

PRISONERS' RIGHTS IN INDIA: AN ANALYSIS OF LEGAL FRAME WORK

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I. Introduction

“A convict is entitled to precious right guaranteed by Article 21.”²

The basic problem in India with reference to the prison administration resulting into various kinds of human rights issue and challenges, for instance rights related to health care, sanitation, food, custodial torture, deaths etc. In this line there is a need to reform the entire criminal Justice system because prison is one of the vital parts of the criminal justice system. Hence, provisions related to arrest, bail, adjournment of the cases needs to revise with human rights perspective of the prisoners.

Laws in India have elaborate provisions of safeguarding the rights of accused in order to assure him a just, fair and impartial trial. However, these rights are not available to the accused belonging to poverty class and the same are being availed only by those belonging to elite class of the society, who have got the means to exploit those rights. Because of this reason accused person from the poverty class are not able to get the justice and on the other hand people possessing the means are able to get the clutches of law and they hold the key to unlock the door of the justice³. Moreover, Social defence is the criminological foundation of punishment. The trial judge has confused between correctional approach to prison treatment and nominal punishment verging on decriminalization of serious social⁴

In this background that paper highlights the rights of the prisoners, constitutional rights, and their human rights. It provides numerous judgments of the Supreme Court affecting the rights of the prisoners.

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² Sunil Batra vs Delhi Administration, 1980 AIR 1579 available at <http://www.manupatrafast.in/pers/Personalized.aspx> (last visited on February 23, 2014).

³ Dr. Ashutosh, Rights of the accused, Page VII, 2nd ed. Universal Law Publishing house, 2013.

⁴ Available at <http://www.manupatrafast.in/pers/Personalized.aspx> (last visited on February 24, 2014).

II. Human Rights of the Prisoners

The issue of human rights and prisoners arouses great emotion. Why should someone who has been accused of or convicted of criminal offences be entitled to human rights at all? Before coming to this question, it is pertinent to understand the concept of the human rights itself.

The concept of the human rights is not a new phenomenon. Human right is a concept that has been constantly evolving throughout human history the origin of which, we can trace back from the evolution of the natural law. In which the concept of human rights can be located in the notion of “natural rights” that was propounded in the seventeenth century by philosopher **John Locke** who urged that certain rights are “natural” to individuals as human beings, having existed even in the state of nature before the development of the societies and emergence of the state.⁵

One of the first examples of a codification of laws that contain references to individual rights is the tablet of Hammurabi. The tablet was created by the Sumerian king Hammurabi about 4000 years ago (1792-1750 BCE). This is one of the exemplary examples for the protection of the human rights. This kind of precedent and legally binding document protects the people from arbitrary prosecution and punishment.⁶

The idea of the setting out in writing the rights of the individuals with respect to the governing authority can be traced back from the dates back to the British Magna Carta – the great charter of 1215- which, was first time, propounded the rule of the law and laid the foundation of the fundamental liberties then came to the British Bill of Rights, the American Declaration of Independence, French Declaration of the Rights of Man (1789) and of the Citizen and American Bills of Rights. The UN charter was yet another landmark document in this field. The adoption of the universal declaration of human rights in 1948 was also a momentous event in the promotion and protection of human rights everywhere. Since then, the basic premise that human rights and fundamental freedom are the birthrights of all human being has generally been accepted and expressed in many international instruments.⁷

The first documentary use of the expression “Human Rights” could be seen in the charter of the United Nations adopted on 25th June, 1945. Which gained momentum since the adoption of the Universal Declaration of Human Rights in 1948, and 10 December 1948 is a landmark in the history

⁵ Introduction of the Human Rights, An overview including the issues of Gender Justice, Environmental and consumer Law, South Asian Human Rights Documentation Centre, Oxford University Press, 2010.

⁶ Faisal, Historical Development of Human Rights, available at Juris Online.

⁷ S. Gopalan, India and the Human Rights, 3, Lok Sabha Secretariat New Delhi.

which is celebrated as Human Rights Day after that, there has been a rapid growth in international law mechanisms for the protection of Human Rights. Therefore the protection of basic human rights is one of the most pressing and yet most elusive goals of the international community.

III. Legal Rights Available to Prisoners

Prisoners are also human being. Hence, all such rights except those that are taken away in the due process of law still remain with the prisoners. Some are as follow:

III.I Constitutional Safeguards

Indian Constitution provides various kinds of safeguards to the prisoners some are as follow:

Article 20

Provides right against the conviction for the offence; this article provides a very important right that is right against the **self incrimination**. Therefore, it is the right of the accused not to compel to be witness against himself/herself.

Article 21

This is one of the most important Article of the Indian constitution. It provides the protection to the life of human being. According to judicial interpretation everybody has right to live with the human dignity⁸. Therefore even though a person in the police custody, it does not mean that he is deprived to live with human dignity, because right to life includes living with human dignity upheld by the Apex Court in the case of *Francis Coralie Mullin v Administrator, Union Territory of Delhi*⁹. Moreover in the case of *Subhash Kumar v. state of Bihar* Court observed that, all the means for the protection of life are included within the meaning of life¹⁰. Therefore 'life' did not mean mere animal existence, as upheld in very renowned *Maneka Gandhi* case.

Further right to speedy trial in one of the important rights of the prisoners, these crucial right is also upheld in the case of **Hussainara Khatoon V. Home Secretary, State of Bihar, and AIR 1979 SC 1360**.

⁸ *Maneka Gandhi v Union of India*

⁹ 1981 AIR 746, available at <http://www.indiankanoon.org> (Visited on September 19, 2012).

¹⁰ AIR 1991 SC 420, available at <http://news.bhadas4media.com/index.php/weyoume/1073-what-is-life-and-right-to-life> (last visited on February 22, 2014).

Article 22

Of the Indian Constitution provide an ample amount of the safeguards to the person who detained in the custody. First of all it obliged the state to inform the accused the ground of the arrest. Moreover it also granted the right to choose the lawyer of his/her own choice. Judiciary has also upheld this right in case of *D.K. Basu v. State of West Bengal*¹¹. Further to check the legality of the detention this article also speaks about the presentation of the accused before the nearest magistrate within the period of the 24 hours.

III.II Other Indian statutory safeguards

III.II.I Indian Penal Code, 1860

Section 330

It speaks about that, punishment for voluntarily causing the hurt for the purpose of extorting any confession or any information which may lead to the detention of the offence..."

Section 331

It is also dealing with the same manner in case of causing the grievous hurt to extract the information as section 330 of the IPC.

Apart from above Sections there are some other sections which provide the protection to the accused i.e. Section 342 and 448 of the IPC.

III.II.II Criminal Procedure Code, 1973

Chapter V of this Act dealing with the concept of arrest, Section 46 to 49 deals with the procedure of the arrest. Further **Section 50 and 56** of the Act also talk about the same right as mentioned in Article 22 of the Indian Constitution. Section 50 A to 57 dealt with the various rights of the accused.

Further, Section 300 of the Act in consonance of Article 20 of the Indian constitution also deals with the same.

III.II.III Indian Evidence Act, 1872

Section 24 of the Act provide Confession would be irrelevant in criminal proceeding if it appears to the court that it is caused by the inducement, threat or promise.

¹¹ (AIR 1997 SC 610), available at <http://lawcommissionofindia.nic.in/reports/177rpt2.pdf> (last visited on February 19, 2014).

Section 25 it speaks about there is no evidentiary value of the confession made in the custody of the police.

III.III International Human Rights Instrument for the Protection of Prisoners

Rights of the prisoners in international law find a very significant place in various international declaration as well as treaties. Some are as follows: Article 5 of the Universal Declaration of the Human rights provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Further, Article 10 of the International Covenant on Civil and Political Rights: All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

The Third Geneva Convention defines the concept of humanitarian protection for prisoners of war. And the most important and specific document for the protection of prisoners approved in 1957 called as “UN standard Minimum Rules for the treatment of Prisoners”. The rules are now widely recognized as constituting a virtual code of practice in prison administration and treatment¹², although these rules are not binding, but they act as the guiding principles for all the countries in respect to the prison reform. Hence, it can be clearly articulate that, even at international level the concept of prison reform is widely recognized.

IV. Prison System in India

The administration of the prisons in India is the sole responsibility of the states. All prisons are managed by the state government or by the Union territory administration Seventh Schedule of the Indian Constitution. The central government is largely concerned with the policy formulation and planning services. In each state, the head of prison administration is an inspector- general who is usually the police officer.¹³ All the administration of the prison is governed by the principal act called “The Prisons Act 1894”.

However, deep analysis of Act focuses only on prison security, offences, punishments etc. and not on the correction and reformation system.

¹² J.C. Chaturvedi, Penology and Correctional Administration, Isha Books, Delhi 2006. Page 168.

¹³ *Ibid* 164.

V. Guiding Principles for an Ideal Prison

Various committees have given many suggestions to improve the condition of the prisoners in jail some are as follow:

The A. N. Mulla committee on Jail reform¹⁴ while proposing the Model prison Manual laid down the guiding principles as under:

“The purpose and justification of the sentence of imprisonment is to protect society against the crime. The punishment inherent in imprisonment primarily consists in deprivation of liberty involving compulsory confinement and consequent segregation from normal society, in carrying out that punishment, the prison administration should aim at ensuring the return of an offender in society not only willing but also able to lead a well-adjusted and self-supporting life.

VI. Indian Judiciary and Prison Reform

The role of the Indian judiciary in introducing the concept of the prison reform through various judgments has been a commendable job. Starting from **Maneka Gandhi's case** Supreme Court has given a various dimension of the Article 21 of the Indian Constitution. In many of the cases SC reiterated that, right to life with human dignity is one of the fundamental rights of every individual and even during emergency this right cannot abrogate.

Maneka Gandhi's case has laid down that personal liberty cannot be cut out or cut down without fair legal procedure. Enough has been set out to establish that a prisoner, deprived of his freedom by court sentence but entitled to appeal against such verdict, can claim, as part of his protection under Article 21 and as implied in his statutory right to appeal, the necessary concomitant of right to counsel to prepare and argue his appeal.¹⁵

Further in case of **Sunil Batra vs. Delhi Administration**¹⁶

This is the landmark judgment delivered by Justice V.R. Krishna Iyer for the prison reform. In instant case Court upheld that, continuously keeping a prisoner in fetters day and night reduces the prisoner from a human-being to an animal; moreover, use of bar fetters is anathema to the spirit of the Constitution. Hence this Court rejected the 'hands-off' doctrine and ruled that fundamental rights do not flee the person as he enters the

¹⁴ Report of the All India Committee on Jail Reforms, Vol II p 464, (Ministry of home affairs and Govt. of India, 1980-83).

¹⁵ available at <http://www.manupatrafast.in/pers/Personalized.aspx> (Visited on September 20, 2012).

¹⁶ AIR 1980 SC 1579.

prison. Court has taken a very proactive role in this case and reiterated certain guidelines:

1. No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of the court.
2. Ensure all other freedoms belong to prisoner to read and write, to exercise and recreation, to meditation and chant
3. Freedom from indignities such as compulsory nudity, forced sodomy and other such unbearable vulgarity.
4. Prison sentence has to be carried out as per the courts orders and no additional punishment can be inflicted by the prison authorities without sanction etc.¹⁷

In another case of “**Prem Shankar Shukla vs. Delhi Administration**”,¹⁸,

Court upheld that, collection of handcuff law must meet the demands of Articles 14, 19, and 21 of the Indian Constitution. Further, Handcuffing is *prima facie* inhuman and, therefore, unreasonable insurance against escape does not compulsorily require handcuffing. Once we make it a constitutional mandate that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort--and we declare that to be the law--the distinction between classes of prisoners becomes constitutionally obsolete apart from the fact that economic and social importance cannot be the basis for classifying prisoners for purposes of handcuffs or otherwise.

Francis Coralie Mullin v. The Administrator, Delhi¹⁹

In this case Supreme Court play a significance role in interpreting the Article 21 of the Indian Constitution as follow:

Article 21 of the Indian Constitution provides protection against torture or cruel, inhuman or degrading treatment. Therefore, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorizes and no procedure which leads to such torture or cruelty, inhuman or degrading treatment can

¹⁷ Available at <http://www.nimhans.kar.nic.in> (last visited on February 15, 2014).

¹⁸ AIR 1980 SC 1535.

¹⁹ AIR 1981 SC 746.

ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being in violation of Article 14 and 21.²⁰

***Sheela Barse v. State of Maharashtra*²¹**

This was the case of custodial violence concerning women prisoners and detainees in state of Maharashtra. The court gave certain direction regarding the arrest by the police officers some are as follow:

1. Whenever a person is arrested by the police and taken to the police lock up, the police should immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee to provide the legal assistance.
2. Court directed that as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest.
3. Court directed that the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody.
4. Inform the arrested person about this right of medical examination in case he has any complaint of torture or mal-treatment in police custody²².

***Rudul Shah v. State of Bihar*²³**

In instant case the Supreme Court, stipulate that, illegal detention of the person without authorization of the law and procedure, amounts to violation of the Article 21 of the Constitution which provides no one shall be deprived from his life and liberty except the procedure established by the law.

***Nilabati Behra v. State of Orissa*²⁴**

In Instant case Supreme Court developed the compensatory jurisprudence in criminal case of the custodial death.

²⁰ Available at <http://www.indiankanoon.org/doc/78536/> (Visited on September 20, 2012).

²¹ AIR 1983 SC 378.

²² *ibid*

²³ AIR 1983 SC 1086.

²⁴ AIR 1993 SC 1960.

A.S. Mohammed Rafi v. State of the Tamilnadu²⁵

In instant case court granted 1.5 lakhs compensation to the victim for police custodial death.

After analysis of above judgments it can be clearly documented that Indian Judiciary has given a various useful suggestion for prison reform, which need to incorporate in present existing system in letter and spirit.

VII. Conclusion

In the light of above discussion, it can conclude that, a prisoner does not shed his basic human and Constitutional rights at the prison gate. Conviction of person does not mean that he/she does not have a right to live with human dignity. Therefore, imposition of any punishment within the prison requires procedural safeguards. Now the time has come to incorporate all the suggestion given at national and international level. In this line every prisoner entitled a sanitary and healthy condition within prison. There should be a proper monitoring of the prison condition to ensure a dignified life of the prisoners. There is a need to take various new initiatives by jail administration so it can enable the prisoners to live dignified lives after prison. It can include vocational training to prisoners, literacy program, creation of prayer hall, music room etc.

²⁵ (2011) 1 SCC 688.