

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Critical Appraisal of Judicial Creativity in the Development of Prison Reforms

ADITI SHREENIVAS PRABHUNE¹

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but how its lowest ones”

- Nelson Mandela

ABSTRACT

Liberty is one of the most precious and cherished possessions of a human being and this would resist forcefully any attempt to diminish it. Similarly, rehabilitation and social reconstruction of life convict, as objective of punishment become paramount importance in a welfare state. All men are born Equal and they are endowed by their creator with similar basic rights. These rights are mainly rights of life and liberty which has been recognised by various Constitutions of world, but if there are some persons who don't comply with ethics and standards of society then that person is deprived of these rights with proper punishment.

If there is a Society without crime is a Utopian theory. The State has to achieve the goal of protecting the society from convict and also to rehabilitate the offender. There is a very real risk of revenge attack upon the convict from others. Punishment enables the convict to expiate his crime and assist his rehabilitation. This research Paper aims at understanding the judicial reforms and judicial creativity in understanding the Prisoners right with the help of various constitutional provisions and providing suggestions for the development of prison system in India.

Keywords: *Judicial Creativity, Prison, Reformation*

I. INTRODUCTION

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 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 prisons are used as an institution to treat the criminal as a deviant, there would be lesser restrictions and control over him inside the institution. The modern progressive view, however, regards crime as a social

¹ Author is a student at Symbiosis Law School, Pune, India.

disease and favours treatment of offenders through non- penal methods such as- probation, parole, and opens jail, etc. whatever be the reaction of society to crime, the lodging of criminals in prison gives rise to several problems of correction. Rehabilitation and reformation which constitute vital aspects of prison administration.

The rights of prisoners were not recognised in India at all during British rule and the time of freedom fight has seen the worst situation of prisoners. The Indian struggle has played most crucial role in identifying the rights of prisoners. There is a famous quote -

“Hate the crime and not the Criminal”

- ***Mahatma Gandhi***

If a person commits any crime it does not mean that he ceases to be a human being, thus all fundamental rights are enforceable in reality, though they are restricted by the fact of imprisonment. “A person who is once a criminal, need not always be a criminal”, is one of the main agenda of the existing criminal justice system². Under Constitution of India, the Supreme Court with its Judicial Creativity has interpreted various fundamental rights for the benefits of prisoners such as- Article 14, 19, 21, 22, 32, 37, 39A, 226.

II. JUDICIAL CREATIVITY TOWARDS PRISON REFORMS AND PRISONERS’ RIGHTS

The judiciary has not only played a great role in deciding on the question of rights of prisoners and approach to be adopted while dealing with them as there are many other renderings of Courts which deal with some other aspects of prison justice. A brief resume of earlier decisions would be helpful to tread the path further.

Rights of Prisoners recognised under Constitution of India: A convicted prisoner is not barred by his fundamental rights though he truly not enjoys all the fundamental rights like other common men but some of the fundamental rights are recognised for the prisoners as a basis of human rights. Constitution of India has not clearly mentioned the rights for prisoners but through judicial interpretation they are recognized through precedents, as in the case of ***T.V. Vatheeswaran v. State of Tamil Nadu***³, it was held that the Articles 14, 19 and 21 are available to the prisoners as well as freemen.

The High Court of M.P in ***S.P Anand v. State of Madhya Pradesh***⁴, has extensively dealt with the basic rights which are available to the prisoners despite curtailment of their right to liberty.

² Malik, Krishna P., “Penology, Victimology and Correctional administration in India”, 1st edition, Allahabad Law Agency, Faridabad, 2011, p.283

³ AIR 1983 SC 361 : (1983) 2 SCC 68.

⁴ AIR 2007 MP 166

The Supreme Court has given great importance that a prisoner needs to be identified, whether a convict, under-trial, he does not cease to be a human being and, while lodged in jail, he enjoys all his fundamental rights guaranteed by the Constitution of India including the right to life guaranteed by the Constitution. Though a person is convicted and deprived of his liberty in accordance with the procedure established by law; a prisoner still retains the residue of constitutional rights⁵.

In the case of *State of Gujrat v. High Court of Gujrat*⁶, The Supreme Court reiterated that reasonable wages should be paid to prisoners for the work or labour done while in prison and laid down guidelines for the same. The court further held that conviction for crime does not reduce the person into a non-person whose rights are subject to whims for prison administration.

Article 14 of the Constitution of India acts as a torchbearer for the prison authorities and its administration to determine various segregations of prisoners and their object of reformation.⁷

Article 19 of the Constitution of India guarantees six freedoms to the all citizens of India. Among these there are certain freedoms which could not be for prisoners because of the very nature of these freedoms. But the “freedom of speech and expression”⁸ and “freedom to become member of an association” is there for the prisoners.

Article 21: Today, the judiciary, by its art of interpretation, has discovered a variety of rights of suspects, accused persons and prisoners, who are in police custody. The fundamental right of 'life and personal liberty' has been interpreted by the Supreme Court of India in a broad spirit and various rights have been included in the ambit of Article 21 of the Constitution.

Article 21 of the Constitution of India focuses on two crucial concepts i.e., right to life and principle of liberty. In the following mentioned cases- *Maneka Gandhi*, *Sunil Batra (I)*, *M.H.Hoskot*, the Supreme Court has taken the view that the provisions of part III of Constitution of India there needs to be widest possible interpretation.

It was held that right to legal aid⁹, speedy trial¹⁰, right to have interview with friend, relative and lawyer, protection to prisoners in jail from degrading, inhuman, and barbarous treatment¹¹, right

⁵ Jain M.P., “Indian Constitutional Law”, 5th Edition, Vol. 1, Wadhwa and Company, Nagpur, 2003, p.1295.

⁶ AIR 1998 SC 3164

⁷ Chowdhury Roy Nitai, “Indian Prison Laws and Correction of Prisoners”, Deep and Deep Publications, New Delhi, 2002, p.75.

⁸ Article 19(1)(a) of the Constitution of India.

⁹ M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544

¹⁰ Rattiram v. State of M.P., (2012) 4 SCC 516.

¹¹ Jagmohan Singh v. State of U.P., AIR 1973 SC 947.

to live with human dignity, right to livelihood, Right of inmates of protective homes¹², etc. though these rights are specifically not mentioned as Fundamental Rights under Article 21 of the Constitution. The Supreme Court of India recognised several rights and protection for the prisoners. Few of such rights are discussed in the following paragraphs. Thus, the Supreme Court of India has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of the prisoners and for effecting prison reforms. The Supreme Court of India has developed Human Rights jurisprudence for the preservation and protection of prisoner's Right to Human Dignity.

Following are the rights which are guaranteed to the prisoners under the Indian Constitution though Judicial Interpretation:

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 which the edifice of our legal system is based. It also means financial Aid provided to a person in matter of legal disputes. In the absence of Free Legal Aid to the poor and needy, Fundamental Rights and Human Freedoms guaranteed by the respective Constitution and International Human Rights covenants have no value.

Maneka Gandhi vs. Union of India¹³ case was a catalyst which laid down a foundation for interpreting Articles 39-A and 21, widely to cover the whole panorama of Free Legal Aid. In the instant case the Supreme Court held that procedure established by law in Article 21 means fair, just and reasonable procedure.

However the Constitution 42nd Amendment Act, 1976 has inserted Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution. This is the most important provision which speaks of Free Legal Aid. Though, this Article finds place in Part-IV of the Constitution as one of the Directive Principles and though this Article is not enforceable by courts, the principle laid down therein is fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making laws. While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice - social, economic and political, shall inform all the institutions of the national life. The Parliament has enacted Legal Services Authorities Act, under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39A. Under

¹² Upendra Baxi v. State of U.P., (1983) 2 SCC 308

¹³ A.I.R 1978 SC P.597

the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases.

2. Right to Speedy Trial: The right to speedy trial has become a universally 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 Apex 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.

Taking the principle of fairness and reasonableness evolved in *Maneka Gandhi's* cases, the Supreme Court in *Hussainara Khatoon (I) VS. Home secretary*⁸ case held that “Obviously procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair, or just unless that procedure ensures a speedy trial for determination of the guilty of such person. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21. There can be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21. Thus, the right to speedy trial is implicit in broad sweep and content of Article 21 of the Constitution. Hence any accused that is denied this right of speedy trial is entitled to approach the Supreme Court for the purpose of enforcing such right.

3. Rights against Hand Cuffing: In *Prem Shankar v Delhi Administration*¹⁴, 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 part of the constitutional culture in India and thus not standing the test of Equality before Law (Article 14), Fundamental Freedoms (Article 19) and the Right to Life and Personal Liberty (Article 21).

4. Rights against Inhuman Treatment: Human Rights are part and parcel of Human Dignity. The Supreme Court of India in several cases has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to the concerned authorities for safeguarding

¹⁴ 9AIR 1980 SC 1535

the rights of the prisoners. The Supreme Court read the right against torture into Articles 14 and 19 of the Constitution. The Court observed that “the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14”.

5. Rights against Solitary Confinement and Bar Fetters: The Supreme Court has also reacted strongly against putting bar fetters to the prisoners. The court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of the Constitution of India. The courts in India have consistently taken the view that imposition of solitary confinement is highly degrading and dehumanizing effect on the prisoners. It can be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from the other prisoners. The Supreme Court in *Sunil Batra* considered the validity of solitary confinement. The Supreme Court has also reacted strongly against putting bar fetters to the prisoners. The Court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of the Constitution of India. The Supreme Court in *Sunil Batra (I)* diluted the rigor of solitary confinement and bar fetters to a considerable extent by specifying the procedural norms to be followed when resorting to sections 30 (2) and 56 of the Prisons Act, 1894.

III. REFORMATION IN PRISON SYSTEM

In the case of *Gurdev Singh v. State of H. P.*¹⁵ the Supreme Court showed great concern for the reformation in the prisons in India. The court observed and laid down following guidelines:

- a) Opening of more open air institutions with sufficient agriculture land attached to it so that prisoners hailing from rural areas with agricultural background may continue to work in the same atmosphere and rehabilitate suitability in their villages;
- b) Provision for adequate work inside and outside jails;
- c) Provision for different jail/correctional institutes for young prisoners, juvenile offenders, hardened criminals and other prisoners who suffer from mental aberrations;
- d) Opening of more 'open air jails' in the State and one exclusively for women;
- e) Provision for education and vocational training;

¹⁵ AIR 1993 SC 776

- f) Liberal remissions and regular paroles;
- g) Greater opportunities to meet friends and near relatives and facilities to allow them to discuss their problems away from the policemen's gaze;
- h) Proper attention to health and entertainment facilities for prisoners;
- i) Comprehensive scheme for procurement of work for them and payment of reasonable wages therefore;
- j) Revision for better dieting facilities etc.
- k) Comprehensive management of their wage funds; and
- l) Provision of other release guidance and help. The wages should be paid to the prisoners for the work done by them and these wages should in no case be less than the 'Minimum Wages'.

IV. CONCLUSION

Prisons constitute important institutions which protect the society from criminals. The obstacles in prison reforms are resource allocation, deterrent functions of punishment, notion of rehabilitation, and internal control.

To improve prison conditions does not mean that prison life should be made easy, it means, it should be made humane and sensible. A study of the notable cases of the Supreme Court speak of the fact that the Indian judiciary, through its positive approach and activism, has served as an institution for providing effective remedy against the violations of Human Rights. The functioning of judiciary reveals that it has exercised its powers in the most creative manner and devised new strategies to ensure the protection of Human Rights of the prisoners.

In the recent past the Supreme Court of India has used the strategy of Public Interest Litigations as an aid to enforce the rights of prisoners. Judicial conscience recognized that the prisoners are also human beings and that the purpose of imprisonment is to reform them rather than to make them hardened criminals. From the perusal of the above contribution it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the prisoners.

It has, through judicial activism initiated new tools and devised new remedies for the purpose of protecting the most precious Human Rights of the prisoners. Despite the deficiencies in the existing enactments, the judiciary on its own creative spirit had contributed much to prison justice thereby ensuring fundamental human rights of prisoners.

Suggestions for Modifications in Prison Administration in Indian Prison System

1. It would be suggested that where the term of imprisonment exceeds one year, a remission of one month or so per year be granted to the inmate so as to enable him to go to his home town and meet his near relatives. This will help in his rehabilitation and after his release he can face the outside world courageously casting aside the stigma attached to him on account of prisonisation. The periodical furlough granted to prisoners in India under the Prisons Act and the rules framed thereunder is intended to achieve this objective.

2. The women prisoners should be treated more generously and allowed to meet their children frequently. Particularly, the women who fall a prey to sex offence should be treated with sympathy and their illegitimate children should be assured an upright life in the society. Women prisoners should also be allowed to meet their sons and daughters more frequently, particularly the attitude in this regard should be more liberal in case of under trial prisoners¹⁶. Women offenders should be handled only by women police or prison officials. The idea of setting up separate women jails exclusively for women prisoners, however, does not seem to be compatible keeping in view the huge expenditure involved in the process.

In the case of *R.D. Upadhyaya v. Sate of Andra Pradesh and others*,¹⁷ the child born out of prisoner mothers their birth place should not be recorded as 'prison' on their Birth Certificate.

3. The under trials, minors, recidivists and first offenders should be kept separated from each other. Similarly, political offenders who are not guilty of violence should also be kept separate and not be housed in the same premises in which other criminals are lodged. It is inhuman and unreasonable to throw young boys to sex starved prisoners or to run mental jobs for hardened and affluent prisoners. The young prisoners should be separated from adults.

4. There is a need for scientific classification of prisoners based on nature of the crime committed, age, sex, character and properties of the offender including his educational level and likely response to prison treatment¹⁸.

5. The prison legislation should make provision for remedy of compensation to prison who are wrongfully detained or suffer injuries due to callous or negligent acts of the prison personnel. It is gratifying to note that in recent decades the Supreme Court has shown deep concerns for prisoner's right to justice and fair treatment and requires prison officials to initiate

¹⁶ Francis Coralie Mullin v. Union Territory Delhi, AIR 1981 SC 746

¹⁷ AIR 2006 SC 1946

¹⁸ Sunil Batra v. Delhi Administration, AIR 1978 SC 1675

measures so that prisoner's basic rights are not violated and they are not subjected to harassment¹⁹ and inhuman conditions of living.

6. The existing Prisons ACT, 1894 which is more than a century old, needs to be thoroughly revised and even re-stated in view of the changed socio-economic and political conditions of India over the years many of the provisions have now become obsolete and redundant.

The Supreme Court, in its landmark decision in *Ramamurthy v. State of Karnataka*²⁰ identified nine major problems which needed immediate attention for implementing prison reforms. The Court observed that the present prison system is confronted with major problems of-

- a) Overcrowding
- b) Delay in Trial
- c) Torture and Ill- treatment
- d) Neglect of health and hygiene
- e) Insufficient food and inadequate Clothing
- f) Prison vices
- g) Deficiency in communication
- h) Streamlining of jail visits
- i) Management of open prisons.

¹⁹ Sanjay Suri v. Delhi Administration 988, Cr LJ 705 (SC)

²⁰ 1997 2 SCC 642

V. REFERENCES**Primary sources:**

1. Constitution of India.
2. The Criminal Procedure Code, 1973

Books:

1. Criminology and Penology with Victimology, Prof. N.V. Paranjape, Sixteen Edition, Central Law Publications

Articles:

1. Datir RN. Prison as a Social System, with special reference to Maharashtra State, Mumbai: Popular Prakashan, 1978.
2. Ewing AC. The Morality of Punishment, London: Kegan Paul. Government of India (2010) Prison Statistics in India, New Delhi: NSBR, 1929.
3. Furqan Ahmad. Protective Judiciary in Aid of Human Rights in India, Indian Journal of International Law. 2003, 1929.

Websites:

1. www.manupatra.com
2. www.scc.com
3. <http://www.legalserviceindia.com/>
4. <https://www.prisonstudies.org/country/india>
