



ROLE OF INDIAN JUDICIARY IN PROTECTION AND PROMOTION OF HUMAN RIGHTS OF THE PRISONERS: A DISCOURSE

Paramita Das

Assistant Professor, Durgapur Institute of Legal Studies, Durgapur, West Bengal.

Introduction

Prisons are built with stones of law and so, when human rights are hashed behind bars, constitutional justice impeaches such law. In this sense, courts, which send citizens into prisons, have an onerous duty to ensure that, the detention is subject to the constitutional safeguards, free from torture or inhuman treatment in jails. Accordingly, the Apex Court has upheld the right of a prisoner Pandurang¹ to have his work entitled 'Inside the Atom' written in jail published since it does not violate prison discipline. For a prisoner all fundamental rights are an enforceable reality, except those restricted by the fact of imprisonment. Confinement inside a prison does not necessarily import cellular isolation. Segregation of one person all alone in a single cell is solitary confinement. Section 73, I.PC prescribes the limit of solitary confinement. Since it is a separate punishment, the court alone can impose it. (Section 74, IPC) It would be a subversion of this statutory provision (Sections 73 and 74, IPC² to impart a meaning to Section 30(2)³ of the Prisoners Act, 1894, whereby a disciplinary variant of solitary confinement can be clamped down on a prisoner under sentence of death. The safe keeping in jail custody is the limited jurisdiction of the jailor. The convict is not sentenced to imprisonment. He is not sentenced to solitary confinement. He is a guest in custody, in the safe keeping of the host jailor until the terminal hour of terrestrial farewell whisks him away to the halter. This is trusteeship in the hands of the superintendent, not imprisonment in the true sense. Section 366(2) of the Criminal Procedure Code, 1973 (jail custody)⁴ and form 40 (safety to keep) underscore this concept, reinforced by the absence of a sentence of imprisonment under Section 53 with Section 73, Indian Penal Code.

Right to Legal Defence vis-a-vis Right to Legal Aid to Prisoners

The right to defence is one of the basic rights of an arrested person⁵ as envisaged in clause (1) to Article 22 of the Constitution that affirms that an arrested person cannot be denied the right to consult and be defended by a legal practitioner of his choice.

Section 303 of the Criminal Procedure Code, 1973 also provides for representation by a pleader of one's choice to an accused charged of an offence. And the Court is under an obligation to provide an amicus curie to defend an accused who is unable to engage a lawyer and secure legal service on account of reason such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the State and the State is under constitutional duty to provide a lawyer to such person if the needs of justice so require. If free legal services are not provided the trial itself may be vitiated as contravening Article 21-"Protection of life and liberty".⁶

¹ State of Maharashtra v. Pandurang, AIR 1966 SC 424.

² Sections 73 and 74, IPC provide for imposition of solitary confinement and the limit of solitary confinement.

³ Section 30(2) ; Prisoner under sentence of death: Every prisoner under sentence of death shall be confined in a cell apart from all other prisoners, and shall be placed by day and night under the charge of a guard.

⁴ Section 336(2). The Court passing the sentence shall commit the convicted person to jail custody under a warrant.

⁵ Madhav H. Hoskot v. State of Maharashtra, AIR 1978 SC 1548.

⁶ Hussainara Khatoon V. Home Secretary, State of Bihar, AIR 1979 SC 1377.



The legal aid and assistance to the indigent and prisoners is a radical humanist concomitant of the rule of prison law. Article 39A⁷ is an interpretative tool for Article 21 of the Constitution. Partial statutory implementation of the mandate is found in sub-section (1) of Section 304 of Criminal Procedure Code, 1973⁸ which provides for legal aid to the accused at the State expense in certain cases. Courts cannot be inert in the face of Articles 21 and 39A of the Constitution. If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Article 142⁹ read with articles 21 and 39A of the Constitution power to assign counsel for such imprisoned individual for doing complete justice.

To provide adequate opportunity to an accused convicted of crime to file an appeal against the sentence the following facilities may be provided by the concerned authorities

1. Courts should forthwith furnish a free transcript of the judgment when sentencing an accused to imprisonment.
2. In the event of any such copy being sent to the jail authorities for delivery to the prisoner by the appellate revisional or other court the official concerned should get it delivered to the accused.
3. Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right should be made available by the jail administration,
4. where the prisoner is disabled from engaging a lawyer on reasonable grounds as indigence or incommunicado situation, the Court should if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner's defence, provided the party does not object to that lawyer.
5. the State should pay to the assigned counsel such sums as the court may equitably fix.¹⁰

Keeping in view the constitutional obligation, the Parliament in 1987 enacted the Legal Services Authorities Act, 1987 to provide free and competent legal services to the weaker sections of the society. The Act, inter alia, envisages to ensure that opportunities for securing justice are not denied to any citizen for reason of economic or other disabilities.

Right against Wrongful Confinement

The plight of under-trial prisoners first came to the notice of the Supreme Court in Hussainara Khatoon in 1973,¹¹ when it granted a charter of freedoms for under trials who had spent virtually their whole life awaiting trial i.e for a much longer period than the maximum, they could have served in jail had they been found guilty of the charge.

It is a well-known legal dictum that until a person is found guilty by a court of law he or she is presumed to be innocent. Unfortunately, in our jails there are more innocent captives that adjudged

⁷ Article 39A "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

⁸ Section 304(1) says " Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

⁹ Article 142(1) says" The Supreme Court in the exercise of its jurisdiction may pass such decrees or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable."

¹⁰ Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

¹¹ Hussainara Khatoon v. State of Bihar, AIR 1980 SC 1819.



criminals.¹² To make things worse, prison conditions are abominable (disgusting) and persons detained in prisons as under-trials are often subjected to various forms of torture, ranging from hand cuffing to maiming and blinding as had happened in Bhagalpur. There is little justice within the four walls of prison.

In case of under-trial prisoners the period of detention should be included in the sentence meted out to them. But if they are to be acquitted, how can they be compensated for the agony which they have already undergone for no fault of theirs. This state of affairs is a sad commentary on our legal system and judicial process.

Right of Public Trial vis-a-vis Speedy Justice

Section 327 of the Criminal Procedure Code, 1973 provides for an open court proceedings, to which the public generally may have access. This is based on the principle of openness of judicial proceedings so as to check against capricious exercise of judicial power or vagaries and to ensure confidence of public in judicial administration. The right to have public trial is also implicit in Articles 14, 19(1)(a) and 21 of the Constitution. Of course, inquiry into and trial of crime against women, such as rape or an offence under Sections 376, 376A, 376B, 376C and 376 D, IPC dowry death (Section 304B), abetment to suicide of a married woman (Section 306) cruelty by husband or relatives, etc. (Section 498A, IPC) shall be conducted in camera if the presiding judge feels in view of the sensitive nature of the proceedings.¹³

Similarly, with a view to safeguard the interest of woman the identity of victims in rape cases under Sections 376, 376A, 376B, 376C or 376D, IPC will not be disclosed¹⁴

Speedy trial is the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the American Constitution provides that : In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.

So also Article 3 of the European Convention on Human Rights provides that everyone arrested or detained shall be entitled to trial within a reasonable time or to be released pending trial. Though, speedy trial is not specifically enumerated as a fundamental right, in the Constitution, it is implicit in the broad sweep and content of Article 21 as interpreted by the Supreme Court in *Maneka Gandhi v. Union of India*,¹⁵ in which the Court held that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law. And it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be reasonable, fair and just. If a person is deprived of his liberty under a procedure which is not reasonable, fair or just, such deprivation would be violative of his fundamental right and secure his release. Procedure, which does not ensure a reasonably, quick and speedy trial, cannot be regarded as reasonable, fair or just and it would fall foul of Article 21.

¹² State of Gujarat v. Hon'ble High Court of Gujarat, AIR 1998 SC 3164.

¹³ Section 327, clause 2 of Cr. P.C, 1973. State of Punjab v. Gurmit Singh, AIR 1996 SC 1393.K

¹⁴ Section 228 of Cr. P.C, 1973. Also see Om Prakash v. State of Bihar, AIR 2006 SC 2214.

¹⁵ AIR 1978 SC 597.



Hussainara Khatoon case

In *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*,¹⁶ the Apex Court said that State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative reasons.

And in *Abdul Rahman Antulay v. R.S.Nayak*,¹⁷ Supreme Court laid down detailed guidelines for speedy trial of an accused in a criminal case but it declined to fix any time limit for trial of offences. Of course, in *Sheela Barse v. Union of India*,¹⁸ the Apex Court fixed time schedule. In the case of *P.Ramachandra Rao*,¹⁹ the Supreme Court while approving *Antulay*, held that speedy trial in criminal cases is one of the basic requirements. However, no limitation could be fixed to terminate the proceedings in a criminal case. Every case is to be judged on the facts and circumstances of its own and the court will decide accordingly.

Rights of Pre-Trial Detainees and Prisoners

A pre-trial detainee, like any other prisoner is entitled to just and fair treatment by way of comfort, recreation, and medical facilities etc. The practice of keeping under-trials with prisoners has been vehemently criticized and held such a practice is in violation of Articles 19 and 21 of the Constitution.

In *Prem Shankar v. Delhi Administration*,²⁰ the Court deplored the practice of handcuffing of the prisoner prima facie as "inhuman, arbitrary and unreasonable, and repugnant to Article 21". Similarly, in *Kihnsore Singh v. State of Rajasthan*,²¹ the Supreme Court held that the use of "third degree" method by police is violative of Article 21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. Similarly, torture and ill-treatment of men and women in police lockup have been held to be violative of Article 21.

Slavery in Jail and Bonded Labour

Perhaps, the most shocking and revealing state is that of slave system operating in Indian jails. The slaves are boys mostly under-trial prisoners, between ten and eighteen years of age employed as helpers. They cook, wash utensils, clean rooms, fetch water and do back breaking labour to help the men, who are employed to do these chores. They would be asked to get up early in the morning to prepare tea and would be allowed to go for sleep late at night after scrubbing the pots and pans. They are kept in jail as long as possible because without them the persons employed to do the menial duties would have not time to relax. They are taken from one court to another to be tried under one charge or another and kept in jail all the while.

A touching account of crime of punishment which in fact touches beyond tears is for children being lapped up and locked up for use as bonded labour on trumped charges in the punitive house of justice. Whenever, the number of prisoners goes up, the police are asked to bring the boys to help the chores. One such instance has been narrated in *Sunil Batra's* case, when one boy was picked up from Defence Colony in New Delhi kept in police lock-up for the night and brought to jail in the morning.. In this

¹⁶ AIR 1979 SC 1369.

¹⁷ AIR 1992 SC 1701.

¹⁸ AIR 1986 SC 1773.

¹⁹ *P.Ramachandra Rao v. State of Karnataka*, (2002) 4 SCC 578.

²⁰ AIR 1980 SC 1535

²¹ AIR 1981 SC 625.



way, young persons, exposed to violence and sufferings of a jail life, rub shoulders with hardened criminals and lead a tragic existence.

Corruption and Lawlessness in jails

An admirable account of the chaotic and deplorable state of affairs preventing in Central Tihar Jail situated right under the nose of the Home Ministry in Delhi is an eye opener to all those champions of the cause of human rights, personal liberty and human dignity. Corruption in jail is so well-organized and so systematic that everything goes like clockwise once the price had been paid.²² A fairly recent example of Pappu Yadav, a Member of Parliament lodged in Bihar for a number of serious charges of murder and other heinous crimes had to be shifted to Tihar Jail in Delhi on the orders of the Apex Court is an eye-opener to the pathetic condition of our recent political culture. Describing the deplorable conditions in Tihar Jail- Justice Krishna Iyer in Sunil Batra, said:

"The Tihar prison is an arena of tension, trauma, tumult and crimes of violence, vulgarity and corruption and to cap it all, there occurs the contamination of pretrial accused with habituals and injurious prisoners of international gangs. The crowning piece is that the jail officials themselves are allegedly in league with the criminals in the cells, that is, there is a large network of criminals, officials and non-officials in the house of correction (jail). Drug racket, alcoholism, smuggling, violence, theft, unconstitutional punishment by way of solitary cellular life and transfers to other jails are not uncommon".²³

If the administration does not immediately take appropriate measures to help improve the conditions of our modern jails, the conditions cannot be improved ever. The situations in Tihar Jail and incidents of blinding of under trial prisoners as stated earlier that has happened in Bhagalpur Jail²⁴ is a reflection of crime explosion, judicial slow motion and mechanical police action coupled with unscientific negativity and expensive futility of the prison administration.²⁵ Some of the causes of deplorable conditions in Indian prisons are following:

1. Overcrowding in jails- Indian prisons are crammed with prisoners. With the result amenities designated for a far less number of inmates are being shared by disproportionately large number of internees.
2. Lack of Proper Classification of Prisoners-No proper classification of different categories of prisoners depending on the nature and type of criminals is made, such as for under trials, females, habitual, casual offenders, juveniles first offenders and political prisoners, etc.
3. Untrained Staff- At present most of the jail staff, such as Assistant Superintendents, Warders, Guards, etc., are appointed without any training in jail administration.
4. Lack of Sanitation- Sanitary conditions in jails are far from being satisfactory as reported by a number of committees on Jail Reforms.

Right to Appeal and Right to Approach the Court for Enforcement of Fundamental Rights

The component of fair procedure is the application of the principles of natural justice. Generally speaking and subject to just exceptions at least a single right of appeal on facts, where criminal

²² Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

²³ AIR 1980 SC 1579.

²⁴ State of Gujarat v. Hon'ble High Court of Gujarat, AIR 1998 SC 3164.

²⁵ Khatri v. State of Bihar, AIR 1981 SC 928.



conviction is fraught with long loss of liberty; is basic to civilised jurisprudence.²⁶ It is integral to fair procedure, natural justice and normative universality. In short, a first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, Section 374 manifests this value upheld in Article 21 of the Constitution.

Technicalities and legal niceties are no impediments to the court's entertaining even an informal communication as a proceeding under Articles 32 and 226 of the Constitution, if the basic facts are found true. For instance, in *Sunil Batra v. Delhi Administration*,²⁷ the writ petition originated in a letter by a prisoner addressed to a judge of the Supreme Court complaining of a brutal assault by a Head Warder on another prisoner Prem Chand. Forms were forsaken since freedom was at stake and the letter was metamorphosed into a habeas corpus proceeding and was judicially navigated with electric creativity. Allowing the petition, the Court said:

"Where injustice verging on inhumanity, emerge from hacking human rights guaranteed in Part III and the victim beseeches the court to intervene and relieve, the court will be functional futility as a constitutional instrumentality; if its guns do not go into action until the wrong is righted. The Court is not a distant abstraction omnipotent in books but an activist institution which is the cynosure of the public hope".²⁸

Directing the authorities the Court said that

The prisoner Prem Chand shall not be subjected to physical manhandling by any jail official, that the shameful and painful torture to which he has been subjected, a blow on Government's claim to protect human rights, shall be ended and the wound on his person given proper medical care and treatment.

Suggestion for Prison Reforms

The Supreme Court during the last 70 years of its existence has rendered invaluable service to the people by upholding the dignity and basic fundamental rights of man by recognizing human rights of people both inside and outside hail. Our constitutional culture has now crystalized in favour of prison justice and judicial jurisdiction. As explained above prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedures that satisfy all the requirements of the due process. In *Narinder Singh Suri v. Union of India*,²⁹ the Supreme Court held that continued detention of the petitioner for a period of 20 days in considering the representation filed by the detainee without any reason is clearly violative of Article 22(5)³⁰ of the Constitution of India.

²⁶ *Madhav H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548.

²⁷ AIR 1980 SC 1579.

²⁸ The court took support from American Jurisprudence, 2nd Edn., Vol. 39, p. 185 para II. *Coffin v. Raichand*, 143 F 2d 443 (445), where the Court of Appeal said that:

"The Government has the absolute right to hold prisoners for offences against it but it also has the correlative duty to protect them against assault, or injury from any quarter while so held. A prisoner is entitled to the writ of habeas corpus when, though lawfully confinement for deprivation of which serves to make his imprisonment more burdensome than the law allows or curtails his liberty to a greater extent than the law permits."

²⁹ AIR 1980 SC 945.

³⁰ Article 22(5) reads: "When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds of which the order has been made and shall afford him the earliest opportunity of making a representation against the order. See *Rajendra Prasad v. State of U.P.*, AIR (1979) 3 SCR 646.



Grievance Deposit Box is kept in all jails and access to it should be allowed to all prisoners. District Magistrates and Sessions Judges should visit jails periodically within their respective court jurisdiction and afford effective opportunities for ventilation of grievances and take suitable remedial measures.

The institutions should utilize all the remedial moral, spiritual, and other forms of assistance which are appropriate and available. Community agencies be enlisted to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be liaison with every institution of social workers charged with the duty of maintaining and improving all desirable relations of prisoner with his family and with valuable social agencies.

As stated by Supreme Court in *Mohammad Giassudin v. State of Andhra Pradesh*,³¹ the role of Jail authorities should be that of doctors treating criminals as patients. The Court's observation is very pertinent in this context, when it says:

"Progressive Criminologists across the world will agree that the Gnadhian diagnosis of offenders as patients and his conception of prisoners as hospitals mental or moral, is the key to the pathology of delinquency and the therapeutic role of 'punishment'. The whole man is a healthy man and every man is born well. Criminality is a curable deviance. Our prisons should be correctional houses, not cruel iron aching the soul."³²

..

³¹ AIR 1977 SC (1977)

³² AIR 1977 SC 1926