
RIGHTS OF PRISONERS AND SPEEDY TRIAL

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ABSTRACT

For ages, the prisoners of our nation have faced drastic discrimination, torture, and inhuman treatment. This research paper is to throw some light on the problems faced by these prisoners and how our judiciary has interpreted various fundamental rights of our Constitution such as Article-21 to protect the prisoners. Article-21 provides a bunch of other rights which still need to be unboxed properly. Although our judiciary has been acting as a watchdog for the protection of these prisoners, still, there's a need for the implementation of some strict and mandatory laws which can be availed by the prisoners to live their life with liberty which is their basic human right. Various judicial precedents have made it clear that the prisoners although are behind the bars but can still avail their basic human rights if all the three pillars of our constitution work harmoniously.

“Inmates in prisons are still citizens and should not be denied of their basic human rights as other citizens”

- UNOCD's Samarth Pathak

Introduction

India, being a democratic nation with so many socio-legal laws and several legislations still does not have any Codified Act for the Prisoners and their rights. Although certain rights are embedded in our constitution but remain behind the mirror due to the non-specification of the word Prisoner (s). For ages, prisoners of our nation are facing cruelty and discrimination even for their basic rights. Although our judiciary has always recognized their rights through various precedents and interpretations still prisoners face drastic discrimination and grave problems. This article is to throw some light on various problems that are being faced by the prisoners, and the provisions, that are present for their protection against inhuman treatment and cruelty. The article further examines the various reports of the experts and researchers on the brutal condition of the prisoners in India, and what all changes can be incorporated in legislation for their protection with the help of judicial precedents.

As said by Mahatma Gandhi – “Hate the crime and not the criminals”, so there is a very crucial need to understand this stop treating the ones inside fetters like animals in a zoological park. They too are humans and are kept in jail for reformation and not to be treated inhumanely. “The fundamental fact of prison reforms comes from our constitutional recognition that every prisoner is a person.”

Historical Background

The concept of prison is very old in our nation and has been alive since the time of Gods but the word prison does not mean any cage or gives right to use sudden force, in fact it is a place where a culprit is kept for safe custody while he/she is on trial or for punishment. Initially, it was just a place where offenders are kept for trials and ultimate punishment, but there occurred an intermediate point-imprisonment was regarded in itself. ¹Lord Macaulay in his book “Minutes of 1835” said –“Imprisonment is the punishment to which we must chiefly trust”. He was the one who put the idea for the establishment of such rules and regulations, the main aim was to destroy the criminal streak among convicted offenders.²

The very first enactment that came into force in India for the prisoners was the “Prisons Act” of 1894. This act focused on the smooth functioning of prisons rather than focusing on the reformation and rehabilitation of prisoners and their environment. This Act does not tune-up

¹ Jaytialak Guha, Roy Prisons & Society-A study of the Indian Jail System,2, Gian Publishing House,1989.

² Paridhi Verma, Rights of Prisoners under Indian Law, Pen Acclaims, Vol 2, July 2018.

with the modern criminal justice system where there is a great need to, implement and provide the basic human rights to the Prisoners like any other citizen as “the imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, Courts will refuse to recognize the full panoply of Part III enjoyed by a free citizen and the criminal Judiciary is bound by the obligation to guard and their sentences”³ which means apart from deterrence and retribution, imprisonment of prisoners is for reformation. After this enactment several other acts came into force like the Prisoners act of 1990, Transfer of Prisoner Act 1950, and the Prisoners (attendance in courts) Act, 1955 but none of these focused on the harassment and inhuman behavior faced by the Prisoners inside and outside the prisons. But since the mid-1970s our Judiciary has regularly tried to focus on the problems faced by the Prisoners and tried to interpret the constitutional rights to such an extent that they can be equally availed by the person inside as well as outside the Prisoners. Lord Diplock in one of the precedents quoted that “the fundamental human rights is not to a legal system that is infallible to one that is fair.”⁴ A person whether is in or out of a prison shall not be deprived of his guaranteed freedom and shall have equal access to all the rights in a just and fair way.⁵

Rights of Prisoners

Part III of the Indian Constitution provides for certain rights to the Prisoners because they too are the citizens of a nation and have the right to gain benefits from these human rights because a court sentence does not deprive the Prisoner of his fundamental rights.⁶ Though our constitution does not have any express provisions for these rights of prisoners, the Judiciary through its interpretation has cleared that the Prisoners are also the persons who cannot be deprived of their basic fundamental rights only because they are behind the bar.⁷ The various articles under our Constitution protect these prisoners against cruelty and degrading behavior and these articles majorly include- Articles 14, 19, and 21. However, it cannot be imposed in its full panoply to the advantages of the prisoners. Now, the various right provided to any person no matter he is free or under prison are:

A. Right to life and personal liberty

³ Charles Sobraj vs. Supdt. Central Jail, Tihar, New Delhi (31.08.1978 - SC): MANU/SC/0070/1978

⁴ Rakesh Kaushik vs. B.L. Vig and Ors. (30.04.1980 - SC) : MANU/SC/0201/1980

⁵ Ibid.

⁶ State of Andhra Pradesh vs. Challa Ramakrishnan Reddy, (2000) 5 SCC 712, AIR 2000 SC.

⁷ Sunil Batra v. Delhi Administration MANU/SC/0184/1978: 1978CriLJ1741

*“A convict is entitled to the precious right guaranteed by Article 21”*⁸ I.e. Article 21 of the Indian Constitution guarantees the right of personal liberty and life and prohibits all sorts of inhuman, cruel, and degrading behavior to any person whether he/she is a citizen of Indian or a foreigner. The Hon'ble Judges of Andhra Pradesh High Court in one of the judgments held that the right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right. A prisoner, be he a convict or under-trial or a detenu, does not cease to be a human being. Even when lodged in jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of a crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights. So far as the fundamental rights and human rights or human dignity are concerned, the law has marched ahead like a Pegasus but the Government attitude continues to be conservative and it tries to defend its action or the tortuous actions of its officers by raising the plea of immunity for sovereign acts or acts of the State, which must fail.⁹

B. Right against solitary confinement and bar fetters

The Honorable Supreme Court, in the case of Sunil Batra, held that Article 21 has forbidden all forms of deprivation of personal liberty except in accordance with the procedure established by law and any curtailment of such liberty to such an extent as to be a negation amounts to deprivation.¹⁰ Also, putting bar fetters on a person for a long duration without due regard to the safety and security of that prisoner would amount to a violation of Article-14 of our Constitution.¹¹ Solitary confinement refers to the harsh isolation of a person from society for a massive duration and keeping that person in lonely cellular detention where he has no freedom even to communicate to his fellow prison mates, whereas bar fetters refer to keeping a prisoner behind iron bars inhuman of in a save where the possibility of safe custody is vain.¹² Our judiciary has always reacted strongly against solitary confinement and bar fetters to the Prisoners. In many of its judgments, the Apex Court has provided this right to humans. Two of the landmark judgments for solitary confinement and bar fetters are Sunil Batra vs Delhi

⁸ Ibid.

⁹ Marri Yadamma and Ors. vs. State of Andhra Pradesh and Ors. (16.10.2001 - APHC) : MANU/AP/0725/2001

¹⁰ Sunil Batra v. Delhi Administration MANU/SC/0184/1978: 1978CriLJ1741

¹¹ Ibid.

¹² Naresh Soni and Ors. vs. State of U.P. and Ors. (18.10.1982 - ALLHC) : MANU/UP/0854/1982

Administration¹³ and Charles Sobhraj versus superintendent Central Jail¹⁴ respectively. This protection is not only available to the ones that are convicted but also to those who may be arrested or detained in the course of criminal investigations. Judgments such as DK Basu vs State of West Bengal¹⁵ have stressed the necessity of preventing the 'cruel inhuman or degrading treatment' of any person who is taken into custody.¹⁶ *"Mr. Justice Douglas, again a dissenter, asserted : "Every prisoner's liberty i.e., of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him is then only the more substantial. Conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the prison system requires procedural safeguards. Of course, a bearing need not be held before a prisoner is subjected to some minor deprivation, such as an evening's loss of television privileges. Placement in solitary confinement, however, is not in that category."*¹⁷

C. Right to privacy

The right to privacy is one of the significant right which is provided to the citizens of India. It is the right embedded under Article-21 that is right to life and personal liberty. Our judiciary at various points held that this right is available even to the Prisoners. In *Rohit Shekhawat vs N.D. Tiwari*¹⁸, the honorable bench held that nobody should be compelled to be subjected to any techniques in question under any circumstances even when it is in the context of investigation under a case. Proceedings with such acts amount to an unwarranted intrusion into one's liberty. Even this right is availed by the prisoner's family and spouses too. The court in the case of *Rahamat Nisha versus Additional Director General of Prisoner and others*,¹⁹ held that when a Prisoner is united with his wife, he holds his hands as a partner, and it's natural that this emotion would find physical expression. Therefore the right to privacy and dignity should be structurally safeguarded. Even the conversations between the Prisoner and their family for spouses should go uninterrupted and be monitored.²⁰

¹³ MANU/SC/0184/1978: 1978CriLJ1741

¹⁴ MANU/SC/0070/1978

¹⁵ MANU/SC/0157/1997 : AIR 1997 SC 610

¹⁶ Selvi and Ors. vs. State of Karnataka (05.05.2010 - SC) : MANU/SC/0325/2010

¹⁷ Sunil Batra v. Delhi Administration MANU/SC/0184/1978: 1978CriLJ1741

¹⁸ Delhi High Court, 547/2011.

¹⁹ Madras High Court, 28.05.2019; WP(MD) no. 12488/2019

²⁰ <https://blog.ipleaders.in/rights-prisoners-major-judgments/>

D. Right to live with human dignity

Human Rights are part and parcel of Human Dignity. In *Kharak Singh's case*. Subba Rao, J. quoted Field, J. in *Munn v. Illinois* (1877) 94, U.S. 113, to emphasize the quality of life covered by Article 21 : *Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.* [1964 (1) SCR 232 at 357]., A dynamic meaning must attach to life and liberty.²¹ In the *Raghubir Singh v. The state of Bihar*,²² the Supreme Court expressed its anguish over police torture by upholding the life sentence awarded to a police officer responsible for the death of a suspect due to torture in a police lock –up. In *Kishore Singh v. State of Rajasthan* the Supreme Court held that the use of third degree method by police is violates of Article 21. The decision of the Supreme Court in the case of *D.K. Basu*²³ is noteworthy. While dealing the case, the court specifically concentrated on the problem of custodial torture and issued several directions to eradicate this evil, for better protection and promotion of Human Rights. In the instant case, the Supreme Court found custodial torture “a naked violation of human dignity” and ruled that law does not permit the use of third-degree methods of torture on an accused person since “actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just nor fair”.²⁴

E. Right to a proper medical facility

Health is the most crucial matter which can't be underestimated no matter where or who the person is. Our Constitution guarantees the right to maintain and attain high standards of health both physically and mentally. Judiciary has also held that this right is a crucial element of Article 21 which imposes the right to, safeguard one's life. Justice Subba Rao in one of her judgments explained the deep meaning of what the word life means and said that life is: “*Something more than mere animal existence. The*

²¹ *Sunil Batra v. Delhi Administration* MANU/SC/0184/1978: 1978CriLJ1741

²² (1986) 4 SCC 481

²³ MANU/SC/0157/1997 : AIR 1997 SC 610

²⁴ Dr. Minal Upadhyay, Role of Judiciary in protecting Human Rights of Prisoners, Research in Humanities and Social Science, Vol 2, Issue 8.

*inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.”*²⁵ The Apex Court in *Navej Singh Johar and others Vs. Union of India* ²⁶, upon survey of previous case law held that right to health and health care is one of the facets of right to life under Article 21 of the Constitution of India. It was held that "the right to life is meaningless unless accompanied by the guarantee of certain concomitant rights including, but not limited to, the right of health. The right of health is understood to be indispensable to a life of dignity and well-being, and includes, for instance, the right of emergency medical care and the right to the maintenance and improvement of public health”²⁷. The Apex Court in the recent duo moto case held that, providing medical assistance and facilities inmates needs no reaffirmation. This Right is undoubtedly, a human right and all the States should concentrate on making this a reality for all, including prisoners. ²⁸

F. Right to legal aid

Legal Aid is another important right that is provided to all the citizens of India including the convicts, prisoners, and non-convicts. This right was incorporated in our Constitution in 1976 vide 42nd Amendment. Article 39-A, under the DPSP, provides the right to legal aid. Though this right is not enforceable but its presence in our Constitution underlines the utmost importance as it becomes the duty of each and every state to frame their rules and regulations keeping this Article in mind. The Parliament has also enacted the Legal Services Authorities Act, 1987, wherein it guaranteed Legal Aid. It has also directed various State Governments to set up Legal Aid and Advice Board where people can get free Legal Aid. This right is not only limited to criminal cases but applies to all forms of cases and trials. The Gujarat High Court, in its recent judgment reiterated that “*an indigent prisoner has a Constitutional right to free legal aid. Failure to provide free legal aid to an indigent is violative of the basic and fundamental norms of Justice. One of the ingredients of "fair procedure" is to provide free legal aid to a prisoner who is indigent or otherwise disabled to secure legal aid.*”²⁹

²⁵ 1964 (1) SCR 232 at 357

²⁶ MANU/SC/0947/2018 : (2018) 10 SCC 1

²⁷ In Reference (Suo Motu) and Ors. vs. Union of India and Ors. (15.04.2021 - MPHC) : MANU/MP/0402/2021

²⁸ In Re: Inhuman Conditions in 1382 Prisons (15.09.2017 - SC): MANU/SC/1183/2017

²⁹ Arjun Karmakar vs. State of Assam (30.07.1986 - GUHC): MANU/GH/0123/1986

The Supreme Court in the case of *Sheela Barse* provided certain guidelines for providing fast and efficient legal assistance to the prisoners in jail and to protect the women prisoners behind lock-ups.³⁰ This right can also be availed by the ones who are unable to appoint a lawyer or secure legal services for the reasons of poverty, communication, or others. The Supreme Court held the same in the case of *State of Assam v. Rabindra Nath Guha*³¹ and *State of Bihar vs Union of India*.³²

G. Right to Education

Right to education is the fundamental right which guarantees that every citizen of India has the right to pursue education and gain the correct knowledge. This right is mainly for the children. Our Apex Court traced the broad scope of this right “*in R.D. Upadhyay v. State of A.P. and Ors. MANU/SC/2061/2006 : AIR2006SC1946 , holding that the State must provide education to all children in all places, even in prisons, to the children of prisoners. We have also affirmed the inviolability of the right to education.*”³³ So, this right imparts the right to receive books and magazines so all the Prisoners have the right to education and to learn more through the books and magazines. The Hon'ble Bench also held that prisoners can even write about the knowledge and get the material published. A Prisoner should not be detained from reading writing and publishing his work for the sake of knowledge.

H. Right to a speedy trial

Right to speedy trial is the most crucial right which should be provided to all without any glitch of error, as it is well said that the “justice delayed is justice denied”. This right is considered as the backbone of just and fair criminal justice delivery system. Every prisoner now has this right irrespective of what crime he has been convicted for. No one should be subject to long, pending and tiresome trials as it not only violates the right of that individual but is also considered as the denial of justice altogether.³⁴ Section 309 of CrPC also provides the right to a speedy trial so that all the grievances and queries regarding and of the Prisoner could be resolved as soon as possible. Once

³⁰ *Sheela Barse vs. State of Maharashtra* (15.02.1983 - SC): MANU/SC/0382/1983

³¹ Criminal Death Ref. 2 of 1981 and Criminal Appeal No. 27(J) of 1981

³² 02.11.1989 - PATNAHC) : MANU/BH/0467/1989

³³ *Avinash Mehrotra vs. Union of India (UOI) and Ors.* (13.04.2009 - SC) : MANU/SC/0555/2009

³⁴ <https://blog.ipleaders.in/rights-prisoners-major-judgments/>

the court has took cognizance of the allegation then the trial should be conducted speedily to find that whether the accused is guilty or innocent. Though this right is not enumerated as a fundamental right but is Judiciary has always recognized the same to be implicit in the spectrum of Article-21. The Supreme Court in the case of Maneka Gandhi laid stress on the need for the enactment of a law that shall ensure the just, fair, and reasonable procedure in the matter of criminal trials. This right is to be provided to all accused at all the stages namely the investigation, inquiry, trial, appeal, revision, and re-trials, and this right has no respected view. In the landmark case of Raj Deo Sharma vs. the State of Bihar³⁵, the SC held that every accused has the right to a speedy trial and an unexplainable delay in starting prosecution after the institution of FIR is sufficient enough to quash the entire case of the prosecution. In Hussainara Khatoon v. Home Secretary, State of Bihar³⁶, the Court while dealing with the cases of under trials who had suffered long incarceration held that a procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of Article 21 and that the financial constraints and priorities in expenditure would not enable the Government to avoid its duty to ensure speedy trial to the accused. Further in case of Kartar Singh vs. State of Punjab, it was observed that "*The concept of speedy trial is read into Article 21 as an essential part of fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, enquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the CrPC.*"

Various guidelines were given in Antulay's Case³⁷ for expounding the right of speedy trial by quoting that "One wrong cannot be remedied by another wrong" and these guidelines were again upheld and affirmed in the case of P. Ramachandra Rao vs. the State of Karnataka³⁸ to take adequate care of this right. But, in the case of Ranjan

³⁵ MANU/SC/0640/1998

³⁶ MANU/SC/0119/1979: 1979CriLJ1036

³⁷ A.R. Antulay vs. R.S. Nayak and Ors. (29.04.1988 - SC) : MANU/SC/0002/1988

³⁸ 16.04.2002 - SC): MANU/SC/0328/2002

Dwivedi vs. C.B.I., Through the Director-General, the SC held that the delay in prosecution cannot be the basis to quash the entire case if such delay is due to valid reasons. The judgment is reiterated as: “In determining whether the undue delay had occurred resulting in violation of the right to a speedy trial, one must have regard to all attendant circumstances, including nature of the offense, number of Accused and witnesses, the workload of Court concerned, prevailing local conditions - However it was the obligation of State to ensure speedy trial and State included judiciary as well, but the realistic and practical approach should be adopted in such matters instead of pedantic one - Hence trial would not be terminated merely on the ground of delay without considering reasons thereof - Therefore it did not justify quashing of prosecution.”³⁹ Recently, the learned District Judge has mentioned various causes/reasons that emerged for delayed trial and long incarceration of under trial prisoners in jail and sought assistance from the Attorney General of India, K.K. Venugopal on the same.⁴⁰

Conclusion and Recommendations

Our Indian legal system is developing the reformatory theory of punishment and part 3 of our Constitution act as a blood stream to it. Jail Authorities at various places are facing overcrowded prisons due to pending cases and under trials in lower courts, High Courts and even the Supreme Court. The situation inside these prisons is still bad and the Prisoners at various places are still treated inhumanly by the authorities which is awful. It is the high time that these Authorities should understand the seriousness of the situation we are currently dealing with, where people are already dying to survive. They should understand the effect that such inhuman treatment, exploitation, forced labor, torture, etc. can have on a person under trial or convicted. The Supreme Court describes Prison as a Centre for rehabilitation and reformation but in reality these centers are worst as hell and a reasonable prudent man would never define it as a rehabilitation Centre.⁴¹ The soul behind these bars are also humans with emotions and feelings and should get more than a mere animal in cage. ⁴²So, the criminal too must be treated like other humans and therefore, it is the responsibility of a government to check and protect the interest of these prisoners both inside and outside the prison. The laws

³⁹ MANU/SC/0657/2012

⁴⁰ In Re: Speedy Trial of Undertrial Prisoners (13.07.2018 - SC Order): MANU/SCOR/87112/2018

⁴¹ Anubhav Mishra, *Prisoners Dilemma- Is India a real follower of informative theory?*; SSRN publication.

⁴² The People of the state of Illinois v. Frank A. Manna, 421 N.E.2d 542 (Ill. App. Ct. 1981) (Illinois Appellate Court- Second District)

formulated by it should be implemented effectively so that every Prisoner can get his right to life along with liberty. During this period of deadly pandemic various records and reports confirmed that there were thousands of prisoners who were found coronavirus positive but were unable to get the proper treatment. Indian system at a stage where the requirement of codified and proper legislation is a must. Such an act must be brought to ensure that the rights discussed above should be provided to all the Prisoners and the Constitution can stand still in respect of these rights. It is the duty of all the three pillars namely- the legislature, the executive, and the Judiciary to justify their obligations in relation to the most neglected sector of a social legal society that is the Prisoners as every prisoner is a person and personhood holds the human potential which, if unfolded, makes a robber a Valmiki and a sinner a saint.⁴³

⁴³ Rakesh Kaushik vs. B.L. Vig and Ors. (30.04.1980 - SC) : MANU/SC/0201/1980