

CONSTITUTIONAL AND LEGISLATIVE REGIME REGARDING RIGHTS OF PRISONERS IN INDIA

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ABSTRACT

The Indian socio-legal system is basically based on the concepts of nonviolence, mutual respect, and human dignity of the individuals. All human beings are born free, independent, and equal in dignity and rights. They are equipped with conscience and rationality and should act accordingly, living in a high spirit of brotherhood and love. The entire mankind is treated as members of one human family; the rights are inalienable and are considered as foundation of freedom, justice, and peace. If a person commits a crime, it does not mean that by committing this crime, he/she ceases to be a human being and that he/she can be deprived those aspects of human life which constitute human dignity of an individual. It is the truth that the philosophy of the rights of prisoners appears to have derived directly from consideration of human dignity of human beings.

KEY WORDS: Prisoners, Personal Liberty Etc

INTRODUCTION

The concept of human rights has obtained much importance in all over the world in the contemporary times due to pre-dominance of ideas like equality, liberty, and Justice. Human rights are those minimal rights to which a person is naturally entitled. Human rights are inherent in all individuals by virtue of being human and irrespective of their caste, creed, religion, sex, language, ideology, and any other status. These fundamental rights originate with the birth of the individuals and are very essential for the adequate development of the human personality, progress, and happiness. Due to their unexplainable link with human beings, these rights are known as human rights. Human rights are neither merely ideals nor aspirations, nor as the existence of set of laws. These rights are inherent by virtue of the fact that we are human beings with an inalienable right to human dignity. The human rights are inalienable because the enlightened conscience of the society would not permit to surrender of these rights by any person even of his own will. The human rights are inviolable, because they are not only essential for the development of human personality, but also, because without them a person would be lowered to the level of animals. The horizon of human rights in the world is expanding. At the same time, the crime rate in the society is also increasing. Therefore, one of the most challenging tasks before the government and the society to cope a balance between the needs of law enforcement and the protection of the individuals from violation of human rights. Oppression by the police and other enforcement authorities of the State is indeed a major concern and prime

interest in a free society. Prison administration in India has been an integral part of the Indian criminal justice system since time immemorial.

All the sub-systems of the Indian criminal justice system including the police, prison administration and judiciary are being looked over at the policy making level. In fact, never in its history, our criminal justice system has been subjected to such a criticism from the point of human rights of prisoners, as at present. Prisons in India are likely to accommodate a large number of socially excluded people. Indian prisons are characteristically associated with physically, mentally, and spiritually dehumanizing, sexual torture and loss of fundamental rights, which makes the reformation of the convict a false promise. A Prisoner sent to prison for the punishment of his/her criminal activity and not for punishment to deprive all his/her personal liberty. The penal system should not be reached such level of disparity for prisoners from which they can never be reformed. So, it is the need of the time to re-socialize and rehabilitate the prisoners that they should be treated through humanitarian approach to become responsible and law-abiding citizen of the country. There are some inalienable and fundamental rights which are very essential for life as a human being, which must be available to the prisoners also.

RIGHTS OF PRISONERS AND THE INDIAN CONSTITUTION

In the constitution of India, the subject of prisons is in the State List of the Seventh Schedule. The protection of prisoners is discussed in the constitution of India as well as various Statutes relating to the Prisoners. The decisions of the Apex Court and the various High Courts played a vital role in the protection of the rights of the prisoners in India. The pathetic conditions of prisoners are not restricted to India alone. This scenario can be seen everywhere throughout the world. Brutality with prisoners is rampant everywhere in the world and there is a tendency to insult and degrade prisoners. The Prisoners must leave under various disabilities, imposed by the State and the society. This tendency makes the prisoners unsafe to live in. Amidst such a scenario, the right of prisoners assumed much significance. Identification of those basic rights, a prisoner can claim during his\ her prison life is essential at this juncture. Various other incidental rights available to the prisoners are also to be considered simultaneously. The Apex Court and the various High Courts have been doing their best to make a balance between the conflicting interests in our country. It is effort to examine that how much the Indian Constitution and the courts have been successful in identifying and effectuating these rights¹.

Article 21 of the Constitution of India has been a centre point of litigation so far as the rights of prisoners are concerned. This Article embodies the principle of liberty. The

¹ Harry Emler Barnes & Negley King Teeters., "New Horizons in Criminology", Prentice Hall Inc. New Jersey 1943, p.2.(Forwarded by Frank Tannenbaum)

Apex Court and the various High Courts has been used this provision to protect certain important rights of prisoners. After Maneka Gandhi case, it has been established that there must be fair and reasonable procedure for the deprivation of the life and personal liberty of the individual. The history of judicial interfere in prison administration shows that whenever the prison authorities have behaved the prisoners to ill treatment the courts have interfered to protect their rights

RIGHT TO FAIR PROCEDURE

In the case of State of Maharashtra V. Prabhakar Panduranga, the Court held that conditions of detention not to be extended to deprive other fundamental rights consistent with the fact of detention The respondent was detained in district jail and during his detention he wrote a book in Marathi Anucha Antarangaat which means inside the atom. This book was purely scientific nature and did not cause and prejudice to the public safety or public order and to the defence of India. The detenu applied the authorities for the permission to send the script out of the jail and for publication but both were rejected. The High Court held that there was no rule prohibiting a detenu from sending a book outside the jail and to get it published. The High Court held that the civil rights and liberties of action were in no way curbed by the order of detention and it is always open to the detenu to carry on his activities within the purview of conditions governing his detention.

It was further held that there was no rule prohibiting the detenu to send a book outside the jail with a view to get it published. The Apex Court also affirmed this judgement and held that the said conditions regulating the restrictions on the personal liberty of a detenu are not privileges conferred on him but are the conditions subjected to which his/her liberty can be restricted. In D.B.M Patnaik V. State of Andhra Pradesh, the Apex Court asserted that prisoners are not denuded of all the fundamental rights by the mere reason of their detention. In this case the petitioners were undergoing their sentences and also at the same time prisoners undertrial in the central jail, Visakhapatnam. They filed for the removal of armed guards located around the jail and for removal of live electric wires fixed on the top of the jail wall. The Apex Court held that the right of personal liberty and some other fundamental freedoms are not to be fully denied to a prisoner during the period of imprisonment. But in the present case there was no violation of any of their fundamental rights by the deployment of armed guards outside the jail. On the question of installation of high voltage wires on the top of the boundary wall, the court held that the prisoners cannot complain this mechanism because prisoners are likely to come into contact of this wire only if they attempt to escape from the prison and prisoners have no fundamental right to escape from the lawful custody².

² Ghosh.S., "Open Prisons and the Inmates", Mittal publications, New Delhi 1992, p.1.

RIGHT OF PERSONAL LIBERTY

Maneka Gandhi V. Union of India case is the turning point in the human rights jurisprudence especially in personal liberty. The expression amplitude and covers all those rights which constitutes personal liberty of any individual. The personal liberties have the status of distinct fundamental right and given additional protection under article 19 of the Indian Constitution. The state cannot deprive anyone of the right to live with basic human rights and dignity. Inhuman and degrading treatment, cruelty or torture or any other type of punishment which encroaches on human dignity would not be impermissible under the Indian Constitution. Thus, the Apex Court elevated immunity against human or degrading treatment to the status of a fundamental right under Article-21 of the constitution, though it is not enumerated as a fundamental right in the Indian Constitution.³

RIGHT TO FREEDOM OF PERSON/PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

EX-POST FACTO LAW

Article 20(1) of the Constitution imposes a restriction on the power of the Legislature. Legislature can enact prospective laws but article 20 clause (1) prohibits the legislature to enact retrospective criminal laws. However, imposition of civil liability retrospectively is not prohibited with effect from a past date. An ex-post facto law is such an enactment which imposes liabilities/penalties from a past date. However, the accused can take benefit of beneficial provisions of the ex post facto law. This beneficial construction rule requires that exposed fact to law should be applied to reducing the penalty or sentence of the previous law on the same subject. So, an ex-post facto law which is in the interest of the accused is not prohibited by article 20(1) of the constitution.

PROTECTION AGAINST DOUBLE JEOPARDY

Doctrine of double jeopardy is an important principle of the criminal justice administration. Protection against double jeopardy means that no person can be punished many times for the same offence. This principle is based on *autrefois acquit* and *autrefois convict* the previous acquittal or conviction as a bar to the subsequent trial. It is the well-established principle of natural justice that a person cannot be tried more than once for the same offence. No person shall be prosecuted and punished for the same offence more than once *nemo debet bis vexari pro eadem causa* that no person should be put twice in peril for the same offence. Article 20 (2) of the Constitution of India is narrower than the protection available in the article 14(7) of the ICPR and in England. In the said article of ICPR and in England this protection is

³ Sharma P. D., "Police and Criminal Justice Administration in India", Uppal Publishing House, New Delhi, 1985, p. 145

given for the second time prosecution for the same offence irrespective of whether the accused was convicted or acquitted in the first trial. But under article 20(2) of the Indian Constitution this protection is given only when an accused was not only been prosecuted but punished also for the same offence for which he is prosecuted again.

ARTICLE 21 AND THE RIGHTS OF THE PRISONERS

Right to life and personal liberty guaranteed under article 21 of the Constitution of India has been main axis of litigation as for as rights of prisoners are concerned. While interpreting article 21 of the Indian constitution the Apex Court has developed human rights jurisprudence for the protection of rights of prisoners to maintain human dignity. *Kharak Singh vs. State of Uttar Pradesh*⁴⁰ the Supreme Court has observed: Life means more than animal existence. Inhibition against deprivation extends to all members and faculties from which one enjoys life. The provision also prohibits the mutilation of body by amputation of an arm or leg or the removal of an eye or destruction of any other organ of the body through which the soul communicates with the other world A fair procedure is the core of article 21 of the constitution. It is clearly mentioned in this article that deprivation of article 21 is justifiable according to procedure established by law and the procedure should be fair, just, and reasonable

RIGHTS AGAINST INHUMAN TREATMENT OF PRISONERS

Human rights are a part of human dignity. The right to life and personal liberty under article 21 of the Indian Constitution includes the right to use every limb to enjoy the life. Hence cruel torture, in human are degrading treatment is not permissible behind the bars. Therefore, a prisoner has the right not to be harmed mentally or physically behind the bars either by prison staff are by any of his/her fellow inmates. The Apex court in many cases took seriously the inhuman and degrading treatment of prisoners and gives proper directions/ instructions to the prison personnel and law enforcement authorities to safeguard the rights of prisoners behind the bars.⁴

In the case of *Raghubir Singh V. State of Bihar*, the Supreme Court has expressed its deep concerned regarding cruelty and torture by prison authorities or police personnel and upholds the sentence awarded to a police officer responsible for the death in police lock-up. In case of *Kishore Singh V. State of Rajasthan*, the Apex court held that use of third-degree methods by police authorities is violation of article 21 of the constitution and direct the government to take necessary measures to sensitize the police authorities to maintain respect for the human being. In this case the Supreme Court expressed its deep concern regarding relation to human rights and dignity against police torture in the words: Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound

⁴ Mahaworker. M.B., "Prison Management: Problems and Solutions", Kalpaz Publications, New Delhi, 2006, p. 9

on our constitutional culture that a state official running berserk regardless of Human Rights In *D. K. Basu v. State of West Bengal* death in custody is perhaps one of the worst crimes in a civil society which is governed by the rule of law In this case the court has issued a comprehensive guideline to police authorities in respect of the inhuman treatment and custodial violence, with a view that violating police officer will be personally responsible for that act under criminal law. In this case the court stated that any form of cruel, torture, inhuman or degrading act or treatment would fall within the ambit of article 21 of the Indian Constitution, during the investigation as well as the interrogation.

RIGHT TO SPEEDY TRIAL

An under trial prisoner and an appellant who have appealed against his or her conviction has the right that their case be heard and disposed of fairly, quickly, and justly is inculcated in the article 21 of the Indian Constitution. It is the pious duty of the court to ensure this to all prisoners. This right begins with the actual restraint by arrestation to imprisonment and continuous to all stages namely investigation, inquiry, trial, appeal, and revision to avert any possible prejudice. In *A. R. Antule v. R.S Nayak*, The right to speedy trial is a part of fair, just and reasonable procedure under article 21 of the constitution. Although, it is not advisable and feasible to fix an outer time limit for conclusion of the criminal proceedings In *Hussainara Khatoon V. Home Secretary, Bihar State*, the Supreme Court held: Obviously the procedure prescribed by law to deprive a person of his/her liberty cannot be reasonable just or fair unless they guarantee a quick procedure to determine that person's fault. Any procedure does not guarantee that a reasonable rapid test can be considered reasonable, fair, and equitable and would be agree with article 21. Consequently, any defendant who is denied the right to a quick trial has the right to go to the Supreme Court in order to enforce that right.⁵

RIGHTS OF 'DETENU'

Clauses (4) to (7) of the article 22 provides the procedure to be followed if a person is arrested under the provisions of preventive detention law. In *A. K. Gopalan V. State of Madras*, the Apex Court observed that there is no It is a preventive measure and not a punitive one. The object of the punitive detention is to punish a person what he has already done while the object of reventive detention is to intercept him before he does it and to prevent him from doing it. In preventive detention no offence is proved or any charge is framed against him. The sole justification of such detention is suspicious or reasonable probability of committing some act likely to cause harm to the society or threaten the security of the Governments, and not any criminal conviction which can only be warranted by legal evidence. The Indian Constitution

⁵ Mahaworker M.B., Supra note. 6. p.13.

has provided safeguards also to mitigate the harshness of preventive detention by placing fetters on legislative power of the Legislature. Clause (4) to (7) of the article 22 guarantees the various safeguards to a person arrested under preventive detention law⁶.

STATUTORY RECOGNITION OF RIGHTS OF PRISONERS IN INDIA

The concept of sovereignty is one of the most prevalent features of a country which gives the strength to adopt or not to adopt any international order or mechanism and to develop its own mechanism to face every situation. There are numerous statutes and enactments in India associated with the prison, prisoners, prison administration and its reformation. Before the enactment of Government of India Act, 1935 the subject 'Jails' was placed in Union List but after passing this Act the subject jail was transferred to that time existed in the list of Provincial Government. After independence the subject prison and their administration is inserted under Entry IV of State List in 7th Schedule of the Constitution of India. In India, the contemporary administration of prisons is a legacy of the British Rule. While presenting a note to the Indian Legislative Council on 21 December, 1835 Lord Macaulay for the first time pointed out the dreadful inhumane conditions prevailing in Indian prisons. He recommended appointing a committee to suggest measures to improve the conditions and discipline in prisons. Later in year 1888 the Fourth Jail Commission was appointed by the Lord Dufferin to enquire into the prison administration. This commission recommended that uniformity of prison administration could be achieved only by the enactment of a comprehensive single prison Act. The commission drafted a Bill and it was presented to the Governor General in Council and after passing by the Council, Prison Act, 1894 came into existence and till the date this Act is the key statutory provision to regulate the administration and management of prisons in India.⁷

CONCLUSION

The beginning of the twentieth century gave rise to the feeling that the prison institutions could be used as the institutions of reformation for the offenders. This reformatory approach is called for individualization of punishment. The post-independence era has witnessed the various reformatory steps, such as formation of Model Jail Manuals, periodic supervision of prisons, scope for jail visits, emphasizing the human rights of prisoners and enhanced vocational training, introduction of wage system and rehabilitation and re-integration of prisoners in the society after their

⁶ Datir R.N., "Prison as a Social System", Popular Press Prakashan, Bombay, 1978, p.28.

⁷ Amarendra Mohanty & Narayan Hazary, "Indian Prison System", Ashish Publishing House, New Delhi, 1990, P. 5.

release. Now there is a paradigm shift in policy and that is individualization of punishment to the progressive form of individualization of treatment.

Now it has been established proposition that prisons are not mere institutions established to achieve only the deterrent and retributive aspects of punishment but these institutions are now treated as places where prisoners are imprisoned not as forgotten members of the society but as human beings having some basic human rights. The prison institutions are as a centre of reformation, therefore, correctional treatment should be focus point where emphasis shall be given on the correctional measures like reformation, moral education, vocational training and rehabilitation of the prisoners. The reformative approach of penology is of the view that imprisonment is justifiable when it looks not to the past only but to the future also. The prison and prison system plays very important role in the Indian Criminal justice system. In the light of this importance prison administration should be operated in such a way that there must be rays of hope in the mind of prisoners that they can be able to change themselves as a law-abiding person and can be a part of upliftment in the society. So, in order to make the prisoners law abiding and as a better human resource for the society after their release, the prison administration must fulfill their basic human rights such as proper food, bedding and clothing, drinking water, sanitation and hygiene, proper health care and treatment, educational facility, vocational training and labour and wages. To change the mental condition of prisoners, various programmes of entertainment and awareness, legal aid clinic, conducting classes of social issues and friendly prison atmosphere are basic requirements must be fulfilled by prison authorities. The prison institutions should be made as high-spirited centre of reformation and rehabilitation of prison inmates with human dignity.

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