

## PROTECTION OF HUMAN RIGHTS OF PRISONERS IN INDIA: ROLE OF JUDICIARY

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### ABSTRACT:

Indian judiciary is ombudsman against infringement of basic rights assured under the Constitution along with it is the only defensive armor of the country & its Constitution & laws. Considering judiciary in our nation has playing pivotal role in enforcing the human rights of the prisoners. Of course the Supreme Court India is heralded as a beacon of rights against torture. The Supreme Court of India through 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 is examining of the landmark verdicts delivered by the higher judiciary in India to ascertain sentiments assumed & novel policies invented through Indian judiciary to safeguard the Human Rights of the prisoners.

**KEYWORDS:** Constitution, Human Rights, Supreme Court, prisoners.

### 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.<sup>1</sup> 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. The Supreme Court of India interpreted Art 21 of Indian 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 Supreme 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.

### 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, Indian Constitution conferred a number of basic rights on the public. Article 21 of the Constitution guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or humiliating conduct to some being whether he is Indian national otherwise foreigner. Article 21 states, "No person shall be deprived of his life or personal liberty except according to process established via law". Apex Court, throughout modification of Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of convicts' rights for upkeep of dignity of

individual. Deprivation of existence & 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 & Others*, while court held that Article judiciary 21 requires that no one shall be deprived of his life or personal liberty. The process should be fair, reasonable & just and not arbitrary, whimsical or fanciful. The Indian judiciary has been very active and vigilant in protecting the human rights of the prisoners.

## PRISONERS AND THE HUMAN RIGHTS

The Supreme Court of India in the recent past has been very vigilant against infringements on Human Rights of convicts. Right to life & Personal Liberty is the back bone of the Human Rights in India. Through its positive approach & Activism, Our judiciary has served as an organization for providing efficient remedy against the violations of Human Rights. By giving a liberal and comprehensive meaning to "life & personal liberty," Courts have devised and have established overabundance of rights. The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21. In *A.K. Gopalan's Case*, the court had taken the view that each Article stated separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be erroneous in *Maneka Gandhi case* & held that they are not equally elite but form a single scheme in the Constitution, that they are all parts of an integrated scheme into the Constitution. In instant case, the court declared that "ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty & procedure prescribed for their deprivation" & opined that the procedures prescribed by law must be fair, just and reasonable.

In following cases like **Maneka Gandhi, Sunil Batra (I), M.H. Hoskot and Hussainara Khatoon**, the Supreme Court has taken the view that the provisions of part III should be given widest possible interpretation. Every activity which facilitates the exercise of the named Fundamental Right may be considered integrated part of the Article 21 of the Constitution. It has been held that right to legal aid, speedy trail, right to have interview with friend, relative & lawyer, protection to prisoners in jail from degrading, inhuman, and barbarous treatment, right to travel in a foreign country, right exist with human dignity, right to livelihood, etc. however specially not mentioned are Fundamental Rights under Article 21 of the Constitution. One of the most powerful dimensions that began throughout PIL is Human Rights of prisoners. The Supreme Court of India has considerably widened the scope of Article 21 and held that its safeguard will be accessible for protection elementary rights of prisoners and for effecting prison reforms. The Supreme Court by its progressive interpretation made Article 21, which guarantees the Right to Life and personal liberty, the reservoir of prisoner's rights. Under the seventh schedule of the Constitution of the India, the prison administration, police and law and order are to be administered by the respective states. The states have generally given low priority to prison administration. In fact, some of the decisions of the Supreme Court on prison administration have served as eye openers for the administrators and directed the states to modernize prison administration. The Human Rights savior 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 Constitution after Maneka Gandhi's case, throughout PIL has unfolded the true nature and scope of Article 21. In this thesis, an attempt is made to analyze the new dimensions given by the Supreme Court to Article 21 through Public Interest Litigation to safeguard the fundamental freedom of the individuals who are indigent, illiterate and ignorant. Public Interest Litigation became a focal point to set the judicial process in motion for the protection of the residuary rights of the prisoners.

Judicial conscience acknowledged that Human Rights of prisoners as of its reformist loom & faith that convicts are also human beings and that the purpose of imprisonment is to reform them sooner than to create them hard-bitten criminals. Concerning treatment of prisoners, Article 5 of the Universal Declaration of Human Rights, 1948 says "No one shall be subjected to torture or brutal handling, in human or humiliating treatment or punishment". Whilst Article 6 of Universal Declaration of Human Rights, 1948 contemplates that "everyone has the right to recognition everywhere as a person before law". Article 10 (1) of International Covenant on Civil & 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 Supreme Court of India has developed Human Rights jurisprudence for the preservation and protection of prisoner's right to Human Dignity. The concern of judiciary is obvious as of the different basic judicial decisions.

### 1. RIGHT TO FREE LEGAL AID

The main object of the Free Legal Aid scheme is to provide means by which the principle of equality before law on our legal system is based. In the absence of Free Legal Aid to the poor and needy, essential rights & persons Freedoms guaranteed through respective Constitution & International Human Rights covenants have no value.

The Indian Constitution does not expressly provide the right to Legal Aid. However judiciary has revealed its favour towards deprived 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 Apex Court reading Articles 21 & 39-A, with Article 142 & Section 304 of Criminal Procedure Code together declared that the Government is under duty to provide legal services to the accused persons.

### 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 fraction of constitutional culture in India & therefore not standing 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, vulgarize society, & 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 over to mortify him, it is to dehumanize him, & therefore to violate his personhood...."

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

### **RIGHT TO SPEEDY TRIAL**

Speedy trial of offences is one of fundamental goals of the criminal fairness 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 guilty & to pardon the innocent. Everybody is presumed to be innocent until the guilty is proved. So, the quality or innocence of the accused has to be determined as rapidly as probable. It's consequently, current on court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed & accused persons are not indefinitely stressed. It is relevant to states that "impediment in trail by itself constitute denial of justice" which is said to be "justice delayed is justice denied". It is completely essential that persons accused of offences should be rapidly tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is totally essential. Right to speedy trial has become a generally 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 Supreme 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 judgments. The court observed that any inordinate, unexplained and negligent delay in pronouncing the judgment by the high court infringed the right under Article 21 of the Constitution.

### **RIGHT TO HAVE INTERVIEW WITH FRIENDS, RELATIVES AND LAWYERS**

**In Prabha Dutt Vs Union of India**<sup>18</sup>, 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*<sup>19</sup>, 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 void<sup>20</sup>. 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 violate of Art 14 and 21 of the constitution.

#### 4. RIGHTS AGAINST INHUMAN TREATMENT

The Supreme Court of India in several cases has taken a grave note of inhuman treatment on prisoners & has issued suitable 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. Court observed that “the treatment of a human being which legal services on account of reasons such as scarcity, poverty 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 while wants of justice consequently necessitate.

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 too growing & court has been getting complaints regarding infringement of human rights because of indiscriminate arrests. The court observed that there is the right to have someone informed. The court ruled:

Human Rights are part and parcel of Human Dignity. The Supreme Court of India in various cases has taken a serious note of the inhuman treatment on prisoners & for protection of rights of the prisoners and persons in police lock-up. The court experiential that “treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to level of a beast would surely be random & may 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 death of a suspect due to torture in a police lock-up.

#### CONCLUSION

Every individual has a human right while he has committed crime as he also has some dignity which must be protected. However, at the same time conferring conjugal rights to prisoners in jail premises needs re-consideration of a superior bench of the High Court or the Supreme Court as far as the concept of human rights is involved.

Our Indian Judiciary in relation to safeguard of Human Rights of prisoners specifies that judiciary has been playing a role of saviour in situations where the executive and legislature have failed to address troubles of people. The Apex Court has come ahead to take remedial measures and provide necessary directions to the executive and legislature.

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