

Human Rights of Prisoners in India

Prof. R.K. Gupta¹ & Karam Singh²

¹Director, Institute of Law, K.U.Kurukshetra

²Research Scholar, Department of Law, Singhanian University, Rajasthan

Abstract: *Right to speedy trial is a right to life and personal liberty of a prisoner guaranteed under article 21 of the Constitution, which ensures just, fair and reasonable procedure. The Supreme Court of India has been very vigilant against encroachments upon the Human Rights of the prisoners by giving a liberal and comprehensive meaning to life and personal liberty. Under trial prisoners are those persons who are facing trial in any court, unable to furnish surety, and have no access to legal aids, are kept in prison for years together, which amounts to gross violation of their human rights. Under trial prisoners constituted 71.14% of the total prison population in the country*

Introduction

A prison is considered as a place in which individuals are physically confined and are deprived of personal freedom to a certain extent. Prison is an integral part of the criminal justice system of any country. Prisons may be meant exclusively for adults, children, females, convicted prisoners, under-trials etc. The objective of imprisonment may vary from country to country. It may be: a) punitive b) deterrence c) reformatory or d) rehabilitative etc. The primary purpose of imprisonment is to protect society against crime. Punitive methods of treatment of prisoners alone cannot achieve the goal of reformation of prisoners. Various human rights approaches and human rights legislations as well as judiciary have facilitated a change in the approaches of criminal justice system. The United Nations has also provided certain guidelines for the treatment of prisoners. The State is under legal obligation for protecting its subjects and for the compliance of which citizens are given certain basic privileges recognized by the Constitution of India and other legislations. However, the enhancement of rights of the prisoners raises a question as to what extent it is viable under Article 21 to incorporate within its ambit, the access to conjugal rights to the prisoners within the jail premises. Moreover, what about the rights of the victims upon whom they had committed the offence and to what extent the arena of rights of the prisoners can be enhanced in the

garb of human rights so as not to violate the human rights of the victims who were the primary sufferers of the offence committed upon them.

The main human rights issue of under trials is delay in trial of cases. Right to speedy trial is a right to life and personal liberty of a prisoner guaranteed under article 21 of the Constitution, which ensures just, fair and reasonable procedure. However, eighty present prisoners are under trials, and some of them are not released even after granting bail as they are unable to furnish surety bonds due to lack of money or verification of addresses, as some prisoners don't have houses. "The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent. Everyone is presumed to be innocent until the guilty is proved. So, the quality or innocence of the accused has to be determined as quickly as possible. It is therefore, incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed. It is pertinent to mention that delay in trial by itself constitutes denial of justice which is said to be justice delayed is justice denied. It is absolutely necessary that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is absolutely necessary. The right to speedy trial has become a universally recognized human right.

Issues Pertaining To Violation Of Prisoners' Rights

Various international instruments have been formulated for the prisoners. In India also, apart from the Constitution of India that confers a number of fundamental rights upon its citizens, various legislations dealing with rights of prisoners have been enacted

Despite having so many legislations various issues enlisted below pertain to the violation of prisoners' rights

- 80 per cent prisoners are under trials.

- Even though bail is granted, prisoners are not released.
- Insufficient provision of medical aid to prisoners.
- Insensitive attitude of jail authorities
- Punishment carried out by jail authorities not coherent with punishment given by court. Harsh mental and physical torture.
- High amount of surety ordered by courts which indigent prisoners can't pay.
- Rejection of surety bonds due to lack of money or verification of addresses, as indigent prisoners don't have houses.

Judicial Attitude on Human Rights Of Prisoners In India:

The Indian freedom struggle played a pertinent role in initiating the process of recognizing certain rights for the prisoners. After independence, the Constitution of India conferred a number of fundamental rights upon the people. Article 21 of the Constitution guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatment to any person whether he is Indian national or foreigner. Article 21 states, "No person shall be deprived of his life or personal liberty except according to procedure established by law". The Supreme Court of India, through interpretation of Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners' rights for the maintenance of human dignity. Deprivation of life and liberty is justifiable according to procedure established by law but the procedure cannot be arbitrary, unfair or unreasonable.

In *Maneka Gandhi Vs Union of India* the Apex Court laid down that the procedure cannot be arbitrary, unfair or unreasonable. This was further endorsed in *Francis Cora lie Mullin Vs The Administrator, Union Territory of Delhi and Others*, when the court held that Article judiciary 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful. The Indian judiciary has been very active and vigilant in protecting the human rights of the prisoners. Certain very pertinent rights of the prisoners recognized by the are as follows:

Compensation

A prisoner or an under trial or a detainee can approach the Supreme Court under Article 32 and High Court under Article 226 and claim for compensation for the violation of his rights while

in custody of the police. In *Rudul Sah Vs State of Bihar and Others* the petitioner was released from Tihar jail fourteen years on the excuse of insanity after he was acquitted. The Court observed that no data of any kind was produced to show that the prison authorities had a basis for either declaring the prisoner insane or for detaining him on that account. No measures were taken to cure him. Insanity was clearly alleged as an afterthought. The Court observed that if a prisoner was at all insane, it must have been caused by the jail conditions itself. The Court granted compensation of Rs 35000 to the petitioner and specifically indicated that a suit for compensation over and above this amount would lie in an appropriate Court. Article 21 will be denuded of its significant content if the powers of the Court were limited to passing orders merely of release. *Sebastian Hongray's case*^[8] was a habeas corpus petition. Sebastian was a Naga Priest who was a Head Master of a school. His school was visited by the army. It was alleged that the army had engaged in certain atrocities and took away certain persons including the petitioner. He was last seen alive in an army camp. A petition for habeas corpus was filed, but the State refused to obey. The Court asked "What is the appropriate mode of enforcing obedience to a writ of habeas corpus?" The Court ordered that the State has to pay Rs One lakh each to the wives of the missing persons. Compensation of Rs 50000 was awarded in *Bhim Singh's case*^[9], for imprisonment with mischievous or malicious intent. In this case an MLA was kept in police custody and remand orders were obtained without his production before a magistrate. The Supreme Court in *Nilabati Behera's case*^[10] expressed the need of the Court to evolve new tools to give relief in public law by moulding it accordingly to the situation with a view to preserve and protect the rule of law. In *Peoples' Union of Democratic Rights Vs State of Bihar*^[11], the Supreme Court enhanced the amount of compensation from Rs 10000 to Rs 20000 to be paid to the twenty one persons belonging to backward classes who died in indiscriminate firing by the police while holding a peaceful meeting in the District of Gaya, Bihar, and Rs 5000 each to the persons injured. The Court held that payment of such compensation does not absolve the liability of the wrong-doer but such compensation is being paid as a working principle and for convenience and with a view to rehabilitating the dependants of the deceased.

Fair Procedure

The Constitution of India recognizes principles of natural justice and they have been incorporated in Part III of the Constitution of India. In *Abdul Azeez Vs State of Mysore*^[12] the Karnataka High Court held that in cases where the accused refuses

legal aid and is not represented by an advocate, the Court ought to, in the interest of justice, either question the witness himself, or appoint a competent counsel to assist the Court. The Court remitted the matter for retrial in accordance with its directions. In Shivappa Vs State of Karnataka^[13] the Supreme Court held that the Magistrate recording confessional statements of accused should strictly comply with the rules and ensure that the confessions are voluntary. In Jayendra Vishnu Thakur Vs State of Maharashtra and Another^[14], the Supreme Court held that an accused would not be presumed to have waived his right and that procedural principles like estoppel and waiver would not be attracted where an order is passed without jurisdiction, as it would then be a nullity, because of which the order cannot be brought into effect for invoking the procedural principles mentioned above.

Humane Sentencing

It is the sacred duty of judiciary to look at every aspect of the case and to award proportionate quantum of punishment depending upon the gravity of the offence. A sentence that is passed after considering the crucial circumstances which resulted into the illegal act drawing imprisonment of the accused is called a humane sentence. In Laxman Naskar (Life Convict) Vs State of West Bengal and Another^[15], the Supreme Court issued certain guidelines as to the basis on which a convict can be released pre-maturely:

1. *Whether the offence is an individual act of crime without affecting the society at large?*
2. *Whether there is any chance of future recurrence of committing crime?*
3. *Whether the convict has lost his potentiality in committing crime?*

In Zahid Hussein and Others Vs State of West Bengal^[16], the Supreme Court observed that the conduct of the petitioners while in jail is an important factor to be considered as to whether they have lost their potentiality in committing crime due to long period of detention or not.

Parole:

In Sunil Fulchand Shah Vs Union of India and Others^[17], the Constitutional Bench of the Supreme Court observed that parole is a form of temporary release from custody, which does not suspend the sentence or the period of detention, but provides conditional release from custody and changes the mode of undergoing the sentence. Parole is granted and governed by the following conditions: (a) A member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill;

or (b) The marriage of the prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated;

International Obligations:

Among the main reasons for the foundation of state and establishment of government; safeguarding peace and security and respecting law and order come to the forefront. The idea of social contract theory says that people agreed for the foundation of a state and government for the sake of better protection and have forfeited some of their rights for its effectiveness. Therefore, the obligation of securing law and order and punishing individuals during violations of the law remain in the hands of the state. Hence, administration of criminal justice in general is the power of the state. Likewise, the practice of how state treats its citizens or subjects was exclusive power of the individual state concerned. This includes Human rights and treatment of prisoners. However, later on issues of human rights and treatment of prisoners by states in particular draw the attention of many activists and was included in the international and regional human rights documents.

Similar to the fact in the research project, addressing prisoners' rights in the UN and regional human rights treaties is a result of the shift of public power of the 1940s. In addition to this, the UN and the other regional human rights systems have established adjudicating bodies which are empowered to settle disputes on the interpretation and application of the treaties concerned.

Human rights committees, particularly the general comments of the ICCPR and IESCR committees on the rights of prisoners is one of the sources to be consulted in my research. Though there is no separate binding treaty on the rights of prisoners there are normative standards adopted by United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

Conclusion:

A person does not lose his human rights merely because he has committed some offence as he also has some dignity which must be protected. However, at the same time conferring conjugal rights to the prisoners within the jail premises requires re-consideration of a larger bench of the High Court or the Supreme Court as far as the concept of human rights is involved. By giving more weightage to the prisoners, the balance of criminal justice system may get disturbed and a situation may arise when one day jails would become resting centres or the victims may stop

reporting the matter to the police and start taking law in their own hands to punish the guilty.

Footnotes

- [1] Available at <http://www.hrln.org/hrln/prisoners-rights.html> (accessed 02 April 2015)
- [2] Basic principles for the treatment of prisoners 1990, Body of principles for the protection of all persons under any form of detention or imprisonment 1988, Code of conduct for law enforcement officials 1979, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, European Prison Rules 1987, International Covenants on Civil and Political Rights 1966, Principles of medical ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, 1982, Standard minimum rules for the treatment of prisoners 1957 and 1977, United Nations Congress on the Prevention of Crime and Treatment of Offenders, United Nations Rules for the Protection of Juveniles deprived of their Liberty, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985, Universal Declaration of Human Rights 1948.
- [3] Code of Criminal Procedure 1973, Exchange of Prisoners Act 1948, Identification of Prisoners Act 1920, Indian Penal Code Act 1860, Juvenile Justice (Care and Protection of Children) Act 2000, Mental Health Act 1987, Model Prison Manual 2003, Prison Act 1894, Prisoners (Attendance In Courts) Act 1955, Prisoners Act 1900, Probation of Offenders Act 1958, Protection of Human Rights
- [4] Available at <http://www.hrln.org/hrln/prisoners-rights.html> (accessed 02 April 2015)
- [5] AIR 1978 SC 597
- [6] AIR 1981 SC 746
- [7] AIR 1983 SC 1086
- [8] AIR 1984 SC 1026
- [9] AIR 1986 SC 494
- [10] JT 1993 (2) SC 503
- [11] AIR 1987 SC 355
- [12] 1975 Cri LJ 335
- [13] AIR 1995 SC 980

- [14] 2009 (7) SCC 104
- [15] 2000 (7) SCC 626
- [16] 2001 (3) SCC 750
- [17] 2000 (3) SCC 409
- [18] AIR 1982 SC 6
- [19] 1988 (1) Bom Cr. 58
- [20] AIR 2006 SC 1946
- [21] CWP No.5429 of 2010 Date of Decision: 29 May 2014
- [22] (2000) 5 SCC 712
- [23] (1975) 3 SCC 185
- [24] (1978) 4 SCC 494 (popularly known as Sunil Batra-I)
- [25] William Blake
- [26] (1980) 3 SCC 488 (known as Sunil Batra-II)
- [27] PIL No.251 of 2012 decided on 16 July 2012
- [28] Marital Relationships of Prisoners in Twenty – Eight Countries by Prof. Ruth Shonle Cavan and Prof. Eugene S. Zemans

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- 3) National Human Right Commission, Annual Report 2004-05, New Delhi, 2005, p. A17, retrieved from <http://nhrc.nic.in/Documents/AR/AR04-05ENG.pdf>, accessed on 12/04/2016)
- 4) Nidhi Beniwal, Role of Judiciary in Protecting the Rights of Prisoners, retrieved from <http://www.legalservicesindia.com/article/article/role-of-judiciary-in-protecting-the-rights-of-prisoners-1616-1.html>, accessed on 16/04/2016
- 5) Soura Subha Ghosh, Plea Bargaining - An Analysis of the concept, retrieved from http://www.legalserviceindia.com/articles/plea_bar.htm, accessed on 18/04/2016
- 6) State of Uttar Pradesh V. Chandrika (2000 Cr.L.J. 384(386) 7) Common Cause v. Union of India AIR 1996, 161