

RAY OF HOPE FOR HUMANITY BEHIND THE BARS

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Abstract

“In our world, prisons are still laboratories of torture, warehouses in which human commodities are sadistically kept and where spectrums of inmates range from driftwood juveniles to heroic dissenters”- Justice V. R Krishna Iyer

The constitution of each and every country talks about the word ‘Human Dignity’. Does this word does not suits on the person who is behind the bars? If it is so why we always talk about the rights of a human being and why we are always silent on the topic of rights of the prisoner. This is so because we do not treat that person into the category of human beings if he or she commits a crime. This is thought of that society towards the person who commits a crime. Society always believes in the notion “once a criminal is always a criminal”. But nobody looks the circumstances that it is that social environment and context which had forced him or her to do such offence. Therefore the people of modern society always treat prisoner or convict as “a person who is no more a human being”. Does a person under prison is no more a human being? Won’t that person be a member of that human race if he commits a crime? Does that person behind the bar is debarred to be included within the category of human beings? Does a prisoner or a convict be outside the sphere of the word “dignity”? It is very unfortunate that the civilized society is not been able to provide just the minimal rights to the prisoners. “Man has advanced his mind but never tried to advance his thought process”. A person behind the bar also belongs to the same society where other human beings belong. Thus, “Imprisonment does not deprive prisoner to have certain basic rights”.

Keywords: Prisoners, Crime, Imprisonment, Human Dignity, Fundamental Rights

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“A prisoner does not shed his basic constitutional rights at the prison gate”¹

INTRODUCTION

Does a person on becoming a prisoner lose all his rights to human existence? Whether that person is excluded from the category of “human beings”? The father of the nation i.e. Mahatma Gandhi Ji said that “Every person is a mixture of good and evil², is there not plenty of evil in us? There is enough of it. The fundamental rights guaranteed under the constitution are not absolute but contain many restrictions on their enjoyment. Right to freedom of the person is one of the most important rights that have been calculated foremost into the category of fundamental rights.³ When a person is convicted or punished for any offence or put in prison his status is considered different from an ordinary human being because a prisoner is devoid of all fundamental rights that can be claimed by him. How a prisoner is treated inside the prison? Nobody cares because a prisoner is no more a part of that society of human beings if he or she commits the offence. The reality is that a prisoner is treated and served with the food of cruelty and barbarous making the prisoner aware that now he won’t be counted as a human being and he would further be known not by his name but he would be called a criminal by that society which considered him earlier as a human being. This is the story of the entire prisoners who are put behind the bars of inhumanity. We always talk about the dignity of an individual. Whether a person behind the bar has nothing to do with the word of dignity? Whether a prisoner loses to have self-respect and self-worth after being convicted of an offence? Why prisoners are made to suffer, just because they are criminals and the only way is to treat them like animals. Why we are not following the reformatory theory? Providing death punishment for all offence will decrease the crime rate. There is a universal tagline that “*Human beings are not born criminals but they are made*”. If human beings are not born criminal then what is the reason behind every crime? How a human being is turned into a criminal? Is there any factory that made a human being to do a criminal act? Yes, there is a factory and the name of that factory is

¹ The view was observed by Justice P.N Bhagwati in *Francis Corah Mullin v. The Administrator, UT Delhi*, AIR 1981 SC 746

² Gandhi M.K. Harijan, 10-6- 1939, pp158-159

³ The right to freedom of the person comprises the following:— Article 20(1) protection against ex-post facto laws; Article 20(2) protection against double jeopardy; Article 20(3) privilege against self-incrimination; Article 21 Protection of personal life and liberty; Article 22(1 to 3) Protection in case of arrest; Article 22(4 to 7) Safeguards in case of preventive detention; The fundamental rights under Article 19 are conferred only on citizens, but the discussed above are available to all persons, whether citizens or not.

“social environment and social context” that forces a person to do that act.

HUMAN RIGHTS *versus* PRISONER’S RIGHTS

“We all are prisoners but some of us are in cells with windows and some without” - Kahlil Gibran

There is big line that is always drawn between the human rights and prisoner’s rights. Majority of people believed that one who is convicted and is undergoing punishment does not deserve to have any kinds of right of his or her human existence. But what rights actually means? If anybody who is having knowledge of rights will never raise question on prisoner’s rights. Rights are legal, ethical, political, social and economic natural rights by society enforced by state without which human beings cannot survive. Every human being is entitled to have the basic rights without any discrimination of his or her status. Why we are not been able to provide just the basic rights to that humanity behind the bars? Albert Einstein while addressing at Chicago has said that the existence and validity of human rights are not written in the stars but these are ideals which the human being has evolved through struggle and conviction which resulted from historical experience.⁴ Human rights are the natural rights which are provided to all human beings without any discrimination.

PRISONER’S RIGHTS

“Prisons are built with stones of law”- when Human rights are harassed behind the bars constitutional justice come forward to uphold the law-William Black

A prisoner does not lose all rights when being imprisoned. They lose only the part of rights which are necessary consequences of the confinement and the rest of the rights are preserved.⁵ A prisoner is a person who is deprived of liberty while being in a confinement. The rights of prisoner are governed by national and international law. International convention include International covenant on Civil and Political Rights 1966. It provides that “Every prisoner who is detained, including every sentenced prisoner has right to live with human dignity including least exercise and provision, at State as well as national expenses of adequate accommodation, nutrition, reading materials and medical treatment. The binding principle at International level is that “all persons deprived of their liberty shall

⁴ Albert Einstein. Ideas and Opinions, New York: Random House (1954)

⁵ A. K. Roy v. Union of India & Another, AIR 1982 SC 710

be treated with humanity and with respect for the inherent dignity of human person.”⁶ In general, the prisoners will not be tortured nor subject to cruelty, inhuman and degrading treatment and punishment.⁷ According to Article 10 the United Nations committee on International Covenant on Civil and Political Rights, the state party must have positive obligations towards all people who are deprived of their liberty to be treated with humanity and with dignity while dealing with the prisoners.⁸

It is a well-established fact that conviction or death punishment to prisoner for a crime does not reduce a person into non-person, so he is entitled to basic rights which are available to him inside the prison. Different court through different interpretations had widened the scope of prisoner’s rights and held that prisoner is a human being as well as natural person. Being a prisoner he or she does not ceases to be a human being and natural person.

*“Conviction for crime does not reduce the person into a non-person, whose rights are subject to the whim of the prison administration and therefore, the imposition of any major punishment within the prison system is conditional upon the absence of procedural safeguards”.*⁹

PRISONER’S RIGHTS *versus* FUNDAMENTAL RIGHTS

The apex court of India held that conviction for crime and imprisonment does not put farewell to the fundamental rights mentioned in Part III of Indian constitution to the humanity behind the bars. Constitutional “Karuna” is thus injected to incarceration strategy to produce and reform prison justice.¹⁰ The Supreme Court held that the conditions of detention cannot be extended in such a way that it deprives the fundamental rights of the prisoner.¹¹ Prisoner retains all the basic rights which are enjoyed by the citizens of India except those which is lost at the time of confinement. Moreover the rights enjoyed by the prisoner under Article 14, 19 and 21, though are limited but it does not mean they are static

⁶ International Covenant on Civil and Political Rights, 1966, Article 10(1). This is also reiterated by Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1979 and Article 2 of the Code of Conduct for Law Enforcement Officials, 1979.

⁷ Article 7, International Covenant on Civil and Political Rights

⁸ General Comments No. 21, UN Human Rights Committee on Civil and Political Rights, 1992, para 4.

⁹ *Charles Wolff v. McDonnell*, (1974) 41 Law Ed 2nd 935, *DBM Patnaik v State of Andhra Pradesh*, AIR 1974 SC 2092, *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675

¹⁰ *Charles Sobaraj v. Supdt Central Jail Tihar*, AIR 1978 SC 1514

¹¹ *State of Maharashtra v Prabhakar Pandurang Sanzgir*, AIR 1966 SC 424

and will rise to human heights when challenging situation arises.¹²

“Every prisoner’s liberty is circumscribed by the very fact of his confinement in the prison cell, but his interest in the limited liberty left to him only to more substantial”- Justice Dougals

Right to fair procedure: The “embryo” or the traces of prisoner’s right in India can be find in the most celebrated decision of *A.K Gopalan v. State of Madras*¹³ it was held that when a prisoner is totally deprived of his personal liberty under the procedure that has been established by the law, the fundamental rights including right to freedom of movement are not available¹⁴ but a prisoner cannot be denied to have the basic fundamental rights. Another most important case was the *State of Maharashtra v. Prabhakar Padurang*¹⁵ in this case it was held that the conditions of detention cannot be extended to the deprivation of fundamental rights consistent with the facts of detention.

Right to life and Personal Liberty: “By the term “life” means more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any organ of the body through which soul communicates with the outer world”¹⁶ – Field J.

The Honourable Supreme Court of India has adopted the annotation of Article 21 and expanded the concept of life given by Field J that “life means more than mere physical existence”. Right to life is not restricted to mere animal existence. It means more than just physical survival.

Right to live with Human Dignity: In the new and wider interpretations of Article 21 of Indian constitution the Honourable Supreme Court of India held that ‘Right to live’ does not mean the confinement to physical existence but it includes within the ambit the right to live with Human dignity.¹⁷ While expanding and widening the ambit of Article 21, the Supreme Court of India held that the word ‘life’ may include all those things which are the bare

¹² Supra note 10

¹³ AIR 1950 SC 27

¹⁴ Id., B.K.Mukerjee J. at p. 93

¹⁵ AIR 1966 SC 424

¹⁶ Field J. in *Munn v. Illinois*, 94 US 11

¹⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 followed in *Francis Coralie v. Delhi Administration*, AIR 1981 SC 746

necessities of life such as food, shelter, clothing and adequate nutrition.¹⁸ The Supreme Court also extended the concept of life and held that ‘Life’ is not limited to “death” but, when a person is executed with death penalty and doctor gave the death certificate and dead body was not lowered down for half an hour after the certificate of death, is thus violation of Right to life under Article 21 of Indian Constitution.¹⁹ It is thus only because of wider interpretation of Article 21 which has guaranteed every human being outside or behind the bars certain basic rights and not even the State has the authority to violate those rights. A prisoner does not cease to be a human being even when he or she is lodged in a jail, prisoner still continues to enjoy certain basic fundamental rights including right to life.²⁰ There have been debates over the topic that convicts are not wholly devoid of their fundamental rights.

*“However, a prisoner liberty is in the very nature of things circumscribed by the very fact of his or her confinement. His interest in the limited liberty left to him is the more substantial”.*²¹

Right to Health and medical Treatment: Right to health and care is an essential ingredient of Article 21 of the Indian constitution. Article 21 casts an obligation over the state to provide health and medical facilities to all human beings. Every doctor has an obligation to preserve the life of others and state cannot interfere to delay and avoid the discharge the services extended by medical profession. Denial of government hospital to provide medical facilities to an injured person is a violation of “right to life” under Article 21 of the Indian constitution. “Preservation of human life whether it is outside or inside the prison is of paramount importance”²². The right to health and medical treatment is a basic human right. The Gujarat High Court held that the jail authorities are under the obligation to take care of ailing convicts and it is the duty of the jail authorities to provide them the medical facilities and take them to the hospitals for medical treatment.²³

Right to Speedy Trial: Speedy trial is a part of fundamental right inserted under Article 21 of the Indian Constitution. Delay in disposal of cases is denial of justice so every court is

¹⁸ *Francis Coralie v. Delhi Administration*, AIR 1981 SC 746

¹⁹ *Pandit Parmanand v. Union of India*, (1995) 3 SCC 248

²⁰ *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, AIR 2000 SC 2083

²¹ *DBM Patnaik v. State of Andhra Pradesh*, AIR 1974 SC 2092

²² *Parmanand Katara v. Union of India*, AIR 1989 SC 2039 : (1989) 4 SCC 286; *Consumer Education and Research Center v. Union of India*, (1995) 3 SCC 42; *Kishore Brothers Ltd v. Employee's State Insurance corporation*, (1996) 2 SCC 682

²³ *Rasikbhai Ramsing Rana v. State of Gujarat*, (DB) 1997 Cr LR (Guj) 442

expected to adopt and take necessary steps for expeditious trial and quick disposal of cases.²⁴ The court held that right to speedy trial is available to all accused at all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. The court further said that the accused cannot be denied the speedy trial on the ground that he had failed to demand a speedy trial.²⁵

“Justice delayed is justice denied” “if the stream of justice dries there would be discontent, disharmony and chaos in the society as that stream does not fulfil the thirst of person for justice”

Right to free Legal aid: A substantial or we can say a major part of prison population in the country consists of under trials and those inmates whose trial is yet to commence. Thus right to free legal aid is an essential mandate of Article 21 of Indian constitution. The Supreme Court held that free legal aid and assistance at state cost is a fundamental right of a person accused of offence which may involve jeopardy to his life and personal liberty.²⁶ Neither the state government nor any government can deny, providing the concept of free legal aid and assistance to the accused and the state government is under constitutional mandate to provide legal assistance to a poor accused by pleading financial or administrative inability.²⁷

Regarding this right of free legal aid, Justice Krishna Iyer said that “This is the state’s duty and not government’s charity”. If a prisoner is unable to exercise his constitutional right to appeal including Special Leave to appeal for want of legal assistance, the court will grant him such rights under Article 142, read with Article 21 and 39 A of the constitution. The power to appoint or assign counsel to the prisoner does not object to the lawyer named by the court. On the other hand implication of free legal aid and assistance is the duty of the state and state must pay the lawyer an amount fixed by the court.²⁸

CONCLUSION

“An eye for an eye only ends up making the whole world blind”-Mahatma Gandhi

²⁴ *Kadra Pahadiya v State of Bihar*, AIR 1983 SC 1167

²⁵ *A.R. Antulay v. R.S. Nayak*, AIR 1984 SC 1630, again some directions were passed by SC in the case of *Common Cause Society v. Union of India*, AIR 1996 SC 1619

²⁶ *Sukdas v. Arunachal Pradesh*, AIR 1986 SC 991

²⁷ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369 and followed in the case of *Khatn (II) v. State of Bihar*, AIR 1981 SC 928

²⁸ *MH Hoskot v. State of Maharashtra*, (1978) 3 SCC 544 : AIR 1978 SC 1548

The present scenario is that even after conviction of person, the role of judiciary does not come to an end. But even after this, Judiciary has to play effective and supervising role with regard to the treatment of prisoner inside the prison. When a person is put inside the prison he loses some fundamental rights such right to freedom of movement, freedom of association etc. but still he is entitled to have some basic rights inside the prison. The state is under constitutional obligation to protect the humanity behind the bars.

“Bail is the rule and Jail is the exception” - Justice Krishna Iyer

The prisoners are entitled to claim the residuary fundamental rights even when they are imprisoned in the jail. Thus, a prisoner is entitled to have rights such as

- Right to live with human dignity
- Right to have fair trial
- Right to have Speedy trial
- Right to Bail
- Right to have Parole
- Right to have medical and health facilities
- Right to free legal aid
- Right to consult lawyers
- Rights of inmates of protective homes
- Right against cruel and unusual punishment
- Right to have reasonable wages in prison
- Right against bar fetters, handcuffing and protection from torture.

There have been many judgments which have clearly elaborated the rights of prisoners. But what is actually happening in India we all are aware that a thing which is in the document has never made a practical application in India. The people of India are made to realize that there have been many things that have been going for the prisoner but in reality no schemes are made available to them. These schemes may look good only in documents but never

tried to have its practical application. Does anybody know how many people are there inside the prison? How many of them are still under trial? How many of them are imprisoned without any offence. Nobody even research for such things because a person who is behind the bar is no more to be called as human being? The leader of the state makes many policies for the people but nobody makes any scheme for the prisoner. When the budget of nation is presented in the house of people every section of society is provided with certain benefits but have anybody said about the word 'prisoner and his rights' whether any budget that has been passed in the house of people contain something for the humanity behind the bars. We provide millions of budgets to every department but nothing has been done to improve the prison justice. Does anybody sees a politician going to prison just to see what is actually happening in the prison cell. The answer is no because people behind the bars cannot vote.

"Society is guilty if anybody suffers unjustly"- Justice Krishna Iyer