

AN OVERVIEW ON PROTECTION OF HUMAN RIGHTS OF PRISONERS UNDER INDIAN CONSTITUTION

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ABSTRACT

The right to life and personal liberty is the most fundamental of all the fundamental human rights. It is one of the most essential basic human rights in a democratic state. The right to life does not mean a mere physical existence or the right to live a lifeless life. The right to life includes the right to live with human dignity and all that goes along with it, namely, the basic necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

KEYWORDS: Prisoners, Human Rights, Constitution of India, 1950,

INTRODUCTION

Article 21 has not only ensured right to life but right to personal liberty also; and nobody can be deprived of these except according to the procedure established by law. The creativity of the Indian judicial system has been at its best whenever it was called to interpret Article 21, except perhaps during the short interregnum of the emergency rule. Today, Article 21 stands out as the beacon light for all freedom lovers promising the development of more rights when needed and ensuring a minimum degree of fairness in all legal proceedings. The Supreme Court played the role of a crusader of people's liberty and introduced „reasonableness, fairness and justness" in the procedure under "*Procedure established by law*". Reasonableness under Article 21 widened its scope and provided impetus to bring in fairness in number of fields. Wide dimension given to this right now covers various aspects which the framers of the constitution might or might not visualized e.g. right to privacy, travel abroad, livelihood, prisoners, health, timely medical aid, free legal aid, speedy trial, live in healthy environment Everyone has a right to be treated with respect and dignity; everyone has basic and fundamental rights enshrined to them under the law regardless of the person's status, circumstance or nature, even if the person is behind bars. Article 5 of the Universal Declaration of Human Rights proclaims that, "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*". Subsequently Article 7 of the International Covenant on Civil and Political Rights, 1966 creates an obligation for the State parties to it that, "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*" The prisoners usually face stigma the government's effort is to avoid their contact with the society and takes away the freedom of mobility. This in turn denies a chance of a prisoner to get reformed. The Supreme Court in the landmark case of *Union of India v. V. Sriharan* declared that the sentences in which the court orders that the convicted persons should spend the whole life or at least a minimum number of years behind bars and puts those terms beyond the scope of remission by the government, are valid sentences, but only the Supreme Court and High Courts would have the power to order such

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terms shelter, education, affirmative action and compensation for violation of right to life and personal liberty.

CONSTITUTIONAL & OTHER STATUTORY PROVISIONS RELATING TO THE PRISONERS' RIGHTS IN INDIA

There is no specific guarantee of prisoner's rights in constitution of India. However, certain rights which have been enumerated in Part III of constitution are available to the prisoners too because a prisoner remains a person in the prison. Besides the constitution, there are certain other Statutes like The Prison Act, 1894, Prisoners Act 1900, and Prisoners Act, 1955, where certain rights are conferred to the prisoners. Prison & Police Manuals, which also have certain rules & safeguards for the prisoners & cast an obligation on the prison authorities to follow these rules.

CONSTITUTIONAL PROVISIONS

One of the important provisions in the constitution of India which is generally applied by the courts, is Article 14 in which principle of equality is embodied. It runs: The state shall not deny to any person equality before law or the equal protection of the laws within the territory of India. The rule that *'like should be treated alike'* & the concept of reasonable classification as contained in Article 14 has been a very useful guide for the courts to determine the category of prisoners & their basis of classification in different categories. Article 19 of the constitution guarantees six freedoms to the citizens of India. Among these freedoms, certain freedoms like 'freedom of movement', 'freedom of reside & to settle' & 'freedom of profession, occupation, trade or business cannot be enjoyed by the prisoners because of the very nature of these freedoms & due to the condition of incarceration. Clause 1 of Article 20 protects the person from ex post facto laws. It provides:

No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of offence. This clause of Article 20 than provides to protect a prisoner from being subjected to any punishment or punishment conditions (including that of imprisonment) which were not authorized by law at the time when he committed the alleged act and for which he was convicted and sentenced after the trial than provided under the law. In other words, no imprisonment conditions of harsh labour can be enacted and inflicted on him who was not prescribed by the law at the time; he committed the crime for which the imprisonment in question was imposed. Article 20(2) embodies the principle of 'double jeopardy', that is: No person shall be prosecuted and punished for the same offence more than once. This clause states the common law rule of *'nemo debet vis veari'* that is no person should be put twice in the peril of same offence. The former prosecution and punishment can be a complete defence for the later prosecution and punishment for the same offence. Article 21 of the constitution has been a major centre of litigation so far as the prisoner's rights are concerned. It embodies the principle of liberty. It provides:

'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

Article 39-A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for Securing justice is not denied to any citizen by reason of economic or other disability. Articles 14 and 21 also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. In 1987 Legal Services Authorities Act (the Act) was enacted to give a statutory basis to legal aid programmes throughout the country on a uniform pattern. The Act was finally enforced on 9th November, 1995. Legal aid programmers strive to ensure that constitutional - pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society. To mark the journey from „ignorance“ to „legal empowerment“, National Legal Literacy Mission was launched on 6th March, 2005. As the Chief Justice Lahoti (as he then was) observed in his speech on the occasion, “National Legal Literacy Mission is a project in which the three wings of governance namely, the Legislature, the Judiciary and the Executive have joined hands to reach out to the most marginalized and vulnerable sections of our society and tell them what their rights are... The doors of the court are open to all but that by itself is not justice so long as the weakest of the weak is not empowered enough to have access to justice.” Legal aid is not confined to representation in court cases, but extends to providing legal literacy and legal awareness, in order to effectuate meaningful legal aid and realize the aim of “*Access to Justice for all*”. The effort is to publicize legal aid schemes and create awareness of legal rights so that the target groups, for whom Legal Services Authorities Act has provided for free legal aid, may come to know about them and approach the concerned legal services functionaries.

RIGHTS OF PRISONERS

- (i) **Right to Speedy trial:** In Prisons throughout the country, there is currently a dire need of institutionalizing systems for legal aid and awareness to ensure that prisoners do not suffer unseen and unnoticed. Prisons are congested with high remand populations. Well recognized challenges before the system pertaining to jails and prisoners include: huge overcrowding in jails, delay in trial, torture and ill-treatment, neglect of health and hygienic, insubstantial Food and inadequate clothing, prison vices, deficiency in communication, streamlining of jail visits and Management of open air prisons, lack of proper classification of prisoners into habitual, casuals, juveniles, political prisoners etc., training and sensitization of staff, warders and guards, establishing counselling and rehabilitation programmes for drug addicts, repeat offenders etc., and the list go on. The vast majority of the prisoners in jails is poor and has no resources to protect their rights.
- (ii) **Right to Free Legal Aid & Right to Appeal:** The right to first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, has been to be a component of fair procedure and basic to civilized jurisprudence. Every step that makes the right of appeal fruitful is held obligatory and every action of inaction which stultifies it, is unfair and unconstitutional.
- (iii) **Right to Bail:** In *Babu Singh v. State of U.P.*, the S.C. held that refusal to grant bail to an accused person without reasonable grounds would amount to deprivation to his

- personal liberty under Article 21. The Court held that right to bail was included in the personal liberty under Article 21 and its refusal would be deprivation of that liberty which could be authorized in accordance with the procedure established by law.
- (iv) **Right against Hand-cuffing:** Hand cuffing has been held to be *prima-facie* inhuman and therefore unreasonable, over-harsh and at the first flush, arbitrary. It has been held to be unwarranted and violative of Article 21. The Court thus directed the Union of India to issue appropriate guidelines in this regard.
- (v) **Right against Bar Fetters:** In *Sunil Batra v. Delhi Administration.*, S.C. laid down that the treatment of the human being which offended human dignity, imposed avoidable torture and reduced the man to the level of beast, would certainly be arbitrary and could be questioned under Article 21 and 14. Therefore, putting bar fitters for an unusually long period without due regard for the safety of prisoner and the security of the prison would certainly be not justified.
- (vi) **No right to escape from custody:** Whatever be the nature and extent of the prisoner's fundamental right to life and personal liberty under Article 21, but they do not have the fundamental freedom to escape from lawful custody. The Supreme Court in *D.B.M. Patnaik v. State of A.P.* rejected the contentions and held that they have no fundamental freedom to escape. A convict has no right more than anyone else had, to dictate whether guards ought to be posted to prevent the escape of prisoners.
- (vii) **Right to write a book:** In *State of Maharashtra v Prabhakar Pandurang*, the petitioner was detained under the Preventive Detention Act, 1950. While under detention in jail, he wrote a book on science and sought permission from the government to send the manuscript of the book to his wife for publication. The government refused permission. The court held the refusal as an infringement of his personal liberty as the restriction was not authorized under the Preventive Detention Act, 1950. The court laid down that the right to personal liberty under Article 21 included the right to write the book and get it published.
- (viii) **Right against Solitary Confinement:** In., *Sunil Batra v. Delhi Administration*, the petitioner, Sunil Batra was sentenced to death by the Delhi Sessions Court and his appeal against the decision was pending before the high Court. He was detained in Tihar jail during the pendency of the appeal. He complained since the date of his conviction by the Session Court, he was kept in solitary confinement. Batra contended that Section 30 of the Prisons Act, 1894, did not authorize the jail authorities to impose the punishment of solitary confinement, which by itself was a substantive punishment under Sections 73 and 74 of the India Penal Code, 1860 and could be imposed by a court of law. That, it could not be left to the whim and caprice of the prison authorities. The Supreme Court accepted the argument of the petitioner and held that imposition of solitary confinement on the petitioner was violative of Article 21.
- (ix) **Right against inhuman treatment:** In *Kishore Singh v. State of Rajasthan* the court held that the use of third degree methods by the police was violative of Article 21 imposing solitary confinement for a long period from 8 to 11 months or putting bar fetters on the prisoners in the jail on flimsy grounds like loitering in the prison, behaving

insolently and in an uncivilized manner, tearing of his history ticket, the Court said it must be regarded as barbarous and against human dignity and hence violative of Articles 14, 19 and 21. *Krishna Iyer Justice*, speaking for the Court observed: Human dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials.

- (x) **Right against Custodial Violence:** In *Sheela Barse v. State of Maharashtra*, the S.C. took a serious note of violence committed on women prisoners confined in the police lock up in the city of Bombay. The Court emphasized on the importance of legal assistance to a poor or indigent accused that was arrested and put in jeopardy of his life or personal liberty. Highlighting the need for setting up a machinery for providing legal assistance to prisoners in jail, the Court directed the Inspector General of Prisons, Maharashtra to issue a circular to all Superintendents of Police in the State requiring them to provide facilities and information to the Legal Aid Committees, so as to render legal assistance to the under-trial prisoners.
- (xi) **Right against delayed Execution:** Prolonged detention to await the execution of a sentence of death has been held to be unjust, unfair and unreasonable, violative of Article 21. In *T.V. Vatheeswaran v. State of T.N.* the appellant was sentenced to death, but his death sentence was not executed for eight years. He contended that to take away his life after keeping him in jail for ten years, eight of which in illegal solitary confinement, would be gross violation of the fundamental right guaranteed by Article 21. The SC accepted the contention of the appellant and held that the only way to undo the wrong done to him would be to quash the sentence of death. As the Constitution of India, 1950 established a democratic welfare State allowing equal opportunity to one & all, without discrimination of any kind, for personal growth and for contributing to the cause of nation. Therein, a key objective of the Constitution is to set up an infrastructure in jails so that the prisoners languishing therein are provided prompt and efficient legal aid and made aware of their rights including their valuable Right to Life and Liberty guaranteed under Article 21 of the Constitution of India, as well as the resources available to them to protect their rights.

CONCLUSION

Therefore, the task of protecting human rights that prisoners are entitled to and of implementing progressive ruling of the Supreme Court and High Courts and recommendations made by various Commissions and Committees on prison reforms including radical reforms suggested by the National Human Rights Commission call for a thorough restructuring and reorganisation of prisons in India. Conclusively, there is a strong need to increase awareness and remove the social stigma surrounding convict rights under the criminal judicial system, prompting efficient working, regularization and implementation of their rights. As it is rightly said by Honourable *Justice P.N. Bhagwati* that:

“The extent to which human rights are respected and protected within the context of its criminal proceeding is an important measure of society’s civilisation”

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