

HUMAN RIGHTS OF PRISONERS IN CRIMINAL JUSTICE SYSTEM WITH SPECIAL REFERENCE TO REFORMATION PERSPECTIVE

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Abstract

Human rights are basic rights which are available to all human beings. The development in human rights perspective has widened the perspectives and, dimensions of life initiating new saga which needs more State attention towards the miserable condition of prisoners and the appalling approach of criminal justice system towards them. It is true that there is no society which is free from crimes and criminals and that's why there is a need of prisons to provide the convicted person the reformatory environment though at the same time it provides punitive measures that work towards retribution, deterrence and prevention of crimes. Incarceration is the widely used practice of punishment inflicted upon the prisoners. However, a prisoner does have certain basic rights which cannot be denied to him unreasonably by virtue of being a human being. It is the responsibility of any criminal justice system to maintain a balance between the rights of prisoners and the challenges of correction, rehabilitation and reformation during the time of incarceration in the prison. In India, there are several issues related to the miserable plight of the prisoners and violation of their rights as there are many flaws in the criminal justice system. In the present paper, the author will discuss and analyse the issues present in criminal justice system regarding the rights and questionable plight of the prisoners and focus on suggesting the remedial measures from the reformation perspectives and for the welfare of prisoners.

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INTRODUCTION

Human rights are the basic or fundamental rights which are available to every individual since his or her birth for being a human. They are universal and self-evident. In this social structure, every person carries and enjoys some rights and duties towards his society and community which work on mutual co-operation. These rights are rudimentary for the identity and development of a person which cannot be taken away by anyone. The existence of these basic rights is known as human rights which have social ends as well as individual ends. In the line, the idea of human rights is also stand on the same footing for the prisoners as well. International societies as well as States now have started taking care of the prisoners in criminal justice system. Now, they are no more left out without human rights. Generally, the term prisoner includes the convicted as well as under trail prisoners or an accused person.

HISTORICAL DEVELOPMENT OF HUMAN RIGHTS

Human rights are a twentieth century name of the practice which has been known as Natural Rights from ages. The rights of man have been the focal point of all civilizations from time immemorial. The roots of human rights can be found in the ancient cultures of the world. Perhaps, the Greeks were the first civilization to develop a clearly articulated and comprehensive idea of rights that further led towards the development of human rights globally. Originally, Human rights are originated from the philosophy of natural law or *jus naturalis*. It is believed that Greek philosophers developed the concept of natural law and defined it coherently. Natural rights are the offspring of natural law and these rights are not provided by any government under special circumstances, but these are possessed by every individual by virtue of being a human being, rational creature¹.

The development of global history of human rights is the product of the Greek Philosophy, the Judeo-Christian tradition and Renaissance. Thus, the Western Europe was the centre stage of the happening of the events took place in the role of human rights. The Greek citizens used to enjoy certain rights as *isonomia* (equality before law), *isotimia* (equal respect for all) and *isogoria* (equal freedom of speech). At the time of Hellenistic period, the Stoic philosophers developed the philosophy of natural rights which was for all human beings in all times. The Romans followed the steps of the Stoics in this regard. In middle ages, Thomas Aquinas provided firm backing to natural law and considered it higher than the positive law

¹ Richa Sharma, *History and Law Relating to Human Rights*, (1st ed. Satyam law International 2017), pp.1-15

which is believed and obeyed by all.

Despite the knowledge of the concept of human right, the plight of human beings was not good. Natural rights were in fetters and they got liberated after the advent of renaissance. With the *Magna Carta*, a new era of liberties and rights started that proved a torch bearer for several revolutions in Europe for freedom and against atrocities of the ruler. The Magna Carta was signed in 1215 A.D. which made about the protection of rights very clear. The Declaration of Bill of Rights accomplished the task which Magana Carta started off.

In the 17th Century, the social contract philosophy of Thomas Hobbes, John Locke and J.J. Rousseau deeply put a great impact on the development of human rights. *American Declaration of Independence* was adopted on 4th July, 1776 that was the result of the philosophies of those great philosophers who had great impact on the masses. The Declaration clearly stated that all men are created equal and they have inalienable right which cannot be taken away by any force.

Human rights are the result of aftermaths of the Second World War. The brutality, cruelty and holocaust that the world experienced were horrible and cannot be defined in words. The consequences of the Second World War were intolerable and gruesome. Such circumstances and dissatisfaction among the masses lead to the development of an organisation, United Nations Organisation, which could ensure safety, security, peace, tranquillity and happiness to the world. The Preamble of the U.N. charter pledges for the re- affirmation of human rights which is one of the objects of the U.N. Before the formulation of U.N.O., after the First World War the League of Nations was established this proved to be ineffective and resulted in sheer failure.

After the Second World War, the Charter of United Nations asserted to protect weak nations from the ravages of future wars and avert the possibilities of any war. It aims to protect human rights for all. The Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December, 1948 that became a water mark in the world history and enshrined a new era of humanity and compassion. To provide a binding effect to the human rights through Universal Declaration of Human Rights, the General Assembly adopted two Covenants (1) The International Covenant of Civil and Political Rights (ICCPR) and (2) The International Covenant on Economic, Social and Cultural Rights (ICESCR).

DEVELOPMENT OF HUMAN RIGHTS IN INDIA

The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the extracts of Confucius' Philosophy are the great and oldest written source of human rights which recognise the idea of duty, rights, reasonable restrictions and responsibilities to all human beings to be followed in their life. There are several religions also as Jainism, Buddhism and in later years Bhakti movement which contributed a lot in the development of human rights. These religious practices taught humans about peace, brotherhood, togetherness, and righteous principles to be followed in life. Essential features of human rights are portrayed in Vedas, Smritis and Kautilya's Arth Shastra and these are recognised and adopted by the United Nations Organisation in the most prominent document of human rights i.e. Universal Declaration of Human rights and Indian Constitution also stands on this footing.

In Hindu way of life, *Dharma* plays a vital role. It is applicable to all human beings in all spheres of human life without any exception and excuses. Rule of Dharma used to regulate individual conduct and protects the rights of individual. Concisely, Dharma used to regulate and balance the mutual obligations of the person and the society in which he lives.²

India had a great sense and sensibility of human rights in its tradition and culture since time immemorial. Indian philosophers, scriptures and literature available clearly vouch the existence of human rights since Vedic Age. Rig Veda advocates three basic rights for all human beings, (i) *Tana* (body), (ii) *Skridhi* (dwelling place), (iii) *Jibhasi* (life).

MEANING OF HUMAN RIGHTS

According to U.N., *"Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination."*³

Section 2(d) of the Protection of Human Rights Act, 1993 defines human rights in these words, *"human rights are the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and*

² Justice H. R. Khanna, *Rule of Law and Human Rights In India*, (Universal Law Publication Co. Pvt.Ltd; 2012), pp.3-7

³ Human Rights, *United Nations*, Available at: <https://www.un.org/en/sections/issues-depth/human-rights.html> (Accessed on: 22.10.2019, 2pm)

enforceable by Courts in India”.

INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF THE PRISONERS

International community also recognise the rights of prisoners. It is considered that a prisoner (convicted or under trial) is also a human being due to the fact that he is in custody doesn't stop to be a human being. He has certain rights with some restrictions off Corse. There are several conventions and treaties formed to protect and ensure certain rights to the victims that cannot wither away.

The Universal Declaration of Human Rights⁴ ensures a prisoner some rights which as follow:

1. It ensures the right to life, liberty and security of person⁵.
2. It provides that no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁶
3. It provides equality before the law and equal protection of law. It deals with right to equality to all human beings.⁷
4. It ensures effective remedy in case of violation of fundamental rights.⁸
5. It guards from arbitrary arrest and detention to everybody⁹.
6. Everyone has right to fair trial and hearing¹⁰.
7. No person shall be considered innocent until proved guilty¹¹.
8. Ex post facto law which states that the accused will be punished as per the law which is applicable at the time of the commission of the offence. No extra and heavy penalty will be inflicted upon the person.¹²

⁴ UDHR, United Nations, Available at: <https://www.un.org/en/universal-declaration-human-rights.html> (Accessed on 22.1.2019, 2pm)

⁵ Article 3

⁶ Article 5

⁷ Article 7

⁸ Article 8

⁹ Article 9

¹⁰ Article 10

¹¹ Article 11(1)

¹² Article 11(2)

Likewise, to strengthen the human rights and the rights of the prisoner, the General Assembly of United Nations adopted the International Covenant on Civil and Political Rights, 1966¹³ on 19 December, 1966. Some of the rights are mentions as follows;

1. Everyone has right to life and no one shall be deprived of his right to life. This right shall be protected by law¹⁴.
2. In case of death sentence, it can be imposed only as per the law and in the most serious crimes. It can be provided to the person only after the final judgement of the competent court.¹⁵
3. The accused got the death sentence has right to appeal for pardon or commutation of the death sentence¹⁶.
4. No one shall be subject to inhuman, degrading treatment or punishment.¹⁷
5. No person shall be subject to arbitrary arrest and detention. No person shall be deprived of his liberty except the procedure established by law on reasonable grounds.¹⁸
6. If any person is arrested shall be informed about the grounds of his arrest¹⁹.
7. The arrested person shall be presented in front of the court for the appropriate trial proceedings.²⁰
8. If anyone is arrested on the basis of unlawful arrest and detention shall be compensated.²¹
9. The accused person shall be treated with dignity and humanity. No humiliation of the accused person will be allowed in any circumstances.²²

¹³ ICCPR 1966, United Nations; Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.html> (Accessed on. 22.10.2019, 2pm)

¹⁴ Article 6 (1)

¹⁵ Article 6(2)

¹⁶ Article 6(4)

¹⁷ Article 7

¹⁸ Article 9(1)

¹⁹ Article 9 (2)

²⁰ Article 9(3)

²¹ Article 9(5)

²² Article 10 (1)

10. Reformation and social rehabilitation of the prisoner will be paid attention for their improvements. Juvenile offenders shall be segregated from the adult prisoners as per the legal status and due to their tender age²³.
11. All will be treated impartially and equally in front of the courts and tribunals.²⁴
12. The accused person shall be presumed innocent until he is proved guilty²⁵.
13. The accused person shall be informed of the charges put against him. Proper time will be provided to him to prepare for his defence. Trial will be conducted to provide witnesses and proper opportunity will be provided to him to cross examine the witnesses²⁶.
14. Everybody is has equal protection of law and equality before the law. No discrimination will take place on the basis of race, cast, sex, Religion and nationality etc.²⁷

In this direction to protect the rights of prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Adopted by General Assembly resolution 43/173 of 9 December 1988²⁸. Amnesty International in 1955 provided certain rules for treatment of prisoners. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) were adopted by the General Assembly of the UN on 17 December, 2015. These rules are revised rules of “United Nations Standard Minimum Rules for the Treatment of Prisoners”²⁹.

RIGHTS OF THE PRISONERS IN INDIA

With the span of time and with the efforts of international bodies, a great concern and attention is being paid towards the human rights particularly towards the criminal justice

²³ Article 10 (3)

²⁴ Article 14(1)

²⁵ Article 14(2)

²⁶ Article 14(3)

²⁷ Article 26

²⁸ The Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment, United Nations; Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx.html> (Accessed on 22.10.2019, 2pm)

²⁹ The Nelsen Mandela Rules, *The United Nations Standard Minimum Rules for The Treatment of prisoners*; Available at: https://www.un.org/en/events/mandeladay/mandela_rules.shtml (Accessed on 22.10.2019, 2pm)

system. India is also following these footsteps to implement human rights of the prisoners in criminal justice system which is discussed as below.

Constitutional Law

Constitutional law is the supreme law of the country. All laws derive their authority from the Constitution of India. It is the supreme law of the land provides powers and define the domain of the organs of the State. On the other hand, it renders fundamental rights to its citizens. Likewise, it provides certain rights to the prisoners to protect them from the dark side of the criminal justice system. These rights are enshrined in part 3 of the Constitution discussed as follows:

1. Protection in respect of conviction for offences

Article 20 of the Constitution ensures some safeguards to the prisoner to protect himself. These provisions are mentioned below;

- a. *Ex post facto law* states, “no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”

The rule is sound and clear in its message that the accused person shall not be convicted retrospectively and the penalty shall imposed on him as per the law applicable at the time of the commission of the offence. Thus no increased or heavy punishment shall be inflicted upon the accused person.

In **Kedar Nath v. State of West Bengal**³⁰, the Supreme Court denied to impose enhanced penalty on the accused for the act committed in 1947 and clearly set aside the additional fine put by the amended act.

- b. *Protection against Double Jeopardy* says, “no person shall be prosecuted and punished for the same offence more than once.” It protects an accused from to be put twice in peril for the same wrong or crime.

³⁰AIR1953 SC404

In **Zahira habibullah H. Sheikh v. State of Gujrat**³¹, (2004)4 SCC 158, in this case Article 20(2) was not allowed by the Supreme Court and directed retrial of the accused after the acquittal by the trial court. The Court stated that to invoke the principle of double jeopardy, it is mandatory that the first trial was conducted before the competent court.

- c. *Protection against self- incrimination* protects an accused person against the compulsion of accused to give evidence against him.³² This protection is provided to the accused person in criminal justice system under Article 20 (3).

In **M.P. Sharma v. Satish Chnadra**³³, the Supreme Court provides the embodiment of the principle in these features:

- a. It is a right belongs to a person who is an accused of a crime.
 - b. It is a protection against compulsion to be a witness.
 - c. It is a protection against any kind of compulsion put on him to give evidence against him.
2. *Protection of life and personal liberty* is provided under Article 21 of the Constitution which is having very wide application. This right is so dynamic and organic and fulfilling the requirements of the people on great scale. This right is the outcome of the judicial creativity and activism which has added several dimensions to it. Consequently, this right carries variety of rights. Article 21 says that “no person shall be deprived of his right to life and liberty except the procedure prescribed by law. Initially, before the arrival of **Maneka Gandhi v. Union of India**³⁴, Article 21 provided protection only against the arbitrary action of the executive but not against the legislature. This case is a landmark in the development of fundamental rights and provided a wider approach to the judiciary to understand the scope of the rights in India.

Likewise, it provides several safeguards to the accused person and protects his life from any kind of unreasonable and unjustified encroachment. These rights are

³¹ (2004)4 SCC 158

³² Kavita Singh, *Custody Jurisprudence*, (Eastern Law House, 2018).

³³ AIR1954 SC300

³⁴ AIR 1978 SC 597

listed below:

- a. *Protection from police atrocities and custodial violence:* In India, custodial violence is not a new phenomenon. There are various ways of custodial violence by the police as rape, torture brutally, death, inhuman treatment etc. Custodial violence is prevent and common due to extort information and conduct investigation. However, law provides a proper procedure to the investigating agencies to conduct investigation and extort information. It is mandatory on the part of the system to maintain discipline and a balance between the requirements of the police and the rights of the accused person but the reality is not hidden.

In this regard, a landmark judgement can be discussed which tries to curb the arbitrary police power and custodial violence. In **D.K. Basu v. State of West Bengal**³⁵, the Supreme Court laid down certain guidelines to be followed by the police authority.

- b. *Right to free legal aid:* Right to free legal aid is the part of Article 21 of the Constitution as well as it is an obligation on the State to provide free legal aid to promote justice and provide equal opportunity to all to defend and protect. Any action against the accused person without providing him free legal aid is fatal and futile so it is a fundamental right to the accused.
- c. *Right to bail:* It is necessary on the part of the criminal justice system to maintain a balance between individual's interest and the interest of the society. It is apparent that no right is absolute and reasonable restrictions can be imposed. In **Babu Singh v. State of Uttar Pradesh**³⁶ the Court stated that denial of grant of bail in murder case without any reasonable ground would amount to denial of personal liberty under Article 21 of the constitution.
- d. *Right against solitary confinement:* Solitary confinement is a total seclusion of the prisoner from the other prisoners. Deprivation of comingling and talking with other prisoners. In **Sunil Batra (No1) v Delhi Administration**³⁷ the question was raised by the prisoner about the validity of solitary confinement.

³⁵ AIR 1997SC610

³⁶ AIR 1978 SC 527

³⁷ AIR1978SC1575

In this case, the Supreme Court held that solitary confinement encroaches the Article 21 of the Constitution if not justified and not supported by the law in any sense.

- e. *Right to reformation and rehabilitation:* Under the pursuit of article 21 and the landmark judgement provided in *Maneka Gandhi case* has added a new dimension to the right to life. Every prisoner is entitled to the right to reform and rehabilitation in the prison for a better life. They have right to life in jail with dignity and right to get equal treatment.
- f. *Right to speedy trial:* It is the integral part of the criminal justice system to provide speedy and fair trial to the accused person otherwise it will be violation of the right of the person and failure of the system as well. Speedy justice is the essence of justice because justice delayed is justice denied. In **Hussainara Khatoon (no 1) v. Home Secretary, State of Bihar**³⁸, a petition was filed to by a number of under trail prisoners waiting for their trials for several years. The Supreme Court held that right to speedy trial is fundament a right under Article 21. Speedy trail is the essential part of the criminal justice system that cannot be avoided.
- g. *Right to socialise with family and friends:* It is clearly stated by the Supreme Court in **Francis Coralie v. Union Terrotory of Delhi**³⁹ that every arrested person has a right to meet his family member and to consult his lawyer. If a detenue is deprived of his right to socialise them without any reasonable cause, it will to violation of is fundamental right under Article 21 of the constitution. So, it cannot be denied to the arrested person as being part of personal liberty.
- h. *Right against handcuffing:* In **Prem Shankar v. Delhi Administration**⁴⁰, the Supreme Court criticised the practice of handcuffing in these words; “Handcuffing is *prima facie* inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent of fair procedure and objective monitoring to inflict ”irons” is to resort to zoological strategies repugnant to Article 21 ”

³⁸ AIR 1979 SC 1360

³⁹ AIR 1981 SC746

⁴⁰ AIR 1980 SC1535

- i. *Right to compensation:* Whenever a person is victimized and tortured by the system, it is the responsibility of the State under criminal justice system to compensate that person at any cost. The right to compensation is provided under Article 21 of the Constitution to compensate the loss, the injury, death and suffering caused due to the crime.

In **People's Union for Civil Liberties v. Union of India**⁴¹, the court followed Nilabati Behera case and stated, "Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation for enforcing fundamental rights, are enforceable".

- j. *Right to wages:* Prisoners have right to get appropriate wages in lieu of the labour provided by them. Directive Principles of State's Policy also emphasis on right to wages.

3. Right against arbitrary arrest and detention

Article 22 of the Constitution provides safeguards against arbitrary arrest and detention. It provides a procedure by applying which a person be deprived of his personal liberty. Article 22 deals with two kinds of procedural matters, one deal with when a person is arrested under any ordinary criminal law and second one is applicable when a person is detained under preventive detention. Those rights are mentioned under Article 22(1) and Article 22 (2). They as follows;

- a) The grounds of arrest should be informed to the person,
- b) The right to consult the lawyer of his choice,
- c) The right to be produced before a Magistrate within 24 hours and
- d) The freedom from detention beyond 24 hours except by the order of the Magistrate.

In **Joginder v. State of U.P.**⁴², the Supreme Court provided guidelines governing arrest of a person during investigation. It tries to create a balance between the needs of the police on the one hand and the protection of rights of the citizens from the atrocities of the police department.

⁴¹ AIR 1997 SC 1203

⁴² (1994) 4 SCC 260

A. Rights of the prisoners provided in Criminal Procedure Code, 1973

1. An accused person is protected against arbitrary and unlawful arrest .(Section 41, 41-A, 55, 151),
2. Protection from unlawful and arbitrary searches. (Section 93, 94, 100, 165),
3. Protection from unnecessary restraint.(Section 49),
4. Right to be informed of grounds of arrest (Section 50),
5. Right to be released on bail (Section 436, 436 –A, 50 (2),
6. Right to obtain a receipt in case of seizure of the property. (Section 100),
7. Right to be medically examined. (Section 54),
8. Right to fair and speedy investigation. (Section 309),
9. Right to be defended (Section 303),
10. Right to legal aid. (Section 304),
11. Right to plea bargain,
12. Protection from Double jeopardy. (Section 300),
13. Right of the accused not to be detained more than 24 hours. (Section 57),
14. Protection against answering to which can expose the accused to any criminal charge or to a penalty or forfeiture. [Section 161(2)] and
15. Right of the accused at the time of recording of confession. (Section 164 (2)

B. Indian Evidence Act

Confession to police is inadmissible in front of the court of law in evidence against him. (Section 25 and 26)

C. Prisons Act, 1984, Prisoner's Act, 1900 and Prison Attendance Act 1955 also casts several rights upon the prisoners regarding separation of male and female prisoners, solitary confinement, under trials, civil prisoners, work, physical protection etc.

SUGGESTIONS FOR REFORMATION IN PRISON TO STRENGTHEN HUMAN RIGHTS OF PRISONERS

- i. There are several issues pertaining in prisons as lack of space, prison violence by peers, drugs, sexual abuse, torture, mental and physical sickness, mal treatment by prison authorities etc. With the span of time and with human rights initiatives, several steps have been taken place against such issues existing in prisons and affecting the rights of the prisoners. Not only this, there are several fake encounters have been

reported on the part of India police which are condemnable. No doubt that arrest, detention and investigation these are the parts of the duty of the police but the police officials should take notice of the fact that nowhere in the constitution and in any legal framework arbitrary and unlawful behaviour is allowed.

- ii. However, some remedial measures and suggestions are provided to protect the human rights of the prisoners herein as follows;
- iii. There should be regular programmes and workshops to sensitise and educate the police personnel and jail authorities towards their role and duties. They should be well informed about the value of human rights and their importance in criminal justice system.
- iv. Senior officers should monitor the functioning of the subordinates to keep a check and balance on prison violence.
- v. The court should be pro- active and efficient in dissolving the complaints of prison violence, custodial violence and police atrocities quickly without taking much time. It should not prolong and delay in punishing the culprit.
- vi. Time to time, some cultural and sports activities should take place to bridge eth gap between the jail authorities and the prisoners in healthy manner.
- vii. Legal aid programmes should be organised constructively time to time.
- viii. There should be counselling programmes and proper training of vocation courses to help the prisoners learn and earn after their incarceration. Some financial help should be provided to the prisoners in their rehabilitation after the fulfilment of punishment.
- ix. The labour of prisoners should be used in near locality community so that they would be able to interact with people outside. This will motivate them in following discipline properly in jail.
- x. Prisoners should be made aware of their rights. National Human Rights commission and NGOs can join their hands and take initiatives to educate prisoners about their rights and remedial measures in case of violations.
- xi. To motivate discipline in prisons, the government can work on constructing open prisons. It will be a great step in the reformation of prisoners. Reformation and rehabilitation that take place in open space will be very different from reformation and rehabilitation practices in closed prisons or conventional prisons.

CONCLUSION

Human Rights are the basic rights of an individual in society to lead life happily. Every person has and is entitled to rights in society to enjoy several benefits. Every human being has a right to live with dignity and respect. In prison also, a person does not stop to be a human being. He still possesses some rights over there. However, despite all human rights and legislative frameworks provided for the protection of the prisoners, the truth is that their condition is troublesome and appalling. Still constant, tenacious and audacious steps will have to be taken to achieve the objectives of human rights for the prisoners and the State will have to make its intention very clear to do so.