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Prisoners right for equal treatment: Seek of humanity

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Abstract
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 its lowest ones."
~ Nelson Mandela
Prisoners are also entitled to rights to some extent as a normal human being when they are behind the prison. These rights are provided under the Constitution of India, the Prisons Act, 1894 etc. Prisoners are persons, have some rights, and do not loose their basic constitutional rights. Even a person is convicted and deprived of his liberty in accordance with the procedure established by law; a prisoner retains the residue of constitutional rights. Indian Constitution does not expressly provides for the prisoners' rights but Articles 14, 19 and 21 implicitly guaranteed the prisoners' rights and the provisions of the Prisons Act, 1894 contains the provisions for the welfare and protection of prisoners. In recent years, custodial crimes have drawn attention of Public, Media, Legislature, Judiciary and even Human Rights Commission. Nevertheless, judicial activisms, widespread media coverage, initiatives taken by National Human Rights Commission as well as Civil Society Intervention have shown their concern for combating torture and upholding human dignity. The first part of this paper deals with the basic concept and atrocities been done on the prisoners along with the rights been guaranteed to them by different legislations in India. Further, the authors will put some light on the International conventions, treaties, and legislations that took place and been drafted and enacted for the protection of rights of prisoners. The extent of this paper is to the remedies that are available to the prisoners along with the war prisoners and some of the judicial decisions recognising the same. To conclude that Police is the machinery which controls crime. If crime takes place in police custody, then we must lean towards some other machinery to curb it.

Keywords: Human Rights, Equality, Crime, Criminals, Prisoners, Jail, Geneva Convention

Introduction: the backdrop

The term *prisoner* is defined as any individual involuntarily confined or *detained in a penal institution*. The term is intended to encompass individuals sentenced to an *institution* under a criminal or civil statute, individuals *detained in other facilities* by virtue of statutes or commitment procedures, which provide alternatives to criminal prosecution or incarceration in a penal institution, and *individuals detained* pending arraignment, trial, or sentencing [1].

A prisoner, for the purposes of this paper, is any person whose liberty is restricted as a result of the interaction with the criminal justice system. Although the limitations on personal choice and control are perhaps most evident and oppressive in locked detention facilities (e.g., jails and prisons), the power differential between criminal justice agents and prisoners exists in many other contexts as well; the differences are a matter of degree. Individuals involved in a wide variety of community-based criminal justice programs, ranging from probation and parole to pre- or post-adjudication diversions such as drug courts or mental health courts, are subject to coercion by the array of agents (e.g., parole or probation officers and diversion program counselors) who monitor the individuals' compliance with program requirements; such agents may also invoke further sanctions for program failure or noncompliance.

[1]Subpart C of 45 C.F.R. § 46.303(c)

Prison System

Prison systems have evolved over centuries into their current form. Societies have always required means of protecting citizens from those who have caused harm or who pose a threat, as well as ways of communicating what is considered wrongful conduct through punishment.

In a written submission to the Scottish Prisons Commission (2008) which was set up to consider how imprisonment is used in Scotland, Alec Spencer, former Director of Rehabilitation and Care for the Scottish Prison Service, reflected on the development and purpose of imprisonment in contemporary Scotland. Spencer noted that the prison service which emerged when the death penalty was abolished and when convicted offenders stopped being transported overseas was one that focused on punishment (retribution), incapacitation and deterrence. Modern prisons also "appear to meet a modern social purpose". Spencer describes a process of reform in the prison service in Scotland since the 1990s resulting in prisons aiming to help with addictions, literacy, employability and through programs to reduce reoffending – in other words, supporting rehabilitation (see SCCJR 'The penal system: reducing reoffending?' for more information about rehabilitation). He also notes that "there are dangerous offenders, those perpetrating murder and violence, sexual offenders, terrorists and those responsible for serious organized crime for which prison is an appropriate response in order to protect the public from their brand of menace and reduce

potential victimization. It is a legitimate use of custody to 'incapacitate' those who would otherwise continue to seriously harm the public".

A 2010 UK Government policy-paper [2], stated that "what really matters" is "improved public safety through more effective punishments that reduce the prospect 3 of criminals reoffending time and time again", indicating that prison system should serve to both punish and rehabilitate those who end up there.

Historical Evolution of Prison System In India

The Universal impact of this thinking is reflected in the United Nations convention adopted by the General Assembly on December 18,1966 Act. 10(3) of the Convention, provides the penitentiary system shall comprise treatment of prisoners, the essentials aim of which shall be their reformation and social rehabilitation [3]. However, this is the recent approach and even at that, it has not yet become the basis of prison administration in every country of the world. The principles and purposes of prison administration have evolved as a process from the ancient to the present days in India, Europe and America.

In India, this process of development can be broadly divided into three phases, viz, 1. Ancient-Medieval period, 2. British Period 3. Post-Independence period [4].

Ancient Period

In ancient India, at the time of the Artha Sastra, justice was administered in accordance with legal rules, which fell under one or the other of the following four heads (a) Sacred law (Dharma) (b) Secular law ('Vyavahara), (c) Custom (Charitra) and (d) Royal Commands (Rajasasan). Out of all these four divisions of law, custom (Charitra) was the most popular one and Manu along with all other law givers of that time accepted it as the essential principle in the administration ofjustice. The king in those days was called Dandadhara, the holder of Danda i.e. the power of punishment or an incarnation of Jama, the judge of the souls of the dead. The civil actions, the usual remedies given by the courts, were restoration of property and fines. In criminal cases the punishments were (i) fine (ii) imprisonment (iii) whipping (iv) physical torture (v) banishment (vi) condemnation to work in mines (vii) death.

British Period

With the advent of the British era the administrative structure in India began to assume a new form. The Regulating Act of 1773 saw the establishment of Supreme Court at Calcutta to exercise all civil and criminal Jurisdiction. In 1790, the criminal courts in Bengal introduced imprisonment in lieu of mutilation. It was only after 1858, a uniform system of legal justice was initiated in India. The Indian penal code defined each and every offence and prescribed punishment for the same. Imprisonment was the most commonly used instrument for penal treatment. On 14th December, 1935, Lord Macaulay, a member of Indian Law Commission opined, "Imprisonment is the punishment to which we must chiefly trust. It will probably be restored to 99 cases in a 100".Thus the deterrent philosophy for the management of prisons in India got a fair treatment in his hand. He recommended the appointment of a committee, for the purpose of collecting information as to the state of Indian prisons and of preparing an improved plan of prison discipline [5]. The report was published in the early part of 1838. The committee went through various aspects like housing of prisoners, discipline, health, diet, remunerative rewards, punishments, education and labour in details. The committee was someway influenced by contemporary ideas in England. Sir John Lawrence, Governor General of India, reviewed the position in 1864 and appointed a Second Prison Commission to minimize high death rate in prisons and to consider other aspects of jail management. The committee of 1864 observed that during the preceding ten years not less than 46,309 deaths had occurred within the walls of Indian prisons. The Prison Committee concluded that sickness and mortality was attributable to overcrowding, lack of ventilation, bad conservancy, bad drainage, insufficient clothing and deficiency of personal cleanliness and inadequate medical facilities. The committee also took into consideration the aspects of juvenile delinquency, female prisoners, diet, jail discipline and a series of suggestions regarding the prison system. It is said that due to the implementation of recommendations of the committee the death rate in prisons came down considerably [6]. In 1876, the Third Jail Committee under the auspices of Lord Lytton made a general review of the subject and suggested means for introducing more uniform regulations and for making short sentence more deterrent [7]. The Fourth Jail Committee, appointed by Lord Dufferin in 1888, suggested changes in rules of prison administration and classification and segregation/ of prisoners following the investigation into the diversity of practices in the prison. It also covered the internal management of jails, laying down rulers for prison management. The work of this committee was corroborated by the recommendations of All India Committee of 1892.

Post-Independence Era

The post-Independence period saw a major change in the Indian prison system. The Government took special and keen interest in it. And as a result, in 1951, invited an expert form United Nations under the technical assistance programme, to study the prison administration in the country and to suggest progressive programmes. The one-member committee comprising Dr. Walter C. Reckless as the U.N. Expert, went round the country and submitted his report on prison administration in India and suggested a sixmonth training programme for jail officers. After an intensive study asto the jail administration in India he made a number of recommendations which included the setting up of central Bureau of Correctional Services in Delhi and the revision of jail manuals which were substantially different from the recommendations of the Indian Jails Committee of 1919. The All India Conference of Inspector general of prisoners was held in Bombay in 1952 which recommended setup a committee to draft a Model Prison Manual in pursuance of the recommendations of Dr. Reckless. And the Government of India appointed an All India Jail Manual

[2]Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders

[3]Dr. M. Zakira Siddiqui, "The Prison as a correctional agency", Social Defence, Vol. XI No. 43, National Institute of Social Defence, Ministry of Social Welfare, Government of India New Delhi, Jan, 1978, p, 24.

[4]Jaytilak Guha Roy, op. cit., p. 3.

[5]C.S. Malliah op. cit., p. 37.

[6]Report of Indian Jail Committee, 1864, p. 10

[7]The Imperial Gazetter of India, The Indian Empire, Vol. IV-Administrative, p. 399.

Committee in 1957, to prepare a model prison manual to examine the Prison Act and other laws and made proposal for changes to be adopted uniformly throughout the country. The committee submitted its report in 1959. It marked the evolution of some new faculties like Central Bureau of Correctional Service (renamed as National Institute of Social Defense in 1975), Working Group on Prison in 1972, to examine measures to streamline the prison set-up in the country.

The most remarkable recommendation of this working group was that it recommended the inclusion of the prisons in the Five-Year Plan and a provision of Rs.100 crores for the upliftment of the same. It thought that prison administration could not be streamlined unless the Central Government and the State Governments channelize more resources for developing every aspect of the existing system. As a result, the Ministry of Home Affairs initiated efforts for the improvement and modernization ofjail administration by making a grant of Rs.2 crores in the budget of 1977-78 respectively [8]. Besides, this process followed up some more developments like the recommendations of the chief Secretaries to reduce the over-crowding in jails, setting up of new codes and amendments of laws relating to the transfer of prisoners, creation of separate faculties for the care, treatment and rehabilitation of women offenders, segregation of juveniles etc. Furthermore, to help the state governments in their efforts to undertake jails reforms, the Central Government formulated a scheme in 1977 to give financial assistance for prison reforms.

Atrocities been done on prisoners

The terms "prison" and "jail" are used interchangeably in India, perhaps reflecting the fact that no significant effort is made to separate "under trials," as those awaiting trial are known, from convicts. Separation of under trials from convicts is required by a decision of India's Supreme Court, but this decision is widely ignored in practice. A substantial majority of all prisoners are "under trials."

According to the Prison Statistics India 2015 report by the National Crime Records Bureau (NCRB), India's prisons are overcrowded with an occupancy ratio of 14% more than the capacity. More than two-thirds of the inmates are undertrials. Chhattisgarh and Delhi are among the top three in the list with an occupancy ratio of more than double the capacity. The prisons are overcrowded by 77.9% in Meghalaya, by 68.8% in Uttar Pradesh and by 39.8% in Madhya Pradesh. In absolute numbers, UP had the highest number of undertrials (62,669), followed by Bihar (23,424) and Maharashtra (21,667). In Bihar, 82% of prisoners were undertrials, the highest among states.

The period during which detainees are held by the police is the most dangerous for them physically. They are confined in lock-ups at police stations, often in crowded cells with only the most rudimentary sanitary facilities, if any.

The Lawyers Collective in Bombay, which has been permitted to visit lock-ups and prisons under court order, has provided this description:

The lock-up is a bare room with no piece of furniture at all, usually divided into two parts, the living area and the toilet area, separated from each other by a one-foot divider. It is almost always a very poorly ventilated room with usually only one small window built close to the ceiling. There is never a fan in the cell. The lock-up is also poorly lit, usually by just one bulb for the whole room, which is never switched off. In lock-ups in the urban areas, the urinal area is usually enclosed, but without a door. There is normally no commode -- just a pot in a corner which is cleaned out occasionally [9]. The water supply is unpredictable and intermittent at best. The stench is unbearable and flies abound. The undertrial is not provided with a change of clothes nor with soap, oil or toothpaste. No mats are provided for sleeping nor are coverlets supplied. The lock-ups are inevitably overcrowded, especially at night. From the uniformity in their filthy and overcrowded conditions, and in the brutal, dehumanizing treatment meted out by the police to their occupants [10].

Torture in the lock-ups is routine. Practically every person taken to a police station in connection with some or the other offense in our country is subjected to severe beating and torture. Sticks, boots and belts and wooden rollers are the most common instruments of beating. Sexual abuse, designed not only to hurt but also to humiliate is part of the torture. Naked or semi-naked men are a common sight in police lock-ups. It is this process of torture, regular and systematic, whose end product is sometimes death.

For women who are detained by the police, a particular danger is rape in custody. The victims of rape risk punishment themselves or ostracism if what happened to them becomes known. They may be rejected by their husbands and families and, in the case of unmarried girls the chances of marriage are reduced drastically.

Prisoners of War

Prisoners of War are persons, whether combatants or non-combatants, who are taken prisoner during a military conflict or immediately thereafter.

The third Geneva Convention provides a wide range of protection for prisoners of war. It defines their rights and sets down detailed rules for their treatment and eventual release. International humanitarian law (IHL) also protects other persons deprived of liberty as a result of armed conflict.

The rules protecting prisoners of war (POWs) are specific and were first detailed in the 1929 Geneva Convention. They were refined in the third 1949 Geneva Convention, following the lessons of World War II, as well as in Additional Protocol I of 1977.

POWs cannot be prosecuted for taking a direct part in hostilities. Their detention is not a form of punishment, but only aims to prevent further participation in the conflict. They must be released and repatriated without delay after the end of hostilities. The detaining power may prosecute them for possible war crimes, but not for acts of violence that are lawful under IHL.

POWs must be treated humanely in all circumstances. They are protected against any act of violence, as well as against intimidation, insults, and public curiosity. IHL also defines minimum conditions of detention covering such issues as accommodation, food, clothing, hygiene and medical care.

[8] A. Mohanty and N. Hazary, op. cit., p. 28.

[9] Rights of Prisoners with special reference to Right to Free Legal Aid for under trial prisoners and its implementation in the District of Satara - YOGESH NARAYAN DESAI

[10] Basant Rath 2000 batch IPS officer - Why We Need to Talk About the Condition of India's Prisons

The fourth 1949 Geneva Convention and Additional Protocol I also provide extensive protection for civilian internees during international armed conflicts. If justified by imperative reasons of security, a party to the conflict may subject civilians to assigned residence or to internment. Therefore, internment is a security measure, and cannot be used as a form of punishment. This means that each interned person must be released as soon as the reasons which necessitated his/her internment no longer exist.

Rights of Prisoners

Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory. Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and deontology.

Rights are often considered fundamental to civilization, for they are regarded as established pillars of society and culture, and the history of social conflicts can be found in the history of each right and its development. According to the Stanford Encyclopedia of Philosophy, "rights structure the form of governments, the content of laws, and the shape of morality as it is currently perceived".

International Perspective

International human rights laws protect people from racial discrimination, from torture and from enforced disappearances. They also recognise the rights of specific groups of people, including women, children, and people with disability, indigenous peoples and migrant workers. Some of these treaties are complemented by optional protocols that deal with specific issues or allow people to make complaints.

1. UN Charter

The charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations conference on international organization, and came into force on October 24 1945. Basic Principles for The Treatment of Prisoners was adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.

The principles are as follows:

- Prisoners shall be treated with inherent dignity and valued as human beings.
- No discrimination on the grounds of race, sex, colour, language, religion, political, national, social origin, property, birth, or other status.
- Respect the religious beliefs and cultural precepts of the group to which the prisoners belong.
- The responsibility of the prisons for the custody of the prisoners and for the protection of the society against crime and its fundamental responsibilities for promoting the well-being and development of all members of the society.
- All prisoners shall retain the human rights and fundamental freedoms set out in UDHR, ICESCR, ICCPR and the optional protocol as well as such other rights as are set out in other United Nations covenants.
- Right of the prisoners to take part in cultural activities and education aimed at the full development of the human personality.
- Abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken or encouraged.
- Prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labor market and permit them to contribute to their own financial support and to that of their families.
- Access to health services without discrimination on the grounds of their legal situation.
- With the participation and help of the community and social institutions and with regard to the interest of victims, favorable conditions shall be created for the reintegration of the ex-prisoner into society.

2. Universal Declaration on Human Rights

In 1948 a movement was started in the United Nations in the form of Universal Declaration of Human Rights which was adopted in the General Assembly of the United Nations. This organic document is also called as Human Rights Declaration. This important document provides some basic principles of administration of justice.

Among the provisions in the document are follows:

- No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Everyone has the right to life, liberty and security of person.
- No one shall be subjected to arbitrary arrest, detention or exile.
- Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

3. The International Covenants on Civil and Political Rights, 1966

The ICCPR remains the core instrumental treaty on the protection of the rights of the prisoners. Following relevant provisions of the covenants are as:

- No one shall be subjected to cruel, inhuman or degrading treatment or punishments.
- Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention.
- All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- No one shall be imprisoned merely on a ground of inability to fulfill a contractual obligation.

4. UN Core Conventions and Specific Instruments

Standard Minimum Rules for the Treatment of Prisoners:

Amnesty International in 1955 formulated certain standard rules for the treatment of prisoners.

Some important relevant rules are as follow:

- Principle of equality should prevail; there shall be no discrimination on grounds of race, sex, colour, religion. Political or other opinion, national or social origin, property, birth or other status among prisoners.
- Men and women shall so far as possible be detained in separate institution;
- Complete separation between civil prisoners and persons imprisoned by reason of criminal offence; young prisoners should be kept separate from the adult prisoners.
- All sorts of cruel inhuman degrading punishments shall be completely prohibited.

- Availability of at least one qualified Medical officer with the knowledge of psychiatry.
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:
- State party has to take effective legislative, judicial and other measures to prevent acts of torture.
- No state party shall expel, return or extradite a person who is in danger of being subjected to torture.
- State party should ensure that all acts of torture are offences under its criminal law.

Indian Perspective

1. Constitution of India

The rights guaranteed in the part III of Indian Constitution are available to prisoners; because a prisoner is treated as a person in prison.

Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article provides the basis for prison authorities to determine various categories of prisoners and their classification with the object of reformation. Indian constitution guarantees six freedoms to citizens of India, among which certain freedom can't be enjoyed by the prisoners.

They are

- freedom of movement,
- freedom to residence and to settle
- freedom of profession.

But other freedoms conferred in this article are enjoyed by the prisoners. Moreover, constitution provides various other provisions though cannot directly be called as prisoner's rights but may be relevant. Among them are Article 20(1), (2), and Article 21 and Article 22(4-7).

2. The Prisons Act, 1894

This act is the first legislation regarding prison regulation in India. The following are some of the important provisions regarding prisoner's rights:

- Accommodation and sanitary conditions for prisoners.
- Provisions relating to mental and physical state of prisoners.
- Examination of prisoners by qualified medical officer.
- Separation of prisoners for male, female, criminal, civil, convicted and under trial prisoners.
- Provisions for treatment of under trials, civil prisoners, parole and temporary release of prisoners.

3. The Prisoners Act, 1990

- It is the duty of the government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment.
- Any court which is a high court may in case in which it has recommended to government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognizance.

- **The Transfer of Prisoners Act, 1950**

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training and from over-populated jails to less congested jails within the state.

General Rights

1. Right to Legal Aid

The talk of human rights would become meaningless unless a person is provided with legal aid to enable him to have access to justice in case of violation of his human rights. This a formidable challenge in the country of India's size and heterogeneity where more than half of the population lives in far-flung villages steeped in poverty, destitution and illiteracy. Legal aid is no longer a matter of charity or benevolence but is one of the constitutional rights and the legal machinery itself is expected to deal specifically with it. The basic philosophy of legal aid envisages that the machinery of administration of justice should be easily accessible and should not be out of the reach of those who have to resort to it for the enforcement of their legal rights. In fact legal aid offers a challenging opportunity to the society to redress grievances of the poor and thereby law foundation of Rule of Law.

In India, judiciary has played an important role in developing the concept of legal aid and expanding its scope so as to enable the people to have access to courts in case of any violation of their human rights. In the case of *M.H. Wadanrao Hoskot v. State of Maharashtra* [11], the Court held that the right to legal aid is one of the ingredients of fair procedure.

If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, for want of legal assistance, there is implicit in the court under article 142 read with article 21 and 39-A of the Constitution, power to assign council for such imprisoned individual for doing complete justice. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so required, assign competent counsel for the prisoners defense, provided the party doesn't object to that lawyer.

2. Right to Speedy Trial

Right to speedy trial is a fundamental right of a prisoner implicit in article 21 of the Constitution. It ensures just, fair and reasonable procedure. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less right of accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

In the case of *Hussainara Khatoon v. State of Bihar* [12], a shocking state of affairs in regard to the administration of justice came forward. An alarmingly large number of men and women, including children are behind prison bars for years awaiting trial in the court of law. The offences with which some of them were charged were trivial, which, even if proved would not warrant punishment for more than a few months, perhaps a year or two, and yet these unfortunate forgotten specimens of humanity were in jail, deprived of their freedom, for periods ranging from three to ten years without as much as their trial having commenced. The Hon'ble Supreme Court expressed its concerned and said that: What faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind the bars not because they are guilty; but

[11] 1978 AIR 1548
[12] 1979 SCR (3) 532

because they are too poor to afford bail and the courts have no time to try them.

One reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pretrial detention is our highly unsatisfactory bail system. This system of bail operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of bail fixed by the courts is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the police or the magistrate about their solvency for the amount of the bail and where the bail is with sureties as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties.

In *HussainaraKhatoon (II) v. Home Secretary, State of Bihar* [13], the Court while dealing with the cases of undertrials who had suffered long incarceration held that a procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of Article 21.

In *Mathew Areeparmtil and other v. State of Bihar and other* [14], a large number of people were languishing in jails without trial for petty offences. Directions were issued to release those persons. Further the court ordered that the cases which involve tribal accused concerning imprisonment of more than 7 yrs. should be released on execution of a personal bond. In the case where trial has started accused should be released on bail on execution of a personal bond. In case where no proceedings at all have taken place in regard to the accused within three yrs., from the date of the lodging of FIR, the accused should be released forthwith under S.169 Cr. P.C. if there are cases in which neither charge-sheet have been submitted nor investigation has been completed during the last three years, the accused should be released forthwith subject to reinvestigation to the said cases on the fresh facts and they should not be arrested without the permission of the magistrate.

3. Right against Solitary Confinement, Handcuffing & Bar Fetters and Protection from Torture

Solitary Confinement in a general sense means the separate confinement of a prisoner, with only occasional access of any other person, and that too only at the discretion of the jail authorities. In strict sense it means the complete isolation of a prisoner from all human society. Torture is regarded by the police/investigating agency as normal practice to check information regarding crime, the accomplice, extract confession. Police officers who are supposed to be the protector of civil liberties of citizens themselves violate precious rights of citizens. But torture of a human being by another human is essentially an instrument to impose the will of the strong over the weak. Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heel it.

An arrested person or under-trial prisoner should not be subjected to handcuffing in the absence of justifying circumstances. When the accused are found to be educated persons, selflessly devoting their service to public cause, not having tendency to escape and tried and convicted for bailable offence, there is no reason for handcuffing them while taking them from prison to court.

In the case of *Prem Shanker Shukla v. Delhi Administration* [15], the petitioner was an under-trial prisoner in Tihar jail. He was required to be taken from jail to magistrate court and back periodically in connection with certain cases pending against him. The trial court has directed the concerned officer that while escorting him to the court and back handcuffing should not be done unless it was so warranted. But handcuffing was forced on him by the escorts. He therefore sent a telegram to one of the judges of Supreme Court on the basis of which the present habeas corpus petition has been admitted by the court. To handcuff is to hoop harshly and to punish humiliatingly. The minimum freedom of movement, under which a detainee is entitled to under Art.19, cannot be cut down by the application of handcuffs. Handcuffs must be the last refuge as there are other ways for ensuring security.

In the case of *D.K. Basu v. State of West Bengal* [16], the Court treating the letter addressed to the Chief justice as a writ petition made the following order: In almost every States there are allegations and these allegations are now increasing in frequency of deaths in custody described generally by newspapers as lock-up deaths. At present there does not appear to be any machinery to effectively deal with such allegations. Since this is an all India question concerning all States, it is desirable to issue notices to all the State Governments to find out whether they are desire to say anything in the matter. Let notices issue to all the State Government. Let notice also issue to the Law Commission of India with a request that suitable suggestions may be made in the matter. Notice be made returnable in two months from today.

Custodial torture is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personally. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward. Fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides no person shall be deprived of his life or personal liberty except according to procedure established by law. Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression life or personal liberty has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice.

The Court, therefore, considered it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

- The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear

[13] 1979 SCR (3) 532
[14] 1984 AIR 1854
[15] 1980 AIR 1535
[16] 1997 1 SCC 416

accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

- That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made, it shall also he countersigned by the arrestee and shall contain the time and dale of arrest.
- A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed; of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor-injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.
- The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
- Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
- The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and al the police control room it should be displayed on a conspicuous police, board.

Balancing the Scenario

The difficulty in dealing with abuses in police detention and in the prisons is exacerbated by the decentralization of authority in India. A determination to correct these abuses at the central government level would not suffice.

The following recommendations can be considered:

- The governments of the various states would have to decide to end torture by the police and to end the mistreatment of lower-class Indians who make up the bulk of the prison population, and enforce those decisions.
- The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.

Thus, (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate; (b) Untried prisoners shall be kept separate from convicted prisoners; (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence; (d) Young prisoners shall be kept separate from adults.

- All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.
- The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.
- At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.
- Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Conclusion

The Supreme Court of India is taking steps to prevent the violations on human rights of prisoners and for the protection of prisoners and is done through Public Interest Litigation. Further almost all the basic rights are identified to come under Art 21 of the Constitution by the judiciary. The constitution of India guarantees equality, right to freedom of speech and expression, peaceful assembly, freedom from arbitrary arrest, protection of life and liberty right against exploitation, freedom of conscience and free profession, practice and propagation of religion and educational and cultural rights. It also provides teeth to those rights by making them enforceable by direct access to the Supreme Court of India. In the comprehension of the Supreme Court the right to life and liberty includes, right to human dignity, right to privacy, right to speedy trail, right to

free legal aid, right to be prisoner to be treated with dignity and humanity, right to bail, right to compensate for custodial death, right of workers to fair wage and human conditions of work, right to security, right to education and right to healthy environment.

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