

HUMAN RIGHTS OF PRISONERS AND UNDER TRIALS – A STUDY WITH REFERENCE TO CENTRE PRISON OF VISAKHAPATNAM

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Abstract

Human right is a modern term but the principle that it invokes is as old as humanity. This article addresses human rights in their complexity by dealing with the legal dimension of human rights and the moral dimension of human rights. The article related to, current theories of human rights are examined on prisoners of three basic questions concerning human rights with reference to centre prison of Visakhapatnam:

- (1) why prisoners have them;*
- (2) who is included as a subject of human rights; and*
- (3) how they are related to other forms of rights.*

Keywords: Human rights, Constitution of India, Indian prison system, under-trials, self-incrimination

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INTRODUCTION

Human right is a modern term but the principle that it invokes is as old as humanity. It is that certain rights and freedoms are fundamental to human existence. They are inherent entitlements that come to every person as a consequence of being human, and are founded on respect for the dignity and worth of each person. The article deals with the various aspects of Human Rights, in the light of Human Rights of Prisoners under Trials. The great gift of classical and contemporary human thought to culture and civilization is the notion of Human Rights. The struggle to preserve, protect and promote basic Human Rights continues in every generation in each society. Today we widen the sphere of Human Rights thought and action to new arenas and Constituencies.¹ As UN Secretary General Mr. Kofi Annan observed *Human Rights are the foundation of human existence and co-existence. Human Rights are universal, indivisible and inter-dependent.* Human Rights are what make us human. They are the principles by which we create the sacred home for human dignity. When we speak of the right to life, or development, or to dissent and diversity, we are speaking of tolerance. Tolerance - promoted, protected and enshrined - will ensure all freedoms, without it, we can be certain of none. Human Rights are the expression of those traditions of tolerance in all religions and cultures that are the basis of peace and progress. Human Rights are foreign to no culture and native to all nations. Tolerance and mercy have always and in all cultures been ideals of government rule and human behaviour. Today, we call these ideals Human Rights. It is the universality of Human Rights that gives them their strength. It endows them with the power to cross any border, climb any wall, defy any force.

The struggle for universal Human Rights has always and everywhere been the struggle against all forms of tyranny and injustice - against slavery, against colonialism, against apartheid. It is nothing less and different today.²

The expression 'Human Rights' had its origin in International law, appertaining to the development of the status of an individual in the International legal system which was originally confined to the relation between sovereign states, who were regarded as the only persons in International Law. For all practical purposes, the genesis of this International aspect of Human Rights is not older- than the Second World War, though the concept of an

¹ Human Rights in Constitutional Law by Acharya Dr. Durga Das Basu Ch-I, p.1, Prentice Hall of Indian Private Ltd., New Delhi-110001

² India ratified on 10-04-1979

individual having certain in-alienable Rights. As against a Sovereign state had its origin in the dim past, in the somewhat nebulous doctrines of natural law and natural rights.³

Every human being is divine being and has little to dignity,, liberty and other basic rights.⁴ The concept of human rights has two basic meanings. The first is that inherent and inalienable rights are due to man simply because of being man. They are moral rights which are derived from the humanness of every human being, and they aim at ensuring the dignity of every human being. The second meaning of human rights is that of legal rights, established according to the law-creating process of societies both National and International. The basis of these rights is the consent of the governed, which is the consent of the subjects of the rights, rather than a natural order which is the basis of the first meaning.⁵

Human life and human dignity have been disregarded and violated throughout the history and continue to be violated today. Nevertheless the idea of rules common to all human beings without discrimination dates back many centuries. It is often called natural law, which implies the concept of a body of rules that ought to prevail in society. The principle of equality recognized in natural law, was long accepted as the source and standard of political rights.

During the eighteenth century the early ideas of natural law developed into an acceptance of natural rights as legal rights and these rights for the first time became a basic part of National Constitutions, thus reflecting an almost contractual relationship between the State and the individual which emphasized that the power of the State derived from the assent of the free individual. The American Declaration of Independence and the French Declaration of the Rights of Man and Citizen were based on this premise. The status of human rights takes us to the life style of a society, the Magna Carta, the Bill of rights of the Rights of Men are the products of their society. Jefferson himself was a slave owner and the French Declaration or the Rights of Men and Citizen did not apply to women or and slavery. Although these several monuments of human rights were achievements in their own way and time.⁶ Lenin's Declaration of the rights of working and exploited people had relevance to the Russian Revolution even as the Objectives resolution moved by Nehru in the Constituent Assembly

³ Covenant on Civil and Political rights 1966 covenant on Social, Economic & Culture Rights-1966: General Assembly Resolution 45/11 of 14th Dec, 1970 on Prisoners right.

⁴ Krishna Iyer, V.R. Human Rights and the law,(1984) 9 Vedpal Law House, Indore

⁵ Leven, Leah, Human rights, (1981) (UNESCO, Paris) at p. 11

⁶ Supra note No.1 at 4

was history in the mankind, not hortative rhetoric. This dialectical angle reveals that the compulsions of the global holocaust and Nazi savagery accounted for the integrated agenda of Peace. Human and Survival and the Dignity and Worth of Human Person and the glorious developments at the International level, of the rainbow of human rights.⁷

India adopted the concept of ‘rule of law’ and ‘democratic’ system and created institutions to protect the people. The Constitution of India guaranteed some of human rights to its people. But the Constitution of India neither gave a new crime control model sensitive to freedom and democracy, nor subjected the pre-trial process, managed mostly by the police to comprehensive Constitutional controls, nor guaranteed to the persons in police custody the needed effective safeguards to direct, regulate and bridle the discretion of the police. Although police raj was well known to Nehru, Patel and others, the torture was still a rumbling volcano; the Constitution contained no specific right against torture, cruel, in-human or degrading punishment or treatment or unreasonable search and seizure. It made the right against self-incrimination available only to the accused and left the suspect to the mercy of the police trained to use brute force. It contained no right to speedy trial and allowed arbitrary and archaic bail system.

Before 1977, the view prisoners are non-persons, that assured fundamental rights are not available to them by their incarceration received considerable support in the celebrated Gopalan’s case. In a situation of callous and near-total disregard for human rights in the administration of Indian prison system, one would have expected that judiciary would provide a major forum for vindication rights and amelioration of prison conditions.⁸ Although Indian Courts have not really developed a judicial handset doctrine concerning the internal administration prisons, they have in effect shown a lack of appreciation concern for conditions of detention.⁹

The post-emergency Court has taken rapid strait in claiming prison justice as its own province, transformation owes tremendously to the crusading spirit Mr. Justice Krishna Iyer. The Court encourages prisoners- under trials as well as convicts – to app confidently to the Court for violations of legality by authorities.

⁷ Ghouse, Mohammad, “ State Lawlessness and the Constitution A study of Lock-up dath”, in comparative Constitutional Law (1989) (EBC, Lucknow) p. 248 at 252

⁸ Baxi, Upendra. The Crisis of the Indian Legal System (1982) (Vikas Publications, New Delhi.) at 209

⁹ *Ibid*

In Sunil Batra Case Justice Krishna Iyer observed on fundamental rights of the prisoners the whenever fundamental rights are flouted or legislative protection ignored to any prisoner's prejudice, his Court writ will run, breaking through stone walls and iron Bars to right the wrong and to restore the rule of law.¹⁰

SCOPE AND LIMITATION OF STUDY

The scope of the study is aimed at the Constitutional and & Statutory protection to the prisoners and under trials.

It must make it clear that the expression Prisoners are and 'under trials classified as under-trials, convicts and condemned. The under-trials are those who have been sent to judicial custody, while their cases are tried in courts convicts are those serving a sentence and the' condemned are those who have been sentenced to death. The expression 'under-trial' prisoner used in wide sense even to include persons who are in judicial custody on remand during the investigations.

OBJECTIVES OF THE STUDY

- (1) To trace the evolution of the human rights for the protection of Prisoners and under-trials.
- (2) To discuss the role of the judiciary in protecting the human freedoms of the prisoners and under-trials.
- (3) To examine the conditions of Prisoners and under-trials in the Central Jail of Visakhapatnam.

HYPOTHESES

Keeping in view of the above objective the following hypotheses are formulated:

1. The human rights provisions under the national and international instruments have not ensured required protection to the Prisoners and Under-Trials.
2. The Judicial mandates to mitigate the rigour of under-trials have little impact on the conditions of Prisoners and under-trials.
3. The human rights and the judicial pronouncements have no impact on the conditions of the Prisoners and under-trials in the jails.

¹⁰ Charles Sobraj v. The Sup. Central Jail, Thihar, New Delhi (1979) 1 SCR 512 at pp. 514-515

METHODOLOGY

The reliability and dependability of any research study mainly depends upon the method that is applied. In the present study both doctrinal and non-doctrinal methods are applied, it includes case study, historical methods and the problem is studied from its social and economic angles.

The non-doctrinal study is based on empirical investigations of prisoners and under-trials with reference to the human right provisions confined to the Central Jail of Visakhapatnam of Andhra Pradesh. The data is collected through an 'interview schedule' method from prisoners and under-trials that were willing for the same. The collected data is presented in the last chapters. The data is analyzed and interpreted. The derived conclusions are correlated to the hypotheses and the hypotheses are tested.

CONCLUSION

The attitude of society towards prisoners may vary according to the object of punishment and social reaction to crime in a given community. If the prisons are meant for retribution or deterrence, the condition inside them shall be punitive in nature inflicting greater pain and suffering and imposing severe restrictions on inmates. On the other hand, if the prison is used as an institution to treat the criminal as a deviant, there would be lesser restrictions and control over him inside the institution.