

Protection of Human Rights of Prisoners in India: Role of Judiciary



Law

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ABSTRACT

Indian judiciary not only is a watchdog against violation of fundamental rights guaranteed under the Constitution but the judiciary in India is the only defensive armour of the country and its Constitution and laws. In view of this the judiciary in our country has a major role to play in enforcing the human rights of the prisoners. Of course the Supreme Court India is heralded as a beacon of rights against torture. The Hon'ble Supreme Court of India by interpreting Article 21 of the Constitution has developed Human Rights Jurisprudence for the preservation and protection of prisoner's right to human dignity. This paper makes a careful scrutiny and examination of the landmark verdicts delivered by the higher judiciary in India to ascertain the sentiments adopted and new strategies devised by the Indian judiciary to ensure the protection of Human Rights of the prisoners.

Introduction

'Human Rights' – the expression comprises of only two simple words but when put together they constitute the very foundation of our existence. Human rights are moral principles or norms that describe certain standards of human behaviour, and are regularly protected as legal rights in municipal and international law. They are commonly understood as inalienable fundamental rights "to which a person is inherently entitled simply because she or he is a human being," and which are "inherent in all human beings". Even the prisoners have human rights because a man on becoming a prisoner, whether convict or under trial, does not cease to be human being. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitutes human dignity. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. Article 21 of the Constitution guarantees the right to life and personal liberty and thereby prohibits any inhuman, cruel or degrading treatments to any person including a prisoner. Any violation of this right attracts the provisions of Article 14 of the Constitution which enshrines right to equality and equal protection of law. In addition to this, the question of cruelty to prisoners is also dealt with specifically by the Prison Act, 1894 and the Criminal Procedure Code. If any excesses are committed on a prisoner, the prison administration is responsible for that. It becomes gruesome indeed and calls for interference of judicial power as constitutional sentinel, when the jurisprudence of prison justice becomes an escalating torture and the violent violation of the human rights. It is beyond doubt that in the recent past the Indian judiciary, particularly the Supreme Court has been very vigilant against encroachments upon the human rights of the prisoners. The courts have recently viewed third degree methods and custodial deaths in police custody as a serious violation of human rights and constitutional provision of right to life and liberty.

Keeping in view the overall sensitivity of human rights issues relating to prisoners such as the torture of arrested persons, the disappearance of suspects and the detention of under-trials for years without trial, a humble attempt has been made in this paper to highlight the landmark judgments pronounced by the Supreme Court of India in order to assess the role played by the Indian judiciary in protecting the rights of the prisoners.

Human Rights of Prisoners - Legal framework

Regarding the treatment of prisoners, Article 5 of the Universal Declaration of Human Rights, 1948 says "No one shall be subjected to torture or cruel treatment, in human or degrading treatment or punishment". Article 6 of the Universal Declaration of Human Rights, 1948 contemplates that "everyone has the right to recognition everywhere as a person before law". Article 10(1) of the International Covenant on Civil and Political Rights

lay down that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

The status of human rights is fairly high under the Constitution of India which makes provision for fundamental rights and empowers the Supreme Court of India and High Courts to enforce these rights. Equally important is the fact that India is a signatory to International Conventions on Economic, Social, Cultural, Civil and Political Rights, with certain conditions. These rights are partly contained in Part III of the Constitution of India including the Right to Equality in Article 14, Right to Freedom of Speech and Expression in Article 19(1)(a), the Right to Protection of Life and Personal Liberty in Article 21 and the Right to Religious Freedom in Article 25 etc. In Part IV of the Constitution, the Directive Principles of State Policy or the socio-economic rights, have been envisaged which are non justiciable in any court of law but complementary to the Fundamental Rights in Part III. It directs the State to apply policies and principles in the governance of the country so as to enhance the prospects of social and economic justice. For instance, Article 43 directs the State to secure for workers a living wage, decent standard of life and social and cultural opportunities. On a different note, the society should be changed in a positive way by the State, enlighten and place every human being in a society where their individual rights can be protected as well as upheld. The Indian judiciary with its widest interpretation in observance of Human Rights has contributed to the progress of the nation and to the goal of creating India as a vibrant State. The definition of Human Rights can be found under Section 2(d) of the Protection of Human Rights Act, 1993 as, "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Court of India." So it is evident that Courts have a major role to play in enforcing the rights.

India still runs with century old legislation for prison administration. Prisons Act is only concerned about the classification and segregation of prisoners by their nature and status of imprisonment. It failed to incorporate many of the principles laid down by the judiciary into its premises as well as recommended by the human rights law. Prisons Act also attempt to cast the responsibility of prison administration over the state. It is also concerned about the prisoner's right to and meet visitors but that too is confined to under trial prisoners and civil prisoners.

Human Rights of Prisoners - Enabling Provisions

The right to enforce the Human Rights provided in the Constitution of India is protected through enabling provisions. Article 226 of the Constitution empowers High Courts to issue directions, orders or writs in the nature of *Habeas Corpus*, *Quo Warranto*, *Mandamus*, *Certiorari*, Prohibition for the enforcement of

fundamental rights as well as any other legal rights. Article 32, itself a Fundamental Right, invests the Supreme Court with the power of Judicial Review for the enforcement of fundamental rights with the power to issue directions, orders and writs as well.

It is worth mentioning that Dr. Ambedkar who in course of his speech referred to draft Article 25 corresponding to the present Article 32, in the Constituent Assembly said:

"If I was asked to name any particular Article in the Constitution as the most important-an Article without which this Constitution would be nullity - I would not refer to any other Article except this one. It is the very soul of the Constitution and very heart of it and I am glad that the House has realized the importance".

During the debates in the Constituent Assembly Alladi Krishnaswami Aiyar upheld the unique position of the Supreme Court and remarked:

"The future evolution of the Indian Constitution will thus depend to a large extent upon the work of the Supreme Court and the direction given to it by the Court, while its function may be one of interpreting the Constitution....it cannot in the discharge of its duties afford to ignore the social, economic and political tendencies of the time which furnish the necessary background".

And these predictions have come true. Any aggrieved person could have direct access to superior Courts for obtaining quick relief against the state for violation of any fundamental right. In addition to the above provisions, Article 142 enables the Supreme Court to make such orders as are necessary to do complete justice in the cause; Article 141 provides that the law declared by the Supreme Court shall be binding on all; and Article 144 obliges all authorities to act in the aid of the Supreme Court.

Human Rights of Prisoners – Judicial Initiatives

The Supreme Court of India has taken a consistent view that right to legal aid, speedy trial, right to have interview with friend, relative and lawyer, protection to prisoners in jail from degrading, inhuman, and barbarous treatment, right to travel abroad, right to live with human dignity, right to livelihood, etc. though specifically not mentioned are Fundamental Rights under Article 21 of the Constitution. Thus, the Supreme Court of India has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of the prisoners and for effecting prison reforms. The Apex Court has developed Human Rights jurisprudence for the preservation and protection of prisoner's right to human dignity. The concern of the Apex judiciary is evident from the various cardinal judicial decisions. The decision of the Supreme Court in *Sunil Batra* cases was a watershed in the development of prison jurisprudence in India. The Supreme Court of India recognised several rights and protection for the prisoners. Few of such rights are discussed in the following paragraphs.

1. Right to free Legal Aid

The Indian Constitution does not expressly provide the Right to Legal Aid. But the judiciary has shown its favour towards poor prisoners those who are not in a position to engage the lawyers of their own choice because of their poverty. In *M.H. Hoskot v. State of Maharashtra* the Supreme Court laid down that right to free legal aid at the cost to the state to an accused who could not afford legal services for reason of poverty, indigence or incommunicado situation was part of fair, just and reasonable procedures implicit in Article 21. a three Judges Bench (V.R.Krishna Iyer, D.A.Desai and O.Chinnappa Reddy, JJ) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and Section 304 of Cr.PC together declared that the Government is under duty to provide legal services to the accused persons.

However the Constitution 42nd Amendment Act, 1976 has inserted Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution. This is the most important provision which speaks of Free Legal Aid. Though, this Article finds place in Part-IV of the Constitution as one of the Directive Principles and though this Article is not enforceable by courts, the principle laid down therein is fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making laws. While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice - social, economic and political, shall inform all the institutions of the national life. The Parliament has enacted Legal Services Authorities Act, 1987 under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39A. Under the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases.

2. Right to Speedy Trial

The right to speedy trial has become a universally recognized human right. The main procedure for investigation and trial of an offence with regard to speedy trial is contained in Section 309 of the Code of Criminal Procedure. If such provision is followed in its letter and spirit, then there would be no question of any grievance. But it is not properly implemented in its spirit. Therefore in *A.R.Antulay v. R.S.Nayak*, the Supreme Court has laid down following propositions which will go a long way to protect the Human Rights of the prisoners. In the instant case 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. Further in *Anil Rai v. State of Bihar* Supreme Court took a serious note of delay in delivery of judgements. The court observed that any inordinate, unexplained and negligent delay in pronouncing the judgement by the high court infringed the right under Article 21 of the Constitution.

3. Rights against Hand Cuffing

In *Prem Shankar v Delhi Administration*, Justice V.R. Krishna Iyer held that hand cuffing is *prima facie* inhuman and therefore, unreasonable, is over harsh and at the first flush, arbitrary. The Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of Equality before Law (Article 14), Fundamental Freedoms (Article 19) and the Right to Life and Personal Liberty (Article 21). The Supreme Court observed:

"To bind a man hand-and-foot', fetter his limbs with hoops of steel; shuffle him along in the streets, and to stand him for hours in the courts, is to torture him, defile his dignity, vulgarise society, and foul the soul of our constitutional culture". Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to "manacle a man is more than to mortify him, it is to dehumanize him, and therefore to violate his personhood...."

The rule thus laid down was reiterated in the case of *Citizens for Democracy vs. State of Assam & Ors.*

4. Rights against Inhuman Treatment

The Supreme Court of India in several cases has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to the concerned authorities for safeguarding the rights of the prisoners. 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 the *Raghubir Singh v. State of Bihar*, 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 violative of Article 21. The decision of the Supreme Court in the case of *D.K. Basu* is noteworthy. While dealing the case, the court specifically concentrated on the problem of custodial torture and issued a number of 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 or 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".

5. Rights against Solitary Confinement and Bar Fetters

The courts in India have consistently taken the view that imposition of solitary confinement is highly degrading and dehumanizing effect on the prisoners. It can be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from the other prisoners. The Supreme Court in *Sunil Batra* 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.

6. Right to have Interview with Friends, Relatives and Lawyers

The horizon of Human Rights is expanding. Prisoner's rights have been recognized not only to protect them from physical discomfort or torture in person, but also to save them from mental torture. The Right to Life and Personal Liberty enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to have interview with the members of one's family and friends is clearly part of the Personal Liberty embodied in Article 21. Article 22 (1) of the Constitution directs that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. This legal right is also available in the Code of Criminal Procedure under Section 304. The right to be defended by a legal practitioner, flowing from Article 22 (1) of the Constitution has further been fortified by the introduction of the Directive Principles of State Policy embodied in Article 39 A of the Constitution by the 42nd Amendment Act of 1976 and enactment of sub-section 1 of Section 304 of the Code of Criminal Procedure. Legal assistance to a poor person facing trial whose life and personal liberty is in jeopardy is mandated not only by the Constitution and the Code of Criminal Procedure but also by International Covenants and Human Rights Declarations. The court has held that from the time of arrest, this right accrues to the arrested person and he has the right of choice of a lawyer. In a series of cases the Supreme Court of India considered the scope of the right of the prisoners or detainees to have interviews with family members, friends and counsel. In *Dharambir v. State of U.P* the court directed the State Government to allow family members to visit the prisoners and for the prisoners, at least once a year, to visit their families, under guarded conditions.

In *Hussainara Khatoon v. Home Secretary, Bihar*, the Supreme Court has held that it is the Constitutional right of every accused person who is unable to engage a lawyer and secure le-

gal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the state and the state is under Constitutional duty to provide a lawyer to such person if the needs of justice so require. If free legal services are not provided the trial itself may be vitiated as contravening the Article 21. The Supreme Court expressed anguish at the "travesty of justice" on account of under-trial prisoners spending extended time in custody due to unrealistically excessive conditions of bail imposed by the magistracy or the police and issued requisite corrective guidelines, holding that "the procedure established by law" for depriving a person of life or personal liberty (Article 21) also should be "reasonable, fair and just".

In *Sheela Barse v. State of Maharashtra*, 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 v. State of U.P*, 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. The court ruled:

"The law of arrest is one of balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties of the single individual and those of individuals collectively....."

In another landmark judgement of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & others*, 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 severe restrictions.

Concluding Observations

A study of the notable cases of the Supreme Court speak of the fact that the Indian judiciary, through its positive approach and activism, has served as an institution for providing effective remedy against the violations of Human Rights. The functioning of judiciary reveals that it has exercised its powers in the most creative manner and devised new strategies to ensure the protection of Human Rights of the prisoners. In the recent past the Supreme Court of India has used the strategy of Public Interest Litigations as an aid to enforce the rights of prisoners. Judicial conscience recognized that the prisoners are also human beings and that the purpose of imprisonment is to reform them rather than to make them hardened criminals. From the perusal of the above contribution it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the prisoners. It has, through judicial activism initiated new tools and devised new remedies for the purpose of protecting the most precious Human Rights of the prisoners. Despite the deficiencies in the existing enactments, the judiciary on its own creative spirit had contributed much to prison justice thereby ensuring fundamental human rights of prisoners.

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