

Pre-trial Detention and the Inequality of Justice

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Liberty, one of man's priceless possessions, is restrained only as a punishment for a crime which one is convicted for. During the period preceding trial and conviction, it is still unclear to what extent liberty can be curtailed. In this regard, two alternatives are presented as available in bringing a person under the jurisdiction of the court: the issuance of summons and arrest.

The necessity of pre-trial detention thus arises in cases where the issuance of summons or bail cannot be availed of. The purpose of a pre-trial detention can be to hold the accused for questioning or to ensure his appearance at trial, among others. However, the Author points out that pre-trial detention, though it is necessary, could amount to an infringement of liberty. He therefore proposes safeguards to ensure that pre-trial detention will serve its purpose and a person's liberty will not be infringed upon.

First and foremost, a person placed under pre-trial detention should not be exposed to the same treatment as those convicted. The United Nations Congress on the Prevention of Crime and Treatment of Offenders in Geneva set of rules establishing minimum conditions for untried prisoners. However, the Author points out that although such efforts are laudable, the conditions under which a detainee is subject to still approximate the sentence of imprisonment. Furthermore, the stigma of detention may be difficult to deal with. Adverse effects of pre-trial detention include a.) disruption of relationships and normal activities, b.) hardening the detainee by lending a psychic effect and thus becoming a factor in the commission of a crime, c.) the detention of an innocent, and d.) dealing with negative conditions after release, particularly a decline of reputation and standing in society. The Author thus recommends the greater use of summons than arrest and allowing bail in more cases and to more persons by relaxing the requirements necessary for its grant.