

## **JUDICIAL RESPONSE IN PROTECTING AND PREVENTING THE RIGHTS OF PRISONERS IN INDIA**

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### **ABSTRACT**

The jurisprudence of right of prisoners in India has been evolving one. From Sunil Batra to Re Inhumane Conditions in 1382 Prisons and till now the judiciary has decided upon the right of prisoners, weather under trial or convicted, from time to time. Prisoners are human beings and the mere fact that they are behind the bars does not mean that they cease to have human rights or deserve to be ill-treated. Unfortunately, the reality is that once a person enters prison, he/she practically loses their human rights and is conveniently forgotten by the society. If such a prisoner happens to be a woman, and then the horror simply gets amplified. The Indian socio-legal system is based on non-violence, mutual respect, and human dignity of the individual. If a person commits any crime, it does not mean that by committing a crime he ceases to be human being and that he can be deprived of that aspect of life which constitutes human dignity. Rule of law and human rights are intimately inter-related concepts. Rule of law is the basis for the governance of human society. Whenever we talk of upholding rule of law, we visualize a system of justice which accepts and respects the basic rights of the individuals. If a society fails to evolve effective machinery for protecting human right its edifice of democracy will suffer it.

**KEY WORDS: Judiciary, Legal Aid Etc**

### **INTRODUCTION**

The jurisprudence of prison justice in India is based upon the constitutional law and is being developed through case law. The human rights contained in Part III of the Indian Constitution bear vital significance on the notions of crime and criminality and the nature of the sentence which an accused must serve in prison setting. The Judiciary under our constitutional scheme has been performing positive and creative

function in securing and promoting human rights to the people. The Apex Court of India in the exercise of its jurisdiction can pass such or matter pending before it. The Supreme Court under article 32 of the Indian Constitution has the power to issue any orders, directions, or writs, whichever may be appropriate, for the enforcement of fundamental rights enshrined in the constitution. Similarly, the High Courts have the power under article 226 of the constitution to issue any order, directions, or writs, whichever maybe appropriate, for the enforcement of fundamental rights or any other purpose. In this regard the power of the High Court is wider than the Supreme Court. The judiciary in India has exercised this power in the most creative manner. It has devised new strategies, forged new tools, and broadly interpreted the letter of law to ensure the protection of human rights of the prisoners.

### **RIGHTS OF THE PRISONERS AND THE JUDICIARY**

It is the inhumane treatment meted out to the prisoners in the prisons that the Apex Court, which is last in the Indian pyramid of justice is compelled to delineate the broad boundaries of judicial jurisdiction, vis-a-vis, prison justice. Judicial conscience recognized the human rights of prisoners because of its reformist approach and belief that convicts are also human being and that the purpose of imprisonment is to reform them rather than to make them hardened criminals. The court is not helpless in this regard and the wider power given to the Supreme Court by article 32 of the constitution of India which itself is a fundamental right imposes a constitutional obligation on the court to forge such new tools, which may be necessary for doing complete justice and in forcing the fundamental rights of prisoners guaranteed in the constitution of India. The Indian judiciary, particularly the Supreme Court in the recent past has been very vigilant against encroachments upon the human rights of the prisoners. The Judiciary has expanded the scope and ambit of article 21 of the Constitution of India. In *Maneka Gandhi V. Union of India* , the Supreme n article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of an individual and some of them have been raised to the status of distinct fundamental right and given additional protection under article 19 of the

constitution Human rights in India are the fundamental rights to life, liberty, equality and dignity of the individual. As held by the Supreme Court in *Olga Telis V. Bombay Municipal Corporation*, no individual can barter away/ waive the fundamental rights conferred by the constitution; nor can be stopped from enjoying these rights. There is also a catena of the Supreme Court and various fundamental rights.

In *Kishor Singh V. State of Rajasthan*, the Apex Court once again pointed out that human dignity is a clear value of our constitution not to be provides protection against police atrocities in various forms. The talk of human rights and declaring them as fundamental rights in the constitution is meaningless unless they can be enforced by effective machinery. If there is no effective remedy against the violation of human rights, there is no effective human right in the real sense. Article 32 and 226 of the Indian constitution provides remedy for the enforcement of the fundamental rights. The judiciary in India has done matchless service in protecting the rights of prisoners and the protected their rights<sup>1</sup>.

### **SOLITARY CONFINEMENT, HANDCUFFING, BAR FETTERS, AND PROTECTION FROM TORTURE**

A person once lodged in a jail loses all his contact with the outside world. The question whether he could be further isolated from his fellow prisoners by putting him into separate and solitary cell came up before the Supreme Court in *Sunil Batra V. Delhi Administration*. In this case Sunil Batra was sentenced to death on charges of gruesome murder and robbery and was kept in solitary confinement. This solitary confinement was challenged as violative of article 21 of the Indian constitution and the court pointed out that it was ended violative of the fundamental right to impose solitary confinement on a prisoner under sentence of death, not as a consequence of violation of prison discipline but on the sole ground that he was a prisoner under sentence of death. In this case the court held that solitary confinement could be

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<sup>1</sup> R.N. Datir, *Supra* note 9, p. 1.

imposed only in exceptional cases where the convict is of such a dangerous character that he must be segregated from other prisoners.

In *Kishore Singh Ravinder Dev V. State of Rajasthan*, again the court held keeping of petitioners (prisoners) in separate solitary condition for long periods as barbarous on the basis of what the Apex Court had decided in *Sunil Batra*. The court held solitary confinement rarest of rare cases contained in the decision of this court relating to the punishment of prisoners. The prisoners are quite often handcuffed while being brought from prison to court and vice versa for the sake of security and discipline. Even suspects and under trials are subjected to this humiliating treatment. However, in *Prem Shankar Shukla V. Delhi Administration*, it has been held by the Supreme Court that no prisoner is to be handcuffed or fettered routinely or merely for the convenience of the court or the custody and are routinely, and doing so, will be unreasonable and violative of article 21 of the Constitution, unless it is proved that there was no other way of forbidding the escape and the reason for doing so here also been recorded. In this case the Apex Court observed: Handcuffing is prima facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent of fair procedure and objective<sup>2</sup>

### **RIGHT TO MEET FRIENDS, FAMILY MEMBERS AND CONSULT LAWYER**

The horizon of human rights is expanding. Prisoner rights have been recognized not only to protect them from physical discomfort or torture in the prison but also to save them from mental torture. Therefore, the Supreme Court in *Sunil Batra (II)* recognized the right of the prisoners to be visited by their friends, relatives, and family members. The court observed: Visit to prisoners by family and friends are a solace in insulation, and only a dehumanized system can derive vicarious delight in depriving prison inmates of this humane amenity

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<sup>2</sup> Ghosh.S., “Open Prisons and the Inmates”, Mittal Publications, New Delhi, 1992, p.5.

In Francis Coralie Mullin, the Supreme Court again stressed upon the need of permitting the prisoners to meet their friends, relatives and to consult lawyer. The court held that the prisoner or detenu could not move about freely by going outside the jail and could not socialize with persons outside jail. The court observed: Personal liberty would include the right to socialize with members of the family and friends subjected of course to any valid prison regulations as well as articles 14 and 21 of the constitution and such prison regulations must be reasonable and non-arbitrary

In this case the court went a step ahead from Sunil Batra (II) when it this right could be included in the right to live with human dignity and it is a personal liberty interview with a legal advisor in a manner which was reasonable just and fair but it could not prescribe an arbitrary or unreasonable procedure for regulating such an interview and if it was so done it would be violative of article 14 and 21 of the constitution<sup>3</sup>.

### **RIGHT/FREEDOM OF EXPRESSION AND COMMUNICATION**

The right/freedom of expression and communication of the prisoners was brought before the Apex Court in so many cases. The question of right to publish a book by a prisoner was upheld by the Apex Court in state of Maharashtra V. Prabhakar Panduranga Shastri. In this case, the respondent was detained under the Defence of India Rules, 1962. During his detention respondent wrote a scientific book, but was not allowed to publish it by the prison authority. The Bombay High Court allowed its publication but the Government of Maharashtra preferred and appeal in the Supreme Court and contended that freedom to publish was only a component part of speech and expression and as the detenu ceased to be free, he could not exercise his freedom to publish the book. Dismissing the appeal, the Apex Court held that being imprisoned the prisoner loses only those rights which are incidental to detention. The court held that the petitioner's right to expression was available and further held that

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<sup>3</sup> Paranjape, N.V., "Criminology and Penology", 11th Ed., Central Law Publications, Allahabad, 2001, p.146-147.

the book being a scientific work could not in any case be detrimental to publish interest or safely as envisaged under the Defense of India Rules, 1962 and therefore allowed the publication of the book. This decision was turning point in effecting an extension of prisoners right and the subsequent years witnessed an active role of the Supreme Court extending prisoner rights further.

The right of the press to interview the prisoner as a part of investigative journalism was decided in *Prabha Dutta V. Union of India*; In this case a newspaper correspondent filed a petition to interview Ranga and Billa, two condemned prisoners. She was not accorded permission by the superintendent of Tihar Jail, Delhi. On appeal, the court allowed the interview holding that the press is entitled to interview the prisoners unless some weighty reasons to the contrary existed. The court cited the relevant rules of the jail manual to support the rights of prisoners to communicate and have interviews with relatives, friends, legal advisers and the press people, not specifically included in rules. One of the famous Indian cases involved the issue of whether journalist should be able to have access to prisoners. It was held that those citizens have no constitutional right to have access to prisons, there are circumstances in which it is desirable for the interest of prisoners that journalist have access to interview prisoners<sup>4</sup>.

### **RIGHT TO LEGAL AID**

Access to law and legal aid facility is one of the important rights of the accused. In India, more than two third (2/3rd) of prison population are reportedly under trials whose trial is yet to commence and therefore, the significance of the right of access to law and legal facilities obvious.

The talk of human rights would become meaningless unless a person is provided with legal aid to enable him to have access to justice in case of violation of human rights. Legal aid is no longer a matter of charity or benevolence but is one of the constitutional rights and the legal machinery itself is expected to deal specifically with

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<sup>4</sup> VidyaBhushan., "Prison Administration in India", S. Chand Publications, New Delhi, 1970, p. 2

it. The basic philosophy of legal aid envisages that the machinery of administration of justice should be visible accessible and should not be out of the reach of those who have to resort to it for the enforcement of their legal rights. In India, Judiciary has played an important role in developing the concept of legal aid and expanding its scope so as to enable the people to have access to courts in case of any violation of their human rights.

In *Khatri V. State of Bihar*, once again the Apex Court held that the right to free legal services was clearly and essential ingredient of reasonable, fair and just procedure for person accused of an offence and it was implicit in the guarantee of article 21 of the constitution. The court emphasized that the state was bound to provide free legal services to an indigent accused person and could not plead financial and administrative inability. The state might have its financial constraints and its priorities in expenditure but by State could not escape this liability<sup>5</sup>.

### **RIGHT TO SPEEDY TRIAL**

In *Hussainara Khatoon(I) V. Home Secretary, State of Bihar*, in which the writ petition filed before the Supreme Court disclose that many men and women, including children were behind prisons for years awaiting trial in courts of law. And so many accused (under trial prisoners) have been in jail for a period longer than the maximum term of which they could have been sentenced if convicted. The Apex Court has held that the speedy trial of the accused is his fundamental right under article 21 of the constitution. The procedure prescribed by law for deprivation of life or personal liberty cannot be reasonable, fair and just, if it does not provide for speedy trial of the accused. Speedy trial means reasonable, expeditious trial. Keeping the undertrial prisoners in jail for period longer than what they would have been sentenced if convicted is regarded as violative of article 21. Inordinate delay in bringing and

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<sup>5</sup> Indra J. Singh, "Indian Prison a Sociological Enquiry", Naurang Raj Concept Publishing Company, Delhi, 1979, p. 18.

accused to trial or in filing appeal against his acquittal without any fault of accused is also regarded as violative of article 21.

In *Kadra Pahadia V. State of Bihar*, four boys were suffering in jail as under trial prisoners for more than 10 years. The Apex Court rightly remarked: We fail to understand why our justice system has become dehumanized that lawyers and judges do not feel a sense of revolt at caging people in jail for years without trial. The court has been held that a procedure which does not provide for speedy trial or determination of the guilt of the accused cannot be termed as just, fair, and reasonable and personal liberty under the procedure not just, fair and reasonable would be violative of article 21 of the constitution. Further, it has been opined that the court was cautious in observing that delay trial is not necessary and unfair trial and the trial cannot be quashed on the ground of delay. However, where the delay in trial is due to the fault of the accused, then he is not entitled to the benefit of delayed trial.

### **RIGHT TO REASONABLE WAGES IN PRISON**

Utilization of prisoners in productive work has been accepted as all of the best method of bringing about rehabilitation of offenders. Keeping the prisoners engaged in productive work would be helpful for their physical and mental fitness. The greatest advantage of putting inmates to work is that the wages earned by the prisoners can be utilized for supporting their family and dependents. In short, work would be beneficial to inmates and at the same time remunerative to the State. It is further suggested that working conditions of prisoners should be at par with free workers so that the values of human dignity are respected. The Supreme Court of India was called upon to decide this issue whether prisoners who are required to do labour as part of their punishment should necessarily be paid wages for such work at the rates prescribed under the Minimum Wages Act. Answering in the affirmative, the Apex Court in *State of Gujarat & others V. Hon'ble High Court of Gujrat*, observed: Reformation and Rehabilitation is basic policy of criminal law, hence compulsory manual labour from the convicted prisoner is protected under article 23 of the constitution. Minimum wages be paid to prisoners for their labour after deducting the expenses incurred on



them. No prisoner can be asked to do labour free of wages. It is not only the legal right of work men to have wages for the work, but also a social imperative and an ethical compulsion. Extracting somebody's work without giving him anything in return is only implicative of the period of slavery and the system of beggar.<sup>6</sup>

### **RIGHT TO PHYSICAL SECURITY OF PRISONERS**

A major problem relating to prison discipline concerns criminality among inmates inside the prison. The continuous long absence from normal society and detachment from members of the family deprives the inmates of their sex gratification which is one of the vital biological urges of human life. Offences and personal assault are common inside prison walls. Prisoners are subject to abuse, including rape in sometimes murder by another inmate. Another cause of criminality among prison inmates is their frequent quarrelling inside the prisons. Every inmate tries to establish his superiority over his fellow prisoners. Therefore, prisoners often narrate with exaggeration the tales of their adventure and the danger overcome by them while committing crime. The conversation on the subject often leads to a heated discussion and eventually results into use of force and intimidation. At times, the situation takes the shape of a group rivalry resulting into clashes between inmates.<sup>316</sup> The distrust and lack of faith among prison inmates for the prison authorities is at another cause of tension in prisons. The tendency of disobedience to prison officials and prison regulations is common with prisoners. The officials of the prison, namely, the jailors, superintendents, wardens and guards on their part, are generally rough and tough with the inmates. Some of them even resort to corrupt practices and extend undue favours to certain inmates in exchange for petty gains. This obviously causes bitterness among other prisoners and thus, a kind of cold war resulted between the inmates on one hand and the prison authorities on the other<sup>7</sup>.

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<sup>6</sup> VasudevUpadya, Supra note -19, p. 323.

<sup>7</sup> Praksah. S., "History of Indian prison system", The Journal of the Correctional Work, No.XXII, Jail Training School, Lucknow, 1976, p.89.

## CONCLUSION

Being a human being and in order to respect others human rights, prison inmates possess human rights. Whatever the society expects from prisoners should give to them first. By maintaining the rights of prisoner the society can contribute towards positive development of civilization. The state is under a constitutional obligation to organize its prison system such a way that the sentence of a prisoner does not result in further denigration to him. During the period of confinement a prisoner deprives of his/her liberty and self-determination. So many difficulties are already inherent in the process of incarceration; therefore, this system should not be approved to irritate the sufferings of the prison inmates. At national level, Indian constitution provides for the protection of fundamental rights of every individual including prisoner.

Article 21 of the constitution is the foundation of the palace of human rights jurisprudence along with Articles 14 and 19. Being a signatory of UNO and various other International Treaties, Conventions, Covenants and This spirit reveals in the part III of the Indian Constitution. The courts also adopted the liberal attitude regarding rights of prisoners. Through various landmark decisions the Judiciary has recognized various rights of prisoners. Maneka Gandhi is a turning point in the rights of prisoners. In this landmark case the Apex Court gave a wide interpretation to the word he Article 21 of the constitution where the court established that law should be fair, just and reasonable. In the light of this liberal and reasonable interpretation, so many laws and enactments regarding rights of prisoners have developed. Further the pronouncements in Charles Sobraj and Sunil Batra, developed a new prison jurisprudence coming up with a balance between the dignity of the prisoners as a human being and the powers of the prison authorities as a ruler. Besides the Indian Constitution, there are various other statutes like the Prisons Act, 1894, the Prisoners Act, 1900, the Identification of Prisoners Act, 1920, the Transfer of Prisoners Act, 1950, The Probation of Offenders Act, 1958, The Repatriation of Prisoner Act, 2003, Model prison Manual, 2003 and the Model Prison Manual 2016, etc. where various rights are conferred to the prisoners. Along with these statutes various committees

like All India Jail Reforms Committee, 1919-20, the Pakwasa Committee, 1949, All India Jail Manual Committee, 1957, Mulla Committee on Prison Reforms, 1980, Krishna Iyer Committee, 1987 as well as National Human Rights Commission and State Human Rights Commissions etc. are the various efforts where the reformative measures for prisoners are introduced. But in reality, the scenario is some different and rights of prisoners are not provided to them in full fledge. There are various loop holes in Indian criminal justice system. On several occasions, the Apex Court of India revealed the problems in criminal Justice system and prison system of India as well as directed the states to reform the prisons enactments and Prisons Manual including case laws subject of state list in our constitution, hence there is no any accountability of the Central Government or any National Agencies in this regard.

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