



Rights of Prisoner in India

KEYWORDS

Jail reform, prisoner's right and Article 21 of the Constitution.

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ABSTRACT *The past decade has witnessed an increasing consciousness about the desirability of prison reforms, It is now being recognized that a reformatory philosophy and a rehabilitative strategy must form a part of prison justice. The role of the Supreme Court in the past five years in introducing jail reforms has been commendable. Its quest for prison justice is probably a result of its attempt to revive liberty after extinguishing it in the Habeas Corpus case. This paper has made an attempt to analyze the rights available to a prisoner and role of Supreme Court to give the justice for violation of their rights.*

INTRODUCTION:

Whenever we try imagining a typical jail in our country, the picture which comes to our mind is not exactly charming. News reports often bring into light the ignominious behaviour of police with the incarcerated. Gloomy atmosphere, bad food, inadequate medical facilities are some of the basic problems faced by the prisoners. Every convict has been conferred with certain rights by the constitution of India so that his life as a prisoner is dignified and comfortable. Though these rights are must for every convicted person to maintain and balance his mental status as a human being, the inefficiency of our law enforcement system prevents prisoners from enjoying these rights But NGOs and Human Rights Commissions in our Country are working for this cause with considerable results. If these agencies keep working with this pace they will definitely be able to make a mark. Also, the citizens must be aware themselves so as to what rights one can enjoy if they get locked up unfortunately.

CONCEPT OF PRISONER:

A person who is a convicted, detained under the trials, suspects, accused, etc. is called a prisoner. No doubt they can be deprived from their Freedom of Movement. But still they are to be treated as human beings. Right to life and personal liberty has larger connotations. It is not merely freedom from physical torture and it's something more than that.

Even a prisoner, which ever they are, even they are deprived from their certain rights and liberties they should have certain rights as ultimately they are human beings. Prisoner's rights shall be taken care of by the jail authority. Freedom of Residence can be limited. Because they have put in a jail, prison, in custody or arrested. Just due to that cannot deprive from all rights. Certain rights also require by such categories also.

RIGHTS OF A CONVICT:

A convict

1. Should be treated with dignity.
2. Should not be subjected to any physical /mental torture or any kind of inhuman or degrading punishment.
3. Cannot be isolated in a separate cell, except on medical grounds or if he/she has proven to be dangerous to other prisoners.
4. Must be presented with means to express his/her grievances faced within the jail.

5. Has right to meet his lawyer and family members at least twice a week
6. Has right to send letters to his relatives and to other prisoners irrespective of their relationship.
7. Has right to write books and get them published, if he/she so desires.
8. Can give press interview, subject to reasonable restrictions.
9. Cannot be held in slavery and or servitude.
10. Cannot be subjected to any labour which is exploitative in nature.
11. Should be equitable remunerated for his labour and should not be paid below the prescribed wages.

JUDICIAL TREND:

The prisoners now have an important forum for the enforcement of their rights. As all the grievances could formerly be aired only through the prison-hierarchy, very few prisoners voiced any complaints for fear of retaliation. The very existence of the remedy of a writ of habeas corpus would be a deterrent to jail authorities and could prevent arbitrary and capricious action.

Maneka Gandhi's case¹ was a landmark in Indian jurisprudence. The Maneka principle was extended to prison conditions and particularly to the plight of under-trials.

In ADM Jabalpur V. Shiv Kant Shukla² the Supreme Court carried the ratio of the habeas Corpus and held that Article 21 is the sole repository of life and liberty and during the emergency when liberty is suspended, due to the Presidential proclamation suspending Article 21, a detainee during emergency could not agitate for better Jail Conditions and facilities.

Rights against Solitary Confinement and Bar Fetters:

The Supreme Court again in a separate writ petition filed by Sunil Batra and Charles Sobharaj,³ two prisoners in Delhi's Tihar jail, made an effort to humanize jail conditions. The Supreme Court in Sunil Batra case⁴ considered the validity of solitary confinement. The Supreme Court has also reacted strongly against putting bar fetters to the prisoners. The court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of the Constitution of India. The courts have strong view that every prisoner has a right against Solitary Con-

finement and Bar Fetters

Rights against Inhuman Treatment of Prisoners:

In *Raghuveer Sing V. State of Bihar*⁵, has issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners and persons in police lock-up. The Supreme Court read the right against torture into Articles 14 and 19 of the Constitution. The court observed that "the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14"

In *Kishore Singh VS. State of Rajasthan*⁶ the Supreme Court held that the use of third degree method by police is violative of Article 21.

In *Sheela Barse vs. State of Maharashtra*⁷, the court held that interviews of the prisoners become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated.

In *Jogindar Kumar vs. State of U.P.*⁸, the court opined that the horizon of Human Rights is expanding and at the same time, the crime rate is also increasing and the court has been receiving complaints about violation of Human Rights because of indiscriminate arrests. The court observed that there is the right to have someone informed.

Rights against Hand Cuffing:

In *Prem Shankar Shukla v/s. Delhi Administration*⁹, the Supreme Court struck down the provisions of the Punjab Police rules which discriminated between the rich and the poor prisoner in determining who was to be handcuffed. The Court also held that in the absence of the escorting authority re-cording why the prisoner is being put under handcuffs, the procedure of handcuffing is a violation of Article 21.

Right to Free Legal Aid:

In *Khatri V. State of Bihar (Bhagalpura binding case)*¹⁰ the Supreme Court held that it was the duty of a trial court to inform the accused that he is entitled to free legal aid service or a lawyer of his choice.

In *M.H.Haskoot V. State Of Maharashtra*¹¹, Supreme Court held that, when ever an under trial an accused as a prisoner are unable to defend themselves, then it is the obligation of the State to provide free legal assistant to such prisoner. Even though, they have been deprived from their liberty by the State the free and fair is a part and parcel of **Article 21**. Therefore free legal assistant go hand in hand or along with free trial. Otherwise it would be anti-national. How can we discriminate due to they don't have anybody to appear on behalf of them. That is the role of government advocates to fight for them.

Right to freedom speech and Expression:

In *State of Maharashtra V. Prabhakar Pondurng*¹² As being a prisoner all rights of freedom of speech and expression was deprived. The petitioner prisoner wanted to publish his own biography. Matter came before the court. Court held that, though he is a prisoner still he seems to be a human being. Under Article 19(1) of the Constitution freedom of speech includes freedom of speech and expression also, Article 21 is still available too. Therefore it's available to a prisoner.

In R RajGopal v. State of Tamil Nadu (Auto shankar

case)¹³ There was a serial killer with the stone in the prison and he wanted to write certain articles to papers as a series about relationship/support/expose criminals and police. Held that if freedom of press is an Article of faith with us, sanctioned by our Constitution validated by four decades of freedom and indispensable to our futures also held that though is a prisoner freedom of speech and expression is available to him

Right to Health:

In Veena Sethi v. State of Bihar¹⁴, Supreme Court held the importance of medical care to prisoners.

Right to Speedy Trial:

In *A.R.Antulay v. R.S.Nayak*¹⁵ the Apex Court held that the right to speedy trial flowing from Article 21 of the Constitution is available to accused at all stages like investigation, inquiry, trial, appeal, revision and retrial

Right to have Interview with Friends, Relatives and Lawyers:

In *Francies Corale Mullin vs. the Administrator, Union Territory of Delhi & others*,¹⁶ the Supreme Court has delivered a landmark judgment and explained the ingredients of personal liberty under Article 21.

The case arose out of the rights of a detainee under COFEPOSA to have an interview with his family members and lawyers. The meeting with family members was restricted to one a month and the lawyer could be met only in the presence of an officer of the customs department. The Supreme Court ruled that the right to life and liberty included his right to live with human dignity and therefore a detainee would be entitled to have interviews with family members, friends and lawyers without these severe restrictions.

ROLE OF HUMAN RIGHTS COMMISSION:

The **National Human Rights Commission** (NHRC) of India is an autonomous statutory body established on 12 October 1993, under the provisions of The Protection of Human Rights Act, 1993

Any individual, who is unlawfully, so deprived of his life or liberty or dignity of life, may approach the National Human Rights Commission or the State Human Rights Commission, which are constituted under this Act. Help of legal expert is not required at all and simple handwritten application incorporating the facts and causes is suffice to redress the grievances.

Very few people are aware of their legal rights and very little about their enforcement in Human rights Commission (HRC). The Act also envisages that any individual on behalf of the victim may approach this Commission for the redressal of the grievances of immediate victim. There is no fee to be paid.

The Commission has enormous powers to give relief to the victims including monetary compensation. The Commission, if necessary, may approach the High Court or Supreme Court on behalf of the victim to give him/her justice.

Section 12 of the Act makes it obligatory on the Commission to take notice of every application so received. Human Rights Commission, in the light of section 12, has Special duty towards under trial prisoners.

CONCLUSION:

Despite the inadequacies in legislations, the judiciary on its own creative spirit had contributed much to prison administration thereby ensuring fundamental human rights of prisoners. Though various rights have been granted to prisoners, in reality, they do not reach the prisoners. Right to speedy trial is an idealistic goal, but presently far from reality

END NOTES:

(Endnotes)

- 1 Maneka Gandhi vs. Union of India – AIR 1978 SC 579
- 2 1976 AIR1207
- 3 Charles Sobraj vs Suptd. Central Jail – AIR 1978 SC 1514
- 4 Sunil Batra vs. Delhi Administration – AIR 1978 SC 1675
- 5 1987 AIR149
- 6 AIR1977SC2401
- 7 AIR1983SC378
- 8 1994SCC260
- 9 1980 SCR(3)855
- 10 1981 SCR(3)145
- 11 1978 AIR 1548
- 12 1966 AIR 424
- 13 1995AIR 264
- 14 1982(2)SCC583
- 15 (1992) 1 SCC 225
- 16 1981 SCR (2)516

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- 1.Karnataka Prisons 2009. Available online at <http://karnatakaprison.org/p1.html> Accessed on 3 Jan 2009
- 2.Krishna Iyer VR 1984. Human Rights and the Law, Indore: Vedpal Law House 3.http://www.humanrightsinitiative.org/publications/prisons/rights_behind_bars.pdf Accessed on 15 Sept 2010.