

them with work¹⁸. Therefore, the question of permanent unemployment insurance does not arise. However, a short break in employment owing to retrenchment or shut down of any factory is pensionable. Soviet

Labour Legislation guarantees the right to work and permits the dismissal of a worker by management only with the agreement of factory and local trade union committee and on grounds stipulated by law¹⁹.

HUMAN RIGHTS OF PRISONERS — JUDICIAL RESPONSE

By

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Introduction

Human rights are based on respect for the dignity and worth of all human beings and seek to ensure freedom from fear and want. The traditional view of Human Rights limits them to civil and political rights. Presently, it emphasizes a comprehensive view of human rights, stressing both the protection and promotion of Human rights.

In the modern days, one of the important topics for discussion is "Human Rights". Across the world, the protection of human rights has attracted much attention. In every society, the recognition and protection of Human Rights is considered as a symbol of welfare to mankind. In International level there is a mandate on the nations to implement conventions relating to human rights. In India, the importance of human rights were recognized in olden days, the respect and the recognition for human rights are considered as the way of life than an obligation.

Human Rights can role at the present moment include economic, social and cultural rights. For example, the Right to Equality includes several economic, social and cultural rights. Human Rights also include a right to a good Government, right to peace, right to education, right to health and right to a clean and healthy environment. Thus, it is seen that Human Rights aim to provide protection against the autocratic powers of the State and to create a suitable environment for the development of an individual.

The right to legal services is the prisoners' fundamental right. Right to speedy trial is also a prisoner's human right. The right to speedy trial is a part of Article 21. Article 21 guarantees certain precious rights to a prisoner taken in custody by the State. The State is under an obligation to respect these rights. In the event of negligence of failure to respect them, the State becomes liable in damages. Every accused has a right to know the reasons of the charge against him, Article 21 and Article 22 provide safeguards to him. They are not only the human right of the accused, but also mandates of the Constitution of India to the State. Every accused has a right to be produced within 24 hours of his arrest. He has also a right of open trial under Section 327 of the Code of Criminal Procedure, 1973.

In India, the idea of rights of prisoners was long suppressed under the colonial rule and has only recently emerged in public discourse. The Constitution of India confers a number of fundamental rights upon citizens. The Indian State is also a signatory to various international instruments of human rights, like the Universal Declaration of Human Rights.

The Indian freedom struggle played a crucial role in initiating the process of identifying certain rights for the prisoners. After independence, the Constitution of India conferred a number of fundamental rights upon citizens. Article 21 of the Constitution guarantees the right of personal

18. Articles 12 and 118 of the Soviet Constitution.

19. *Robert Conquest*, Industrial Workers in the USSR (The Bodley Head Ltd., London, 1967), P.19.

liberty and thereby prohibits any inhuman, cruel or degrading treatment to any person whether(s) he is national or foreigner.

The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners' rights to maintain human dignity. Although it is clearly mentioned that deprivation of Article 21 is justifiable according to procedure established by law, this procedure cannot be arbitrary, unfair or unreasonable.

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.

Role of the judiciary in protecting of Human Rights:

The need for prison reforms has come into focus during the last three to four decades. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. Prisoner's rights have become an important item in the agenda for prison reforms.

The Indian Supreme Court has been active in responding to human right violations in Indian jails and has, in the process, recognized a number of rights of prisoners by interpreting Articles 21, 19, 22, 32, 37 and 39A of the Constitution in a positive and humane way. Given the Supreme Courts' overarching authority, these newly recognized rights are also binding on the State under Article 141 of the Constitution of India which provides that the Law declared by the Supreme Court shall be binding on all courts within the territory of India.

Rights of the prisoners have been expressed under the Indian Constitution as well as Indian laws governing prisons. The Supreme Court and High Court rulings have played a crucial role in an enumerating the rights of prisoners.

A land mark judgement by justice V.R. Krishnan Iyer enumerated basic human rights of the prisoners. Mr. Sunil Batra had written a letter from Tihar Jail, Delhi to the Supreme Court providing information about the torture and inhuman conditions of the prison. This case has become a landmark case in prison reforms. This case is recognized the various rights of prisoners in the most comprehensive manner. The judgement held that: *"No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of the court. All other freedoms belong to him to read and write, to exercise and recreation, to meditation and chant, to comforts like protection from extreme cold and heat, to freedom from indignities such as compulsory nudity, forced sodomy and other such unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self-expression, to acquire skills and techniques. A corollary of this ruling is the Right to Basic Minimum Needs necessary for the healthy maintenance of the body and development of the human mind. This umbrella of rights would include: Right to proper Accommodation, Hygienic living conditions, Wholesome diet, Clothing, Bedding, timely Medical Services, Rehabilitative and Treatment programmes"*

Another land mark judgement pronounce by the judiciary is the right to compensation in cases of illegal deprivation of personal liberty. The Rudal shah case is an instance of breakthrough in Human rights Jurisprudence. The petitioner Rudal Shah was detained illegally in prison for more than fourteen years. He filed Habeas Corpus before the court for his immediate release and, inter alia, prayed for his rehabilitation cost, medical charges and compensation for illegal detention. After his release, the question before the court was "whether in exercise of jurisdiction under Article 32, could the court pass an order for payment of money? Was such an order in the nature of compensation consequential upon the deprivation of fundamental right? There is no expressed provision in the Constitution of India for grant of compensation for violation of a fundamental right to life and personal liberty. But the judiciary has evolved

a right to compensation in case of illegal deprivation of personal liberty. The Court granted monetary compensation of Rs.35,000 against the Bihar Government for keeping the person in illegal detention for 14 years even after his acquittal. The Court departed from the traditional approach, ignored the technicalities while granting compensation.

The decision of Rudal Shah was important in two respects. Firstly, it held that violation of a constitutional right can give rise to a civil liability enforceable in a civil court and; secondly, it formulates the bases for a theory of liability under which a violation of the right to personal liberty can give rise to a civil liability. The decision focused on extreme concern to protect and preserve the fundamental right of a citizen. It also calls for compensatory jurisprudence for illegal detention in prison.

In India, the court have acknowledged and several judgements recognize a wide array of fundamental and other rights of prisoners.

The judgements passed by Indian courts suggest that they are sensitized to the need for doing justice to people to whom justice had been denied by a heartless society for generations. Although several judgements have recognized the rights of prisoners, these have resulted in few amendments to legislation. While judicial sensitivity and activism is appreciable, it must be borne in mind that the country's criminal justice system still suffers from substantive and procedural deficiencies; once a citizen is arrested, even if on a relatively minor charge, he/she could be held in custody for years before his/her case comes up for trial. Those who are affluent are still being able to negotiate their way around numerous obstacles that lie on the road to justice. For an ordinary citizen, an encounter with the law is very much the stuff nightmares. There is a long course before the Indian judiciary to be followed in order to achieve the goal of social justice.

Though various rights have been granted to prisoners, in reality, they do not reach the

prisoners. An outstanding example is the right to speedy trial. A huge backlog of case impedes the delivery of justice and this is a violation of the rights by the court itself. Similarly, free legal aid is an idealistic goal, but presently far from reality. Many of the prisoners do not know about the services and they are unable to utilize it.

The right to legal aid of the prisoners:

It was the duty of the State that to provide legal assistance to an accused who is too poor to engage a lawyer. It can be inferred that the right to consult and be defined by a lawyer of choice conferred by Art.22(1) couple with the reasonable procedure required by Art.21, would put the State under an obligation to make legal assistance under Art.39-A to a needy accused person detained in custody. This innovative method of protecting the accused is one of the greatest contributions made by the judiciary to the system of Penal Justice in India.

In *Khatri v. State of Bihar*, it was held that the State cannot escape from its constitutional obligation to provide free legal aid to poor person who cannot afford legal service on the ground of financial or administrative inability.

In other words of *Bhagwati, J.*

"The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal service on account of indigence, and whatever is necessary has to be done by the State. The State may have its financial constraints and its priorities in expenditure but the law does not permit any Government to deprive its citizens of Constitutional rights on the plea of poverty."

In *Sheela Barse v. Union Territory* custodial violence to women prisoners confined in police lock-up was complained of. The Supreme Court held in this case that Constitutional obligation to provide to the indigent persons free legal aid emanates from

Articles 14, 21 and 39-A. The Supreme Court ordered that the Maharashtra Free Legal Aid Board should affix a pamphlet in triplicate – language (Hindi, English and Marathi) about free legal aid in each cell for the knowledge of the arrested persons.

The State should provide free legal aid to the poor even if the poor accused had not demanded it, since failure to provide free legal aid to an W accused vitiate the trial. If the trial takes place without affording a counsel to the accused at the State expense, the same amount to violation to the Fundamental Right of the accused under Art. 21 of the Constitution and the trial would be considered vitiated (*Moolchand v. the State* 1990 Cr.L.J. 682). The accused should get a fair trial and while taking recourse to the provision of the Criminal Procedure Code for engaging a State Defence Counsel where the accused is unable to engage one sufficient care should be taken by the court to give it to an able hand.

Wages to Prisoners:

The work that prisoners do has been devalued in a decision of the Supreme Court in *State of Gujrat v. High Court of Gujrat*. A judge in the case has held that:

Prisoners are not entitled to minimum wages, particularly where they have been sentenced to rigorous imprisonment, and it is part of their sentence to do hard labour.

The non-payment of wages in prison will not amount to a violation of the constitutional dictum on the right against exploitation.

Where they do earn a wage, apart from deductions for their maintenance in the prison, money may be taken from it to pay to the victim as compensation. There is a complete negation of the rehabilitative potential of work and wages, and a re-introduction of the purely punitive in this judgement of the court that human rights advocates and activists will have to contest.

Prison jurisprudence since the late '60s recognizes that prisoners do not lose all rights because of imprisonment. Yet, there is a loss rights within custodial institutions which continue to occur. For instance, it was found that the status of all the women in the Agra Protective Home was public knowledge, and there was no confidentiality attaching to this information. There was segregation within the institutions of those found to be HIV positive, and, for a while, the Supreme Court too endorsed this. The rules governing women in these institutions uncannily resemble prison rule – such as those concerning visitors, letters, even punishment for conduct within the institutions.

Conclusion:

The Jail Reforms Committee 1980-1983 has also made recommendations regarding prisoners' rights and the Committee appear to have been inspired and influenced by judicial pronouncements on various issues. Some of the rights recommended for incorporation of "National Prison Legislation" are Right to human dignity, Right to minimum needs, Right communication, Right to access to law, Right against arbitrary prison punishments, Right of meaningful and gainful employment, Right to be released on due date.

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