

HUMAN RIGHTS OF PRISONER'S UNDER INDIAN CONSTITUTION

* Dr. Kalpana Bharadwaj

A society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and the services and of recourses made available to them. It is the human life that necessitates human rights. Being in a civilised society organised with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. Thus every right is a human right as that helps a human to live like a human being. Even if the person is deprived some of his rights due to commission of some wrongs, he is entitled to a their rights unaffected by the punishment for wrongs. Especially when the principles and objectives of criminology and penology are acquiring a human face the enforcement of human rights assume a very great relevance. Simply because a person is under a trial or convicted, his rights cannot be discarded as a whole.

A man on becoming a prisoner, whether convict or under trial, does not cease to be human being. Though the prisoners can't be treated as animals yet the barbarous treatment sometimes given to them in prisons is not qualitatively human compared to the one given to the caged inmates. The grim scenario of prison justice assumes in human misanthropic fragrance when the intellect of prisoners is blemished, personhood of prison is fortified and they are forced to lose their integrity and individuality and thereby compelling them to become the rightless slaves of the state. It becomes gruesome indeed and calls for interference of judicial power as constitutional sentinel, when the jurisprudence of prison justice becomes an escalating torture and the violent violation of the human rights is perpetrated by agencies of the state. The mandates of preamble, fundamental rights and Directive Principles Provisions of the Indian Constitution seem to be outlawed from the security bound prohibited areas of high walled jails¹.

Human rights are founded in the heart and mind of every citizen who in common effort should labour to gather to create a world in which fundamental rights and freedoms can be realised for all citizens. The people of the world in the charter of U.N. have reaffirmed faith in Fundamental human rights, in the dignity and work of human person. One of the purpose laid down in Article 1 of the United Nations

Organisation is to promote and encourage respect for human rights and for fundamental freedoms of all.

To achieve this object, the U.N. General Assembly adopted "Universal Declaration of Human rights" on December 10, 1948 to promote respect for and to secure universal and effective recognition and observance of these rights and freedoms. Article 3 of the declaration provide- to everyone the right to life, liberty and security of person. Article 5 outlaws torture, or cruel, inhuman degrading treatment or punishment. Article 8 provides that no one shall be subjected to arbitrary arrest, detention or exile. Article 10 provides arrest, detention or exile Article 10 provides for fair public hearing by impartial tribunals. Accused shall be presumed to be innocent unless proved guilty and he shall not be punishment under ex post facto laws. Arbitrary interference with his privacy, family, home or correspondence or attack on his honour or reputation shall not be allowed².

The Constitution of India was adopted on November 26, 1949 and all its provisions came into force on 26th January, 1950, which is referred as commencement of constitution. The framers of Indian Constitution were deeply concerned with the minority problem in India, economic and political exploitation of the people under British rule and the prevailing social disparities among the different segment of the population. Thus, keeping in view the great ideals of Mahatma Gandhi and the growing consciousness towards international human rights movement, The framers of the constitution provided for fundamental rights in the constitution. These rights though initially influenced by the American Bill of Rights, differ from them in some important respects. The provisions for reasonable restrictions are provided in the constitution. Itself³ with the advent of independence, the constitution of India not only recognised and incorporated in its part III various human rights and fundamental freedoms contained in international instruments but also provided mechanism for their enforcement.

Article 21 of Indian Constitution, among others, is the embodiment of wide range of human rights a single sentence of that Article - "No person shall be deprived of his life and personal liberty except according to procedure established by law" become

* Deptt. of Law, Dr. H.S. Gour University, Sagar (M.P.)

a perennial source of human law. Article 21 guarantees right to human dignity even to prisoners. In fact right to human dignity belongs to all human beings inside and outside the prison. Whether prisoners are entitled to fundamental rights guaranteed by the constitution was one of the important issues examined by the supreme court immediately after the commencement of the constitution. The Court declared that when a person loses his right to personal liberty by way of detention under a valid law enacted by a competent legislature, and so long as long he remains under such detention, he ceases to be entitled to enjoys his other fundamental freedoms. The courts have recently viewed third degree methods and custodial deaths in police custody as a serious violation of human rights and constitutional provision of right to life and liberty⁴.

In Gauri Shanker Sharma V State of U.P.⁵ the court observed, death in police custody must be seriously viewed for otherwise we well help take a stride in the direction of police raj.

Under the Indian Constitution there is no such provision in part III which can safeguard the discretionary and some times brutal treatment given to the prisoners. But the supreme court of India, by interpreting Article 21 of the Constitution has developed human rights jurisprudence for the preservation and protection of prisoners right to human dignity. In the case of Charles Shobroj v-Superintendent Central Jail, Tihar, New Delhi⁶ Supreme court recognised that the right to life is more than mere animal existence or vegetable substance. Even in prison a person is required to be treated with dignity and one enjoy all the right specified In Article 21.

Sunil Batra V. Delhi Administration⁷ in this case, supreme court held that the prisoners are not wholly denuded of their fundamental right they are entitled to all the constitutional rights unless their liberty has been constitutionally curtailed. Though a prisoner's liberty is in the very nature of the thing circumscribed by the very fact of his confinement his interest in the limited liberty left to him is than all more important.

Conviction for a crime does not reduce the person into a non-person whose right are subject to the whim of prison administration and therefore the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards freedom behind bar is part of Indian constitution trust and the index of our collective consciousness. Supreme court of India recognised several rights and protection for the prisoners, like as :

- (i) Right to free legal aid.
- (ii) Right to speedy trial
- (iii) Right against hand cuffing
- (iv) Right against inhuman treatment
- (v) Right against public hanging
- (vi) Prisoner's Grievances -

In M.H. Hoskot v State of Maharashtra⁸ the supreme Court laid down that right to free legal aid at the cost to the state to an accused who could not afford legal services for reason of poverty, indigence or incommunicado situation was part of fear, just and reasonable procedures implicit in Article 21.

In Anil Rai v. State of Bihar⁹ Supreme Court took a serious note of delay in delivery of judgements. The court observed that any inordinate, unexplained and negligent delay in pronouncing the judgement by the high court infringed the right under Article 21 of the Constitution. In Prem Shanker v Delhi Administration¹⁰, the supreme court declared that hand cuffing is prima facie inhuman and therefore unreasonable is over harsh and that the first flush, arbitrary. A rule requiring every trial person accused of a non-boilable offence punishable with more than 3 yrs. Prison term to be routinely hand cuffed during transit from prison to court for trial violates Article 14, 19 & 21.

There is no doubt that it is the democratic legitimacy which characterizes our era. Liberty and freedom are the elements of prisoner's human right and democracy. In so far as developing countries are concerned it has to be observed that must believe in democracy and human rights of prisoners.

References-

1. Bansal : V.K.; Right to Life and Personal Liberty in India, New Delhi, Deep and Deep Publications, ed I (1987).
2. Kapoor : S.K. . Human Rights, Allahabad, Central Law Publication, ed. V.
3. Kailash : Rai; The Constitutional Law of India, Allahabad, Central Law Publications, ed. VI, (2005).
4. Sirohi : J.P.S.; Criminology, and Penology, Haryana, Allahabad Law Agency, ed. VI (2004).
5. AIR 1990 S.C. 709
6. AIR 1978 S.C. 514
7. AIR 1994 S.C. 1675
8. AIR 1978 S.C. 1548
9. AIR 2001 S.C. 3173
10. AIR 1980 S.C. 1535