



PROTECTION OF HUMAN RIGHTS OF PRISONERS IN INDIA – CONSTITUTIONAL AND JUDICIAL PERSPECTIVE*

Introduction

The constitution of India instituted equally, provides right to freedom of speech and expression, peaceful assembly, freedom from arbitrary arrest, protection of life and liberty right against exploitation, freedom of conscience and free profession, practice and propagation of religion and educational and cultural rights. It also provided teeth to those rights by making them enforceable by direct access to the Supreme Court of India.¹ In the comprehension of the Supreme Court the right to life and liberty includes, right to human dignity, right to privacy, right to speedy trial, right to free legal aid, right to be prisoner to be treated with dignity and humanity, right to bail, right to compensate for custodial death, right of workers to fair wage and human conditions of work, right to security, right to education and right to health environment.² The Supreme Court of India interpreted Art 21 of the Constitution and shows much interest on prison reforms. The Supreme Court all the time balanced the reformatory theory and retributive theory of punishment, i.e., the Apex Court maintaining the severity of punishment wherever necessary and considering the gravity of crime and circumstances in it is committed. The Penological approach of the Indian Judiciary itself in humane.

A prison, jail or correctional facility is a place where individuals are physically confined or detained and usually deprived of a range of personal freedom. These institutions are an integral part of the criminal justice system of a country. There are various types of prisons such as those exclusively for adults, children, female, convicted prisoners, under trial prisoners, detainees and separate facilities for mentally ill offenders. They are also correctional facilities. The concept of protection of rights of the people accused of committing crime and rights of prisoners in the administration of criminal justice has been continually changing and developing over time³. The

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¹ C.R.Parthasaradhi, Civil Liberties and Human Rights: A Challenging Issue,28 (1999)

² Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publications (p). Ltd.,2008

³ violations of the rights of the accused and the convicted in India, Sudipto Roy Department of Criminology, Indiana State University, Terre Haute, IN 47809

State is under an obligation for protecting the human rights of its citizens as well as to protect the society at large, and is authorized to do so. To protect the citizens from any possible abuse of this authority, they are given certain basic privileges recognized by the Constitution of India as Rights. Elevation of such claims to the status of Rights, gives the citizens the capacity to evoke the power of the Judiciary to protect themselves against violation of such rights, as well as to seek redressal for their restitution.

The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoner's rights to maintain human dignity.⁴ Under the Indian Constitution, the subject of prisons is transferred from central list to state list and is mentioned in the Seventh Schedule. Thus importance is given to the prisoners for their better maintenance and improvements in prisons. The State governments constituted committees on jail reforms for the protection of prisoner's rights. The Supreme Court and High Court decisions played a crucial role in protection of prisoners' rights.

Judicial Perspective:

One of our basic tenets of our legal system is the benefit of the presumptions of innocence of the accused till he is found guilty at the end of the fair trial on legal evidence. A man convicted, some of his rights are available to a common man are taken away, but that does not mean as stated earlier that he ceases to be a human being. Even a convict has basic Human Rights. Only those rights need to be restricted, because of incarceration, are affected, but the remaining rights are not curtailed by any process of law and the judiciary time and again has recognized those rights by way of different pronouncements.⁵ The protection of Article 21 is available even to convicts in jails. The convicts are not by mere reason of their conviction deprived of all the fundamental rights they otherwise possess. The conviction, convict is put into the jail he may be deprived of fundamental freedoms like the right to move freely throughout the territory of India or the right to practice a profession. But the Constitution guarantees to them other freedom like the right to acquire, hold and dispose of property for the existence of detention can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 and he shall not be deprived of his life or personal liberty except according Rights of accused, under trials and prisoners to procedure established by law⁶. The Human Rights savior the Supreme Court has protected the prisoners from all types of torture. Judiciary has taken a lead to widen the ambit of Right to Life and personal liberty. The host of decisions of the Supreme Court on Article 21 of the

⁴ Rights of prisoners and convicts under the criminal justice administration by Justice T.S.Sivagnanam Judge, High Court, Madras, National Judicial Academy Regional Judicial Conference, Organised by High Court, Madras, Tamil Nadu State Judicial Academy and The National Judicial Academy, 24.02.2012 to 26.02.2012

⁵ Dr. Ashuthosh, Rights of Accused, 2nd Edition, Universal Law Publishing (P) Ltd, New Delhi.p.205

⁶ Dr.Gurubax Singh, Law Relating to Protection of Human Rights and Human Values, Vinod Publications(P).Ltd, Delhi.

Constitution after Maneka Gandhi's case, through Public Interest Litigation have unfolded the true nature and scope of Article 21.

Rights against Hand Cuffing

In India, it has become a common practice for the police to handcuff under trials and arrestees, irrespective of the nature of the offence committed by them and the responsibility of any escape.⁷ In *Prem Shanker vs. Delhi Administration*,⁸ the Supreme Court added another projectile in its armoury to be used against the war for prison reform and prisoners rights. In the instant case the question raised was whether hand-cuffing is constitutionally valid or not? The Supreme Court discussed in depth the hand cuffing jurisprudence. It is the case placed before the court by way of Public Interest Litigation urging the court to pronounce upon the Constitutional validity of the "hand cuffing culture" in the light of Article 21 of the Constitution. In the instant case, the court banned the routine hand cuffing of a prisoners as a Constitutional mandate and declared the distinction between classes of prisoner as obsolete. The court also opined that "hand cuffing is prima facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict "irons" is to resort to Zoological strategies repugnant to Article 21 of the Constitution".

The Supreme Court stated that the handcuffing is the violation of prisoner's rights, necessary handcuffing can be done with prior permission of the magistrate concerned who grants permission after satisfying all ingredients. This right protected all the prisoners from hand cuffing by the prison authorities. The Supreme Court directed the Union of India to frame rules and guidelines regarding the circumstances in hand cuffing of the accused should be resorted to, in conformity with the judgment of the court in *Prem Shankar* case;

Rights against Inhuman Treatment of Prisoners

Human Rights are part and parcel of Human Dignity. The precious right guaranteed by Art. 21 of Constitution of India cannot be denied to convicts, under trials, detenus and other prisoners in custody, except according to the procedure established by law by placing reasonable restrictions as are permitted by laws. The Supreme Court of India in various cases has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to prisons and police authorities for safeguarding the rights of the prisoners and persons in police lockup⁹. In the *Raghubir Singh v. State of Bihar*¹⁰, the Supreme Court expressed its anguish over

⁷ Dr. Ashutosh, *Rights of Accused*, 2nd Edition, Universal Law Publishing (P) Ltd, New Delhi.p.216

⁸ AIR 1980 SC 1535

⁹ *Ramana Murthy V. State of Karnataka* AIR 1997 SC 1739

¹⁰ (1986) 4 SCC 481

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 Vs State of Rajasthan*¹¹ the Supreme Court held that the use of third degree method by police is violative of Article 21. The court also directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. In the instant case the Supreme Court brought home the deep concern for Human Rights by observing against police cruelty in the words: “Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our Constitutional culture than a state official running berserk regardless of Human Rights.”¹²

The Supreme Court of India issued guidelines for the custodial, inhuman treatment of prisoners to police authorities in *D.K.Basu vs. State of West Bengal*¹³, the police officer violates the guidelines and uses custodial violence third degree methods, he will personally liable under criminal law. The Court observed "Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law". Dr. Justice Anand who delivered the said judgment on behalf of the Court held that any form of torture or cruel, inhuman or degrading treatment, would fall within the inhibition of Art. 21 of the Constitution whether it occurs during investigation, interrogation or otherwise. Guidelines have been laid down by the Court to be followed in all cases of arrest or detention till legislative measures are taken: The police personnel carrying out the arrest and handling to interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particulars of all police personnel handle or interrogation of the arrestee must be recorded in a register. The police officer carrying out arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo must be attested by at least, one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall be counter signed by the arrestee and shall contain the time and date of arrest.

A person has been arrested or detained and is being held in custody in a police station or interrogation centre or lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare informed, as early as practicable, that he has been arrested and is being detained at a particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee. The time, place of arrest and venue of custody of an arrest must be notified by the police where the next friend or relative of the arrest lives outside the district or town through the Legal Aid Organization in the District and the police

¹¹ AIR 1981 SC 625

¹² *Kishore Singh VS. State of Rajasthan*, AIR 1981 SC 625

¹³ AIR 1997 SC 610

station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest. The person arrested must be aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained. An entry must be made in the diary at the place of detention regarding the arrest of the person shall also disclose the name of next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is the arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, present on his or her body, must be recorded at that time. The inspection memo must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee¹⁴.

The arrestee should be subjected to medical examination by a trained doctor within 48 hours during his detention or by a doctor on panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. The Director, Health Services, should prepare such a panel for all Tehsils and Districts as well. Copies of all the documents including the memo of arrest, should be sent to the Magistrate for his record. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation., A police control room should be provided at all Districts and State headquarters, where information regarding the arrest and place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and it should be displayed conspicuous on the notice-board.

Rights against Solitary Confinement and Bar Fetters

The Supreme Court of India, in Sunil Batra (1)¹⁵ case considered the validity of solitary confinement. The Constitutional validity of solitary confinement prescribed under section 30(2) of the Prisons Act, 1894 was considered. Section 30(2) of the Act provides the solitary confinement prisoner is under sentence of death, while section 56 of the said Act permits the use of bar fetters for the safe custody of the prisoners. Sunil Batra's was sentenced to death having been found guilty of a gruesome murder compounded with robbery. He challenged his solitary confinement invoking articles 14, 19 and 21 of the Constitution. The Supreme Court upheld the contention of the petitioner and declared part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, flouted, frowned upon or frozen by the prison authority. Is a person under death sentence or under trail unilaterally dubbed dangerous liable to suffer extra torment too deep for tears? Emphatically no. the convict is not sentenced to imprisonment. He is not sentenced to solitary confinement. He is a guest in custody, in the safe keeping of the host jailor until the terminal hour of terrestrial farewell

¹⁴ Code of Criminal Procedure, 1973

¹⁵ Sunil Batra (I) vs. Delhi administration AIR 1978 SC 1675

whisks him away to the halter. The trusteeship in the hands of the superintendent not imprisonment in the true sense.¹⁶ In *Kishore Singh Vs State of Rajasthan*¹⁷ it was stated by Justice V.R.Krishna Iyer that solitary confinement has to be resorted to only in the rarest of rare cases for security reasons to make it in consonance with article 21 of the constitution. The Supreme Court stated that the solitary confinement is violation of life and personal liberty of prisoners under Art 21 of the constitution, the sections containing prisons act, 1894 of sec.30(2) and 56 of Prisons Act 1894 is violation of prisoners rights guaranteed by the constitution.

Right to have Interview with Friends, Relatives and Lawyers

In *Prabha Dutt Vs Union of India*¹⁸, the Supreme Court held that it would be a part of fundamental freedom of the press to interview prisoners sentenced to death. In *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi*¹⁹, the Supreme Court considered the prisoners right to have interviews from the perspective of the Right to Life and Personal Liberty under Article 21. The court held that the provisions of COFEPOSA permitted only one interview in a month to detune with her family members were violative of Art 14 and 21 and unconstitutional and void²⁰. The Supreme Court held that, right to consult legal advisor is basic right to the prisoners for and under Art 14 and 21 of the Constitution also guaranteed this right. The provisions of COFEPOSA are not valid those provisions are unconstitutional and violative of Art 14 and 21 of the constitution.

Right to Free Legal Aid

The Constitution of India mentioned does not expressly provide the Right to Legal Aid, but the judiciary had shown its favour towards poor prisoners because of their poverty and is not in a position to engage the lawyer of their own choice. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution²¹. In *Khatri (I) vs. State of Bihar*²² a division bench of the Supreme Court held that the state is under Constitutional mandate to provide Free Legal Aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state.

¹⁶ AIR 1978 SC 1675

¹⁷ AIR 1981 SC 625

¹⁸ AIR 1982 SC 6

¹⁹ (1981) 1 SCC 608

²⁰ Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publicatioons (p). Ltd.,2008, p.113

²¹ Article 39-A provides that "the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall in particular, provides Free Legal Aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

²² AIR 1981 SC 928

In *M.H. Hoskot v. State of Maharashtra*, the Supreme Court applied the ruling of *Maneka Gandhi's case*.²³ The Court held that 'a single right of appeal' on facts, where the conviction is fraught with long loss of liberty, is basic to civilized jurisprudence, "One component of fair procedure is natural justice". Every step that makes the right of appeal fruitful is obligatory and every action or inaction stultifies it is unfair and therefore offends Article 21. There are two ingredients of a right of appeal: (1) service of a copy of a judgment to the prisoner in time to enable him to file an appeal, and (2) provision of free legal service to a prisoner who is indigent or otherwise disabled from securing legal assistance. These are State responsibilities under Article 21. Any Jailor who by indifference or vendetta, withholds the copy thwarts the court process and violates Article 21 and may make the further imprisonment illegal. The Court suggested that the Jail Manuals should be updated and should include this mandate and the State must make available a copy of the judgment to the prisoner. Regarding the right to free legal aid, Krishna Iyer, J., declared, "This is the State's duty and not Government's charity." A prisoner is unable to exercise his constitutional and statutory right of appeal including special leave to appeal for want of legal assistance, there is implicit in the court under Article 142, read with Articles 21 and 39-A of the Constitution, the power to assign counsel to the prisoner provided he does not object to the lawyer named by the court. Equally, is the implication that the State sets the law in motion must pay the lawyer an amount fixed by the Court.

The Supreme Court is guaranteed the Article 39-A and Article 21 of the Constitution. The Right to Free Legal Aid to comes under fundamental rights protected by Art.21 of the constitution. Art.39A is comes under Directive Principles of State Policy, Part IV, but cannot enforceable rights even though the Supreme Court included the right to free legal aid under Art 21 right to life and personal liberty. In number of cases, the Supreme Court stated that providing free legal aid, those who are in needy and poorer, the state responsibility not charity

Right to Speedy Trial

The concept of speedy trial is read into article 21 as an essential part of the 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, inquiry, 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 averted²⁴ In *Abdul Rehman Antulay Vs*

²³ AIR 1978 SC 1548.

²⁴ Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publicatioons (p). Ltd.,2008, p.117

R.S. Nayak²⁵. The court held that the right to a speedy trial was a part of fair, just and reasonable procedure implicit in Article 21 of the constitution. The Supreme Court was observed that each case has to be decided on its own facts. The court further observed that it was not advisable and feasible to fix an outer time limit for conclusion of the criminal proceedings.²⁶

The Supreme Court in Hussainara Khatoon (I) Vs. Home secretary²⁷ case held that “Obviously procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair, or just unless that procedure ensures a speedy trial for determination of the guilty of such person. No procedure does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21. There can be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21. Thus, the right to speedy trial is implicit in broad sweep and content of Article 21 of the Constitution. Hence any accused who is denied this right of speedy trial is entitled to approach the Supreme Court for the purpose of enforcing such right. The right to speedy trial is contained under section 309 of Cr.P.C²⁸. The Court interpreted the right to speedy trial to the prisoners under Art 21 of the constitution. Every prisoner is having right to get speedy trial of his cases. Particularly in case of convicted prisoners under sec.302 of IPC, their appeal takes years to years. These types of cases are happening in the same half of the punishment has been completed under trial prisoners, having takes place and he will be released as innocent. The state governments were having constitutional obligation on prisoners for their speedy trial of cases.

Women Prisoners and their children’s:

The prison environment is not conducive to the normal growth and development of children’. Many children are born in prison and have never experienced a normal family life, sometimes till the age permitted to stay inside (four or five years). Socialization pattern get severely affected due to their stay in prison. Their only image of male authority figures is that of police and prison officials. They are unaware of the concept of home, as we know it. Boys may sometimes talk in the female gender, having grownup only among women confined in the female ward. Unusual sights, like animals on the road are frightening. children transferred with their mothers

²⁵ 1992 1 SCC 225

²⁶ Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publicatioons (p). Ltd.,2008, p.115

²⁷ (1980) 1 SCC 81

²⁸ Section 309 (1) of Cr.PC contemplates “In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds that the adjournment of the same beyond the day to be necessary for reasons to be recorded.

from one prison to another frequently, thus unsettling them; and such children sometimes display violent and aggressive, or alternatively, withdrawn behavior in prison.²⁹

The famous case is related to the children of imprisoned mothers. In *R.D. Upadhy vs. State of A.P.*³⁰, the children are residing with their mothers, even though they are not prisoners. They are forced to live in jails by circumstances. For this, The Supreme Court issued certain guidelines to the prison authorities for the safeguards to the children's. The Central Government and State Governments are having responsibility for the protection of children in prison who are residing with their mothers. The Supreme Court issued guidelines to the central and state governments. The governments are also taking serious steps to provide certain rights regarding diet, shelter, medical aid, clothing, schooling facility to them and recreational facility are considered to be the basic human rights of children's.

Conclusion:

A prisoner, be he a convict or under-trial or a detenu, does not cease to be a human being. They also have all the rights which a free man has but under some restrictions. Just being in prison doesn't deprive them of their fundamental rights. Even when lodged in jail, they continue to enjoy all their fundamental rights.³¹ In spite of these provisions the treatment of prisoners inside the prisons was cruel and barbarous. When a person is convicted, it was thought that he lost all the rights. The prison community was treated as a closed system and there was no access to outsiders in the affairs of the prisoners. The authorities under the guise of discipline inflicted many injuries upon the inmates. The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoner's rights to maintain human dignity.³² The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. The judiciary has made it very clear in many judgments that except for the fact that the compulsion to live in a prison entails by its own force the deprivation of certain rights, like prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution.³³ The convicted persons go to prisons as punishment and not for punishment.³⁴ Prison sentence has to be carried out as per courts orders and no additional punishment can be inflicted by the prison authorities without sanction. Prison authorities have to be, therefore, accountable for the manner in which they exercise their

²⁹ Dr. Gurbax Singh, *Law relating to Protection of Human Rights and Human Values*, Vinod Publications (p). Ltd., 2008, p.124-125

³⁰ AIR 2006 SC 1946

³¹ Dr. G.B.Reddy, *Judicial Activism In India*, Gogia Law Agency, Hyd, 2nd Edition, 2014.

³² Rights of prisoners and convicts under the criminal justice administration by Justice T.S.Sivagnanam Judge, High Court, Madras, National Judicial Academy Regional Judicial Conference, Organised by High Court, Madras, Tamil Nadu State Judicial Academy and The National Judicial Academy, 24.02.2012 to 26.02.2012

³³ Charles Shobraj vs. Superintendent, Tihar Jail, AIR 1978, SC 1514

³⁴ Jon Vagg. *Prison System- A Comparative Study of Accountability in England, France, Germany and the Netherlands*, Clarendon Press, Oxford 1994

custody over persons in their care, especially as regards their wide discretionary powers. Article 21 of the Constitution guarantees the right of life and personal liberty and thereby prohibits any inhuman, cruel or degrading treatments to any person, whether he is a national or foreigner. The Supreme Court of India, by interpreting Article 21 of the Constitution and Articles of 19 to 22 as contained in part III of the Constitution of India, the constitution has guaranteed certain rights to the accused. The Supreme Court is acting as custodian of prisoners rights in India.

