

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

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Upholding Fundamental Rights of Prisoners: A Challenge to Criminal Justice System in India

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ABSTRACT

“Many persons enter the prisons as undergraduates in crime, by the time they leave they are doctorates.” – Justice J.S. Verma

As per the latest Prison Statistics India Report 2021 (as on December 31st), released by the National Crime Records Bureau (NCRB), total number of prisoners in the Indian jails, has increased by 1.0% in comparison with the year 2020. According to data provided by various State and UT Prison Headquarters, the number of prisoners at the end of each year is far greater than the actual capacity of such jails. The prison population is decreasing while occupancy is increasing at a double-digit rate. In 2019, there were 1,351 prisons, with a total capacity of 4,00,934. At the end of the year, these jails had 4,81,387 inmates, with a 120.1% occupancy rate. When data from 2020 and 2021 are compared, comparable conclusions can be drawn. The prison population increased from 1,306 in 2020 to 1,319 in 2021, but the prison population increased from 4,88,511 to 5,54,034, resulting in a two-year shift in occupancy rate. The number of under-trials increased by 14.9% between 2020 and 2021, rising from 3,71,848 in 2020 to 4,27,165 in 2021, with only 53 of the 4,27,165 being civil inmates.

According to the Law Commission of India's 78th Report, undertrials are criminals who have not been found guilty but have been detained pending investigation, inquiry, or trial for a crime they are accused of committing. These people are in judicial custody or on remand for an investigation. Prisoners were subject to colonial laws prior to enactment of the Code of Criminal Procedure. However, before delving into the statutory provisions, the Indian Constitution is a superior and more important document that identifies the rights of a prisoner in India. Part III of the Indian Constitution guarantees certain rights and safeguards personal liberty. Although, the fact that these rights are subject to exceptions, is not out of sight

This paper will examine the extent to which prisoners are able to exercise the fundamental rights protected by Part III. In light of various laws and prison reform committees, we will assess the viability of these rights. We will examine and evaluate whether the Indian judiciary has been successful in protecting the fundamental rights in the absence of a

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comprehensive codified law for prisoner rights by pointing out any gaps within the current framework.

Keywords: prison, human rights, liberty, dignity, recommendations.

I. INTRODUCTION

(A) Research Objective and Methodology

1. To understand the existing prison system in India.
2. To recognize the efficacy of legislative actions regarding the right to liberty and dignity of inmates in the light of judicial intervention and recommendations since independence.

The present study is Qualitative in nature. The author has studied various judgements passed by the Apex Court of India. The source has been copies of judgements freely available online and other secondary sources like data from various prison reform committees, National Crime Records Bureau, Ministry of Home Affairs, books, journals, newspaper reports, etc. The keywords used for this research includes “prison”, “human rights”, “prison issues”, “liberty”, “dignity”, “recommendations”.

Although, not exhaustive, the data, however, will help us in understanding the trends and the course that legislature and Indian judiciary has taken over the years regarding adjudication of issues relating to rights of prison inmates, post-independence.

(B) Research Questions

The mechanism that Indian legal and social framework thrives upon, is based on non-violence, dignity and liberty of the individuals. However, prison system in India has become a state subject only after independence. Prior to independence, it was not a reformatory system and only focused on detention, without giving due regard to the rights of individuals involved. Now, the prison system in India focuses not on intensifying the inherently existing restrictions of imprisonment process, but aims to guarantee an individual, the right to live with dignity, by the means of Constitution of India. It upholds the idea of humanity, by safeguarding the individuals from inhumane, cruel or degrading treatment of the State.

To uphold this same idea, various legislations were brought forward that paint a rosy picture of the prison system of India. However, can it be concretely said that it sufficiently protects the prisoners from inhumane conditions? Is the intervention of Indian courts protecting prisoners from harsh living conditions and a kind of treatment that offends the very idea of humanity? Is

the lack of safeguard for civil liberties, so minute that it can be ignored? These are the questions that this paper set out to answer.

II. PRISONERS AND THEIR RIGHTS GUARANTEED AS UNDER INDIAN CONSTITUTION

“Convicts are sent to prisons as a punishment and not for punishment”²

The foundation of prison system in India is based on the concept of protecting the society from crime. Oxford Universal dictionary defines this willful wrong against the society as *“an act punishable by law, as being forbidden by statute or injurious to public welfare”*.³ To safeguard the society from these wrongs, the modern concept of Prisons was brought up, so that there can be a place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or punishment. This understanding of prison, as opposed to the ancient concept of prison, clearly elucidates the reformatory approach of punishment that ensures the protection of society from crime, without depriving the accused involved, of his right to liberty and self-determination.⁴

The Constitution of India offers various constitutional rights, i.e. Fundamental Rights to the citizens as well as aliens. However, these rights guaranteed by the constitution are not absolute and certain reasonable restrictions are imposed. Even after these impositions, a prisoner does not have access to all of these fundamental rights, unlike free men. In the case of *Charles Shobhraj v. Superintendent, Tihar Jail*, the Apex Court explicitly mentioned that,

“except for the fact that the compulsion to live in a prison requires by its own force the lack of certain rights, like that of practicing a profession, or that to move freely, a prisoner is otherwise eligible to the basic freedoms guaranteed by the Constitution.”⁵

Although the rights guaranteed to prisoners are limited, they cannot be said to be static.

The reason that Part III of the Indian Constitution offers rights to those inside the prison is because law believes in the concept that a prisoner remains a ‘person’ even after going to the prison. Those who are in conflict with law are not to be treated differently but same as free men.⁶ As emphatically stated in the landmark cases of *Sunil Batra*⁷ and *DBM Patnaik v. State of Andhra Pradesh*⁸, it must not be forgotten that a person, even if

² Jon Vagg. *Prison System- A Comparative Study of Accountability in English, France, Germany and the Netherlands*, Clanrenden Press, Oxford (1st ed. 1994)

³ The Oxford Universal Dictionary, Volume I (London, 1974), p.456.

⁴ Morris Norval, *The future of imprisonment*, University of Chicago press, Chicago, London, 1974

⁵ *Charles Shobhraj v. Superintendent, Tihar Jail*, AIR 1978 SC 1514

⁶ *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579

⁷ *Id.*

⁸ 1974 AIR 2092

gets convicted for a crime, remains a human being. Rights of such person cannot be snatched away at the whims and fancies of administrative authorities. Court was of the view, that, “Mere detention of a person is not enough to deprive him of his fundamental human rights that were being enjoyed by such person when he was a free citizen, except some rights that necessarily needs to be taken away in the larger interest of society, such as an incident of confinement.” The Apex Court, in the case of *State of Maharashtra v. Prabhakar Pandurang Sanzgir*⁹ was also of the same opinion.

In the landmark *Francis Corallie Mullin v. The Administrator, UT Delhi*¹⁰, Justice Bhagwati, while identifying the broad scope of Right to Life and Human Dignity, observed the rules laid down by Justice Douglas and Justice Marshall. He said that:

“Mr Justice Dougals reiterated his thesis when he asserted: “Every prisoner’s liberty is, of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him only the more substantial. Conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the prison system requires procedural safeguards.” Mr Justice Marshall also expressed himself clearly and explicitly in the same terms: “I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate and I fully support the court’s holding that the interest of inmate.”

The Principle of Equality, and that of ‘equal should be treated equally’ along with the concept of reasonable classification, as under Article 14 has proved to be an effective munition for the Indian Judiciary for identification of right of prisoners. The Indian Constitution also provides for certain freedoms to its citizens under Article 19, such as that of movement, to reside and settle, to profession, occupation, etc. However, prisoners do not have access to these freedoms as the same constitution also grants the power to authorities, to put certain reasonable restrictions.

But more often than not, these powers conferred upon the authorities are also used arbitrarily that works against the human rights of these prisoners. To protect prisoners from such arbitrary use of power that violates their basic rights, important safeguards are also provided in the form of Article 20, 21 and 22. As under Article 20(1), (2) and (3) the Constitution protects the prisoners and under-trials from “Ex-post facto laws”¹¹, “Double Jeopardy”¹² and “Self-

⁹ 1966 AIR 424

¹⁰ 1981 AIR 746

¹¹ Retrospective laws. Laws that go back in time to make a conduct punishable in a way that it was not, when it was committed.

¹² No one should be put twice in peril for the same offence.

incrimination”¹³ respectively.

Indian Judiciary, when it comes to Article 21, i.e., Right to Life and Personal Liberty, has given a very wide interpretation by providing remedies to the citizens against arbitrary actions by the executive authorities including police and prison authorities. This gave rise to the concept of justness, fairness and reasonability that is to be taken care of while depriving a person of his life and personal liberty.¹⁴ It is very crucial to understand that the ambit of this remedy is not just limited to substantive rights of liberty of the individuals, but also the procedure that has been prescribed for depriving the individuals of their liberty.¹⁵

While discussing the concept of Life and Personal Liberty, the right that is of utmost importance with regard to the under-trials and detenues, is that of speedy trial. The Constitution under Article 22 provides for preventive detention laws as special safeguards to prisoners. The Supreme Court, has time and again, reiterated that any order passed under Article 22 shall not be valid if it is passed without due consideration to the fact that “is detinue likely to affect the maintenance of public order?” Meaning, a person can be detained under preventive detention laws only if there is a certainty that if not detained, such person will certainly affect the ‘law and order’ situation, affecting the community and public at large. “Liberty” of a person is of utmost importance, and is prone to become nugatory, if the power of preventive detention is not narrowed down to its limits.

Various other constitutional provisions which are based on the principle that “just because a person has been penalized to imprisonment does not mean that his rights can be violated”¹⁶, includes Article 39A¹⁷, Article 72¹⁸ and Article 161¹⁹. Infact, Right to Free Legal Aid that empowers the prisoners to secure free legal assistance is not a constitutional requirement only under the said Article 39A but is also guaranteed under articles 14 and 21²⁰. The Supreme Court of India emphasized that free legal aid is a must to ensure that justice is not denied to those who are disabled, either economically or otherwise, as it is an integral part of Article 21 of the Constitution.²¹

¹³ Act of implicating or exposing one’s own self to criminal prosecution.

¹⁴ *Maneka Gandhi v. Union of India* (AIR 1978 SC 597)

¹⁵ *AK Gopalan v. sate of Madras* (AIR 1950 SC 27)

¹⁶ Dr. Mukesh Garg & Narshelata Singla, *Rights of Women in Prisons: An Evaluation*, 1 IJARMSS 134, 142(2012)

¹⁷ Equal Justice and Free Legal Aid

¹⁸ Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases.

¹⁹ Power of Governor to grant pardons, etc, and to suspend, remit or commute sentences in certain cases

²⁰ *Sheela Barse v. State of Maharashtra*, (1983 AIR 378)

²¹ *MH Hoskot v. State of Maharashtra*, (AIR 1978 SCC 1548)

III. PROBLEMS PERSISTING IN THE INDIAN PRISON SYSTEM

Initially, the objective that the prison system aimed to achieve was physical confinement so as to restrict the interaction of such persons with the society, in order to deter the happening of a crime. However, as per the interpretation of Indian Judiciary, with the growing global criminal jurisprudence, purpose of imprisonment has changed from being deterrent to now serving reformatory and rehabilitative purposes. Intervention of judiciary and introduction of various new human rights legislations have facilitated a change in the state of prisons in the country. Prisons therefore, are now thought to be levelling institutions in democratic countries like India. The Constitution of India aims to create equality by guaranteeing equal treatment. However, number of privileged prisoners is very low. Those economically and financially influential, irrespective of the crime committed, are getting the special privilege. This leaves behind a greater chunk of prisoners who belong to a humble background, and are generally kept away from accessing even the basic amenities, let alone special privileges. In certain cases, political prisoners are treated as privileged elites with access to various facilities, which are not generally available to other persons inside the prison.

Hon'ble Supreme Court, in the case of *Rama Murthy v. State of Karnataka*²², very comprehensively dealt with the problems persisting in the Indian prison system. These problems were identified more than two decades back, in 1996 and required immediate attention even back then. Problems include: overcrowding of prisons, delayed trial proceedings, custodial torture, neglect of hygiene violation of right to healthy life, etc.²³ The judiciary, in present matter, had issued show cause notices to the government and emphasized on the need for enactment of formulation of new prison law as per the earlier suggestions made by NHRC. The court also suggested to formulate a uniform Model Jail Manual by referring to the recommendations made by All India Committee on Jail Reforms (1980-83)²⁴, also known as

²² (1997) S.C.C. (Cri) 386

²³ The Mulla Committee found nine issues:

- 80% of convicts are awaiting trial
- Delayed trial processes
- Even when bail is granted, inmates are not released.
- Lack of or insufficient provision of medical help to inmates; callous and insensitive attitude of jail authorities; and punishment administered by jail authorities that is inconsistent with the sentence imposed by the court.
- Torture, both mental and physical;
- a lack of adequate legal representation; and
- corruption and other malpractices.

²⁴ The All India Committee on Jail Reforms (1980-1983) offered several recommendations that are crucial when it comes to remission, parole, pre-mature release, health, cleanliness, food, clothes, and so on. The Committee's suggestions are "goal-oriented" in some cases and "actionable" in others. The basic idea on which the committee based its recommendations is that the correctional programme begins the moment a person enters the institution. The basis of a prisoner's reform and rehabilitation is only laid in his early days.

Mulla Committee recommendations.

The All India Jail Manual Committee²⁵ also, in the late 1950s, identified that the major problem faced by the Indian prisons is that of overcrowding. Overcrowding has a considerable amount of role to play in the significant increase of issues in the prison system. Barracks and cells being used as godowns and storeroom was identified as one of the reasons that the accommodation provided to the prisoners was shrinking whereas the admission of inmates was increasing. Overcrowding leads to various other problems like lacking sanitation facilities, increased mental issues due to absence of qualified personnel and dearth of healthcare and welfare facilities. Human Rights of the inmates are grossly violated in the prisons, majorly affecting the dignity of honor of people inside the prisons.

IV. SUGGESTIONS

(A) Correctional institutions

As the Mulla Committee identified that prisons are not just a place aimed to keep the person detached and away from the society, but it aims to reform and rehabilitate the said prisoner, concept of prison should be more as that of a correctional institute. Gone are the days when imprisonment was a form of punishment that focused upon the Deterrent approach. Custodial Torture, in ancient times, was not considered to be a socially unacceptable practice. Times have changed and now the reformative approach must be followed. The aim must be to reintegrate those prisoners successfully into the society.

However, the harsh reality is that in India, custodial torture has become very widespread over the years. In the name of extracting confessions and investigation, torture has become “legitimate” now. Such torture by the law enforcement agencies is not just cruel and barbaric, but also a degrading act that violates the dignity of an individual. In case of female prisoners, barbaric and inhumane acts as that of custodial rape, molestation and other forms of sexual torture are done in the name of investigation.

The Hon’ble Supreme Court has time and again reiterated that such gruesome acts amount to degrading treatment of a person, irrespective of his nationality. Whether such person is a citizen of India or not, his right to life and liberty, including that of dignity, must not be taken away unless as per the procedure established by law.

In *Joginder Kumar v. State of UP and Ors.*, the Apex Court, while dealing with human rights

²⁵ In 1957, the Government of India formed the All India Jail handbook Committee to create a standard jail handbook. The All India Jail Manual Committee was also tasked with investigating jail administration issues and making recommendations for changes that might be implemented consistently across the country.

and liberty in the light of custodial violence, identified that the “the quality of a nation’s civilization can be largely measured by the methods it uses in the enforcement of criminal law. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. The court has been receiving complaints about violation of human rights because of indiscriminate arrests. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on one hand and individual duties obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first – the criminal or society, the law violator or the law abider”.²⁶

(A) Speedy trials and grant of bail

As the abovementioned data shows, the number of under-trials is steadily increasing with each passing year. With the increase in number of detainees, the burden of prison system is also increasing, and resultantly, period of confinement of such persons is also increasing disproportionately. Therefore, it can be inferred that faster trials and grant of bail, wherever possible, as under Section 436A²⁷ of Code of Criminal Procedure, 1973, can be resorted to as a solution.

The Hon’ble Supreme Court has also intervened time and again regarding the same, most recently in *Satender Kumar Antil v. Central Bureau of Investigation & Anr.*²⁸, however, not much has improved.

In another case, the Supreme Court, in July 2022, also recommended the Union Government to form a separate bail law, on the lines of the United Kingdom Bail Act²⁹, as it can prove to be a helpful measure in reducing the number of under-trials and overcrowding of prisons that leads to violation of fundamental rights of prisoners. Such law can prove to be a positive and reformative step. The court observed that “Arrest is a draconian measure that limits liberty and should be used with caution. There should never be the idea that a democracy is a police state, because the two are purely incompatible.”

The court had expressed its “hope” that the investigating agencies would keep in mind the law laid down in *Armesh Kumar v. State of Bihar*, “the discretion to be exercised on the touchstone

²⁶ (1994) 4 SCC 260

²⁷ Maximum detention duration for a prisoner awaiting trial.

²⁸ (2021) 10 SCC 773

²⁹ The Act provides everyone with a general right to bail, regardless of how serious the offense is.

²⁹ (2014) 8 SCC 273

of presumption of innocence, and the safeguards provided under Section 41³⁰, since an arrest is not mandatory”.³¹

(B) Regulations regarding automatic extension of remand period

Infact, in addition to this, automatic extension of remand needs to be regulated. Certain guidelines must be provided as to when the remand period of an accused can be automatically extended. Automatic extension of remand period, violates the Constitutional guarantee given to a person under Article 21, as it is merely for the sake of convenience of the authorities, and is not an accused-centric approach. Due regard must be given to the fact that constitutional rights of an individual cannot be superseded by convenience of authorities.

The author is of the view that Indian judiciary, a lot of times, fails to uphold the rights of the convicts. One such example is that of a judgement passed by the High Court of Karnataka in *D. Gundappa v. State of Karnataka*³². In the present case, the mandates provided under Section 167(2)(b)³³ and Section 209³⁴ of the Code of Criminal Procedure, 1973 were not followed and the authorities failed to produce the accused before the Magistrate, within the prescribed time period. In addition to this, the authorities also failed to pass an express order regarding extension of remand period. The Petitioner approached the court with the contention that the earlier remand order made under Section 309(2) of Code of Criminal Procedure, 1973 has expired, and therefore, the extension of his remand is arbitrary and illegal. The Court observed that “the accused could not be released on bail merely because he was not present when the remand order was passed.” It was further held that “though production of the accused for the purpose of extending the remand is not an empty formality, the extension could not be refused by the Magistrate merely on account of non-production, and the Magistrate must apply his discretion while executing the powers granted by the Code”, thereby, granting wide discretionary powers to the Magistrate.³⁵

In case of extension of remand, the accused must be provided with the copy of report made by public prosecutor. The Delhi High Court, in one such recent case, relating to The Unlawful Activities (Prevention) Act, 1967, is set to decide if the trial court can extend remand beyond

³⁰ When police may arrest without warrant.

³¹ *Bail, not jail: Why Supreme Court put emphasis on separate bail law*, India Today, <https://www.indiatoday.in/law/story/why-supreme-court-put-emphasis-on-separate-bail-law-1979246-2022-07-24>

³² 2017 SCC OnLine Kar 1149

³³ No Magistrate shall authorise detention in any custody under this section unless the accused is produced before him.

³⁴ Commitment of case to Court of Session when offence is triable exclusively by it.

³⁵ <https://www.sconline.com/blog/post/2017/06/19/extension-of-remand-cannot-be-refused-by-magistrate-merely-on-account-of-non-production-of-accused/>

the initial time period prescribed under the code. If yes, in what cases can it be done?³⁶

V. CONCLUSION

As previously stated, when dealing with the rights of prisoners in the case of *Sunil Batra v. Delhi Administration*, the court addressed a critical question: whether prisoners are individuals and are entitled to their basic rights even when in captivity. The court responded to the argument in a straightforward manner. Court ruled that

*“fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration. Our Constitutional culture has now crystallized in favour of prison justice and judicial jurisdiction.”*³⁷

Although, judiciary has, over the years, used its power of judicial review to uphold the rights of prisoners, and has been successful to an extent. However, even after successful recognition of rights of prisoners and formation of various policies in this regard, there still exists deficiency in the implementation process. The policies that are framed are not being acted upon promptly by the authorities. Such poor implementation starts at the ground level, i.e. from police stations, in the form of abuse, both physical and mental infliction of pain. In cases where accused belong to a not-so- educated background, the person is not usually aware of his rights as an accused. It is thus, a duty of the police officials, to inform such person of his rights as an arrestee, as specified for the first time, in the landmark *DK Basu v. State of West Bengal*³⁸. It is not just this case where the Apex Court has issued arrest guidelines for various stages of arrest. Other cases include that of Arnesh Kumar, Sheela Barse, Joginder Kumar and most recently Satendar Kumar Antil’s case.

Other than these guidelines, as per the National Legal Services Authority guidelines³⁹ also, police must inform the arrestee that the right of free legal assistance can be availed by them as specified under the Legal Services Authorities Act, 1987.

A huge number of cases dealt with by the judiciary, since early 1980s, especially the ones involving Justice V.R. Krishna Iyer, were about the ameliorating prison conditions and rights of the prisoners. There cannot be a shred of doubt about the fact that prisoners were one of those

³⁶ Nupur Thapliyal, [Section 43D(2) UAPA] Whether Accused Entitled To Copy Of Public Prosecutor’s Report At Time Of Remand Extension? Delhi HC To Decide, (2022), <https://www.livelaw.in/news-updates/section-43d2-uapa-accused-public-prosecutor-report-remand-extension-delhi-hc-212061>

³⁷ AIR 1980 SC 1579

³⁸ 1997 (1) SCC 416

³⁹ These guidelines were regarding Legal Aid Defense Counsel System, Access to Justice at Pre-Arrest, Arrest and Remand stage, Standard Operating Procedure and Guidelines, Ensuring access to justice for widows living in Shelter Homes, SOP for representatives of people in custody and Minimum Fee Recommended by NALSA for Panel Lawyers.

disempowered sections of the society, who were (and still are) severely constrained in being able to pursue the rights that they are entitled for. As mentioned above, various cases relating to the constitutional rights of the prisoners have been taken up by the Supreme Court. Therefore, it can be concluded that Indian Judiciary has time and again taken a progressive and humanistic approach of interpretation of Article 21 and has been able to enlarge the rights of suspects and accused with a zeal to protect the interests of the innocent and prevent the violation of a person's right to life and liberty. However, there still exists a need to introduce a separate specific law, an all-inclusive codified law, specifically for prisoners. It is because arresting a person, and devoiding him of his life and personal liberty is a draconian measure, therefore, must be used sparingly. Cases of appeal, revision, or a prolonged trial for that matter, are violative of Article 21, whatever may be the nature of offence. Therefore, due consideration must be given to the rights of under trial prisoners, even after taking away their liberty to exist as a free citizen.

Lack of awareness and access to legal aid and resources, make a person end up in the jail for longer periods of time, even extending the prescribed time period as a punishment for the crime such person have allegedly committed. Such events only increase the backlog and burden that the Indian prison system and judiciary is currently facing. If not addressed properly, these burgeoning shares of under-trial prisoners have the potential to remain a colossal challenge for our system.
