</sup> The jail authorities were themselves ignorant of the bail provisions such as section 436A. Incarcerated under-trial prisoners totaling 229 from the 17 prisons studied were found to be eligible for release since they were charged with bailable offences under section 436. Twenty-three under-trial prisoners were found eligible for release under section 436A, having been in detention for more than ½ the maximum permissible punishment for the offence alleged. Further, 5 under-trials were found to have been in detention for more

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<sup>90</sup>Priti Bharadwaj, CHRI, 2010.

<sup>91</sup>Not being an offence for which punishment of death is one of the specified punishments; provided that the Court may order continued detention or release him on bail, after hearing the Public Prosecutor, for reasons to be recorded in writing; provided further that no such person shall in any case be detained for more than the maximum period of imprisonment provided for the offence concerned.

<sup>92</sup>Page 13, Chapter 3, *Pre-Trial Detention and Access to Justice in Orissa*, Priti Bharadwaj, CHRI (2010).

than the maximum punishable periods of the offences with which they had been charged!<sup>93</sup> In spite of the law ordering the release of such persons, these persons continued inside prison because they were ignorant and poor, and due to the ignorance and mismanagement by the jail staff.

The CHRI study further found that:

- a) Under-trials continue to be detained in prisons for long periods of time; the interviewed prisoners had been detained for a minimum of 1 month and maximum of 6 years, with an average stay of 14 months; 33% of the interviewees had stayed incarcerated for more than a year<sup>94</sup>.
- b) Of the 66 under-trials interviewed, 5 had been kept in police custody for 3-4 days, in breach of section 151(2) of the Code of Criminal Procedure, 1973, which requires that no person shall be detained for more than 24 hours by the police without authorization by a magistrate<sup>95</sup>.
- c) 89% of the interviewees were uneducated or illiterate.<sup>96</sup>
- d) Some 80% of the interviewees had a family income of less than Rs. 5,000/- per month.<sup>97</sup>
- e) Most of the interviewees had agricultural backgrounds and were daily-wagers; they were occupied in labour-intensive work and were agricultural labourers, daily-wage labourers, rickshaw-pullers, watchmen, masons, vendors of dried fish, makers of incense-sticks, sellers of flowers or *Prasad* at temples, etc<sup>98</sup>.
- f) Provisions relating to preventive detention such as sections 107,109, 110, 151 CrPC were being exploited by the police as a matter of

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<sup>93</sup>Ibid. Page 18.

<sup>94</sup>Ibid. Page 11.

<sup>95</sup>Ibid. Page 11.

<sup>96</sup>Ibid. Page 12.

<sup>97</sup>Ibid. Page 12.

<sup>98</sup>Ibid. Page 13.

routine to swell figures of arrest by police as found by the report of the *All India Committee on Jail Reforms*.<sup>99</sup>

- g) In spite of the fact that free legal aid to the accused is a constitutional right<sup>100</sup> and mandated under the Legal Services Authority Act, 1987, out of the 66 prisoners interviewed, 19% did not have a lawyer; very few prisoners opted for legal aid; of the 51 prisoners who had a lawyer, only 6 opted for a legal aid lawyer, 40 opted for private lawyers and 6 did not know whether their lawyers were private or legal aid lawyers<sup>101</sup>. Even amongst prisoners who had lawyers, most lawyers did not come to meet their clients in prisons; 67% of the prisoners who had legal aid lawyers were not aware of the status of their cases and were not informed about the status by their lawyers<sup>102</sup>. Except in one of the prisons visited, the District/High Court Legal Services Authorities never informed the prison authorities about legal aid lawyers having been assigned to the prisoners.<sup>103</sup>
- h) Under-trials were not even being produced promptly before courts on the dates of their case hearings due to lack of police escorts.<sup>104</sup>
- i) The jails had antiquated methods of data management, without much computerization<sup>105</sup>.
- j) The *Prison Visiting System* which provides for a system whereby officials from outside the prison periodically inspect the conditions in prisons, was largely dysfunctional.<sup>106</sup>

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<sup>99</sup>Page 174, *All India Committee on Jail Reforms*, 1983, Ministry of Home Affairs, Government of India. As has been pointed out earlier, this thesis does not go into the issue of preventive detention in depth.

<sup>100</sup>Per Article 21 and various decisions of the Supreme Court including *Sukh Das vs. UT of Arunachal Pradesh* 1986 AIR (SC) 991 & *Sheela Barse vs. State of Maharashtra* AIR 1983 SC 378.

<sup>101</sup>*Pre-Trial Detention and Access to Justice in Orissa*, Priti Bharadwaj, CWHRI (2010), Chapter 5.

<sup>102</sup>*Ibid.*

<sup>103</sup>*Ibid.*

<sup>104</sup>*Ibid.*

<sup>105</sup>*Ibid.*

- k) There was no functioning Grievance Redressing System in place in the jails visited.<sup>107</sup>

In yet another CHRI study *Conditions of Detention in the Prisons of Karnataka*<sup>108</sup> the research team visited 39 prisons in Karnataka and studied various aspects relating to the infrastructure and management of the prisons in the State. The findings reiterate the general perception about the quality of prison life in India for under-trials:

- a. The practice of locating prisons outside towns and cities was deprecated since serious hardship is caused to the families and visitors of the prisoners and runs counter to the government policy of re-integration of offenders into society<sup>109</sup>;
- b. Most of the prisons in Karnataka were built more than 100 years ago by the British or by the princely States of Mysore and Hyderabad, consequently, with the exception of Bangalore Central Prison built in 1997, none of the structures had features conforming to modern penal standards<sup>110</sup>;
- c. Some jails had extremely tiny windows or none at all, with thick iron or wooden grills; inmates had to take turns standing near the grill doors for fresh air<sup>111</sup>;
- d. In some jails inmates were locked up for 24 hours a day in highly overcrowded conditions; overcrowding is a major issue with the State

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<sup>106</sup>Ibid. See also *Undertrials- A Long Wait to Justice- A Report on Rajasthan's Periodic Review Committee*, CHRI, 2011. The study looked at Periodic Review Committees as a significant oversight mechanism in the prison management system to ensure that an under-trial should remain in prison for the barest minimum period. The findings were however, that the PRCs hardly functioned in the 93 prisons spread across 33 districts of Rajasthan that were studied.

<sup>107</sup>*Pre-Trial Detention and Access to Justice in Orissa*, Priti Bharadwaj, CWHRI (2010), Chapter 9.

<sup>108</sup>Murali Karnam, CHRI, 2007-2008.

<sup>109</sup>Ibid.

<sup>110</sup>Ibid.

<sup>111</sup>Ibid.

Government itself conceding that there was 41% overcrowding<sup>112</sup>; however the realities are even worse since in some jails there is the practice of dumping all the prisoners in a few cells due to the lack of sufficient guarding staff<sup>113</sup>; the poor generally bear the brunt of overcrowding since less crowded barracks are reserved for the influential and the affluent<sup>114</sup>;

- e. Prison hygiene is a big problem with 75 inmates per toilet in Madikeri, Bidar, Gulbarga, Bellary and Bangalore jails; in most prisons ground and municipal drinking water is scarce and many prison inmates cannot bathe for months; basic amenities like toothpaste and bath soap are sometimes lacking<sup>115</sup>;
- f. Prison food is generally inedible, and many inmates resort to cooking clandestinely inside the barracks by building fireplaces; consequently the barracks get stained with black soot<sup>116</sup>;
- g. Corruption is endemic in prisons – inmates pay for everything they receive and can obtain everything for a price- with the poor bearing the brunt; more than 20% of the inmates are found to have respiratory problems<sup>117</sup>; management of prison visitors at interviews is one of the most “profitable” activities for the prison staff<sup>118</sup>;
- h. Basic health care including psychiatric care is lacking in prisons<sup>119</sup>;
- i. Even though under-trials cannot be made to work unless they ask for it, a sizable number of under-trials were employed in the essential maintenance of the prisons, without pay<sup>120</sup>.

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<sup>112</sup>As on 15-01-2008.

<sup>113</sup>ibid.

<sup>114</sup>ibid.

<sup>115</sup>ibid.

<sup>116</sup>ibid.

<sup>117</sup>ibid.

<sup>118</sup>ibid.

<sup>119</sup>ibid.

<sup>120</sup>ibid.

An under-trial prisoner is presumed innocent until proven guilty: this is the cardinal principle of criminal jurisprudence in India.<sup>121</sup> There is no reason why he should be subject to excessive physical and mental deprivations until he has been found guilty by a court of law. Consequently, modern guidelines for under-trial inmates require a better standard of treatment for under-trials, since they cannot be treated alike with convicts. For example, under-trials must be permitted to wear their own clothing, they must be segregated from other prisoners such as convicts and detenues, they cannot suffer any reduction in diet as a penal measure, they may be allowed food from outside the prison on a day-to-day basis, there should be no restrictions on the number of interviews sought by under-trial prisoners for the sake of legal assistance; rules relating to interviews with family members are more liberal; every under-trial prisoner is to be permitted to purchase or receive from private sources food, clothing, bedding and other items of necessity subject to some restrictions; under-trials cannot be forced to work but can be given work if they ask for it; all under-trials should be produced effectively before the courts on the dates of hearing; on the initial admission of an under-trial prisoner, a printed card should be sent to his family with his details and a brief summary of the rules applicable to him; and women under-trials prisoners shall be lodged separately<sup>122</sup>.

The *US State Department Human Rights Country Report for 2013* states, with regard to Indian prisons: "Prison conditions were frequently life-threatening and did not meet international standards.

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<sup>121</sup> See *K. Joseph Augusthi vs. M.A. Narayanan* AIR 1964 SC 1552, para 8.

<sup>122</sup> See *Standards Behind Bars: Prescribed Rules and Recommendations for Prisons*, CHRI 2010, which is a compilation of the standards laid down by the *Rajasthan Prison Manual 1951*, the *All India Committee on Jail Reforms 1980-83 (Mulla Committee)* and the *Model Prison Manual 2003* prepared by the *All India Model Prison Manual Committee*, approved by the Central Government in 2004.

Prisons were severely overcrowded and food, medical care, sanitation and environmental conditions were often inadequate. Potable water was only occasionally available.”<sup>123</sup> The *Ministry of Home Affairs* has acknowledged in its *2011-2012 Annual Report* that prison and detention-centre conditions were extremely poor and severely overcrowded, understaffed, and lacked medical care and infrastructure. Prisoners were physically mistreated, faced long detention before and during trial, and had inadequate opportunity to communicate with legal counsel, authorities and family<sup>124</sup>.

In spite of these abysmal conditions, which *prima facie* show a lack of willpower and insufficient allocation of funds for prisons, NCRB publications proudly list the expenditure incurred by States each year towards prisons and their management and state that the ratio of actual staff strength to sanctioned staff strength is good<sup>125</sup>.

Why should an under-trial prisoner, who by law, is presumed innocent until proven guilty, suffer such conditions, that too for long periods of time? What appeasements can be given if he/she is ultimately found innocent?

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<sup>123</sup>Page 9, *US State Department Human Rights Country Report for 2013*, <http://www.state.gov/documents/organization/220604.pdf>. The annual Country Reports on Human Rights Practices – the Human Rights Reports – cover internationally recognized individual, civil, political, and worker rights, as set forth in the Universal Declaration of Human Rights and other international agreements. The U.S. Department of State submits reports on all countries receiving assistance and all United Nations member states to the U.S. Congress in accordance with the Foreign Assistance Act of 1961 and the Trade Act of 1974. Of course, one might say that the viewpoint is very American.

<sup>124</sup>*2011-2012 Annual Report, Ministry of Home Affairs*, page 103, Chapter 6.

<sup>125</sup>The total (of all States’) sanctioned budget for expenditure on prisons had increased from Rs. 1,28,796.3 lakhs in 2004 to Rs. 3,74,496.7 lakhs in 2013 (*Prison Statistics 2004 to 2013*) – but this increase is clearly inadequate given the need for modernization and the levels of overcrowding. Whether the sanctioned strength is adequate is not gone into by NCRB publications.

## 2.12 The situation is only getting worse: crime rates are increasing; Police and Courts are increasingly unable to keep up with workloads

The incidence of total Cognizable Crimes (IPC) increased from 6,01,964 in 1953 to 26,47,722 in 2013<sup>126</sup>, which is an increase by 339.8% from 1953. The incidence of most offences such as Murder, Rape, Kidnapping and Abduction, Robbery and Rioting has increased over the decades<sup>127</sup>. Total cognizable IPC crimes have shown a rising trend except for the years 1954, 1955, 1963, 1969, 1975, 1976, 1979, 1982, 1993 and 2003 when slight decreases were observed<sup>128</sup>. **Appendix “A”** is a graph showing the incidence of Cognizable IPC crimes for the period 1953 to 2013<sup>129</sup>.

Over the last decade, the crime rate<sup>130</sup> for IPC crimes increased from 160.7 in 2003 to 215.5 in 2013<sup>131</sup>. The crime rate for SLL crimes decreased from 353.7 in 2003 to 324.7 in 2013<sup>132</sup>. Overall, the crime rate has increased from 514.4 in 2003 to 540.4 in 2013, which is an increase of 5.1% over the last decade<sup>133</sup>. **Appendix “B”** shows the incidence and rate of total cognizable crimes under IPC/SLL for the period 2003-2013<sup>134</sup>.

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<sup>126</sup> *Crime in India Compendium 2013*, page 12.

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*, page 13.

<sup>129</sup> *Ibid.*, page 11.

<sup>130</sup> The crime rate is the number of crimes per 1 lakh population.

<sup>131</sup> *Crime in India Statistics 2013*, page 194.

<sup>132</sup> *Ibid.* *Crime in India Statistics 2013* points out that Motor Vehicles crimes have been excluded from SLL crimes in Andhra Pradesh.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

The percentage of cases disposed through investigation each year is decreasing-showing that the police are struggling against increasing work-loads of cases registered. The percentage disposal of IPC cases in which investigations were completed declined from 81.6% in 1973 to 72.8% in 2013, showing a declining trend<sup>135</sup>. **Appendix “C”** is the decadel picture showing percentage disposals of IPC crimes by the police from 1973 to 2013<sup>136</sup>.

The percentage of cases in which trials were completed by the courts is also showing a declining trend. In the year 1973, the courts had tried 28.8% of the total IPC cases pending for trial, whereas by 2013, they had completed only 13.2% of the total IPC cases pending for trial.<sup>137</sup> **Appendix “D”** shows the decadel picture for IPC crimes and the percentage of completion by courts<sup>138</sup>. Similarly, the percentage disposal of SLL crimes by courts also appears to be declining. Whilst 44% of all SLL crimes had been disposed by the courts in 1991, in 2013 only 36.9% of SLL crimes had been tried by the courts<sup>139</sup>.

Conviction Rates<sup>140</sup> have also shown a declining trend over the years. In 1973, it was 62% whereas in 2013 it was 40.2% for IPC

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<sup>135</sup> *Crime in India Compendium 2013*, Table 4(A), page 63. Insofar as SLL crimes were concerned, the percentage completion by the police does not seem to have varied much over the years: it was 93.1% in 1991, 94.5% in 1995, 94.5% in 2000, 93.4% in 2007, 94% in 2010 and 93.3% in 2013. *Crime in India 1991,1995,2000,2007,2010 and 2013*.

<sup>136</sup> *Ibid.*

<sup>137</sup> *Crime in India 2013 Compendium*, Table 4(B), page 73.

<sup>138</sup> *Ibid.*

<sup>139</sup> *Crime in India 1991,2013*.

<sup>140</sup> The percentage of cases convicted as against the total number of cases tried.

Crimes.<sup>141</sup> **Appendix “D”** also shows the rates of conviction over the years for IPC Crimes.<sup>142</sup>

These trends suggest that the number of criminal cases in the country are only going to increase each year, and the numbers of incarcerated under-trials will continue to grow.

### 2.13 The Effects of Delay

Delay is generally prejudicial to all concerned- the accused, the victims and the State- even though in some situations it may benefit certain persons. Whilst it may appear obvious that delay results in various negative consequences, it may be worthwhile to nonetheless list some of them out:

- (a) For the accused: delay would increase the suffering of the incarcerated under-trial due to loss of *physical freedom* and the deprivations attached thereto, as well as the various hardships and risks of jail life; the under-trial would lose his job and his economic capacities- consequently his family would suffer along with him during his incarceration; delay would increase loss of reputation for the accused and affect his employability. The accused and his family would have to spend more on lawyers and other costs. Delay would also increase the *mental agony* and anguish of facing criminal prosecution, of the “sword hanging” constantly over the accused; delay might affect the accused’s ability to defend himself due to loss of witness memories, death of witnesses and

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<sup>141</sup>*Crime in India 2013 Compendium*, page 73.

<sup>142</sup>*Ibid.* The conviction rate for SLL Crimes was 90.9% in 2013. *Ibid.*, page 77. In the year 1973 the conviction rate for SLL Crimes was 92.8%. *Crime in India 1973*, page 72. Thus, there does not appear to be much variance in the rates of conviction for SLL crimes.

destruction of other types of evidence; consequently it might seriously affect the effectiveness of the trial as a process for getting to the truth. Consequently, the trial held after lapse of a great period of time might not be a *fair* trial.

- (b) For the victims: delay would heighten the pain of victims who fail to get retribution and compensation within reasonable time; delay would increase the chances of victims and witnesses being bought over or influenced by the accused; their costs would also increase.
- (c) For the State/society: the objectives of the Criminal Justice System and the penal law would be defeated due to the delay in bringing the guilty to book; the chances of obtaining convictions would be minimized due to loss of evidence<sup>143</sup> – memory loss<sup>144</sup>, death of witnesses and destruction of evidence; more time would be given to the accused to tamper with witness testimonies; the State would incur increased costs<sup>145</sup> for running the judicial and prosecution machinery and for maintaining under-trials in prisons; confidence of the public in peace, social order and good government would be threatened;<sup>146</sup> some people may be provoked to take action *de hors* state machinery.<sup>147</sup>

Sometimes, delay can be a deliberate tactic by the accused. For example, if the accused feels that conviction is inevitable, he may delay the trial with the intention of causing the evidence to disappear or of influencing crucial witnesses. If he is out on bail and conviction seems inevitable, the accused may delay the trial

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<sup>143</sup>Para 1.24, *Report of the Committee on Reforms of the Criminal Justice System*, March 2003.

<sup>144</sup>Noted by the Law Commission of India in its 221<sup>st</sup> *Report on the Need for Speedy Justice-Some Suggestions*, April 2009, Paras 2.15 to 2.18.

<sup>145</sup>*Ibid.*

<sup>146</sup>*Ibid.*

<sup>147</sup>*Ibid.*

so that he can enjoy his freedom. The State also sometimes uses delay as a tactic: if the investigation authorities have not been able to garner sufficient evidence against the accused, then Public Prosecutors may delay trial with the hope of getting evidence in future.

*Swigert and Farrell*<sup>148</sup>, after conducting empirical studies in the United States have concluded that cases that are concluded quickly result in *higher* conviction rates- therefore speedy trial is a State resource.

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<sup>148</sup>*Speedy Trial and the Legal Process*, Victoria Lyan Swigert and Ronald A. Farrell, Law and Human Behaviour, Volume 4, No. 3 (1980) pp. 135-145 (Springer publication).