



HUMAN RIGHTS OF UNDER TRIAL PRISONERS: NATIONAL AND INTERNATIONAL PERSPECTIVES

Asst. Prof. Yogesh Narayan Desai
Ismailsaheb Mulla Law College, Satara
Email- Prof.desai@rediffmail.com

The human rights are said to be the natural and basic birth rights of all human being without any discrimination. All Human beings are entitled to some basic human rights by virtue of being as a member of human family. Everyone is equally liable for all these basic and inalienable, natural or birth rights of human being. Human rights are also available to persons under detention including convicted or under trial prisoners.

A prisoner means the person whose liberty has been forfeited for execution of any legal process. Prisoners are divided in two categories i.e. convicts and under trial prisoners. A prisoner be he a convict or under trial does not cease to be a human being. Therefore, every human being in jail or detention enjoys all basic human rights without any discrimination. Article of 25 of Universal Declaration of Human Rights says that “All Human beings are said to be born free and equal in dignity”. It also states that: “No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment”. The international Covenant on Civil and Political Rights states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

Part III and Part IV of Indian Constitution consisting of Fundamental rights and Directive Principles of State Policies respectively are enumerated these various principles of Human rights specified under International Bill of Rights. Some of the provisions of Indian Constitution are related to the basic human rights of Prisoners, such as Article 14 of Constitution of India provides for equality before law and equal protection of laws; it states that “State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. Article 19 provides for protection of certain freedoms i.e. All citizens shall have the right– (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; (g) to practice any profession, or to carry on any occupation, trade or business. Article 20 provides for protection in respect of conviction for offences “(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (2) No person shall be prosecuted and punished for the same offence more than once. (3) No person accused of any offence shall be compelled to be a witness against himself.” Article 21 protects right to life and personal liberty “No person shall be deprived of his life or personal liberty except according to procedure established by law”. Article 22 states different rights of arrested and detained persons such as (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond said period without the authority of a magistrate. Seventh Schedule of Indian Constitution under Article 246 and in Second List i.e. State List Entry No. 4 provides for law making power of state govt. on different subjects such as Prisons,

reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

Prisons in India, and their administration, are a state subject covered by item IV under the State List in the Seventh Schedule of the Constitution of India. The management and administration of prisons falls exclusively in the domain of the State governments, and is governed by the Prisons Act, 1894 and the Prison manuals of the respective state governments. Thus, states have the primary role, responsibility and authority to change the current prison laws, rules and regulations.¹ The Central Government provides assistance to the states to improve security in prisons, for the repair and renovation of old prisons, medical facilities, development of Borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosures.

According to Prison Statistics India 2011, in the Indian prisons 2,41,200 under trial prisoners were kept for committing offences under IPC, Special and local laws and civil offences. Out of these 2,30,266 (95.5%) are male and 10,934 (4.5%) females.² Some States and Union Territories have reported very high percentage of under trials to total prisoners. They were Dadar & Nagar Haveli (100.0%), Arunachal Pradesh (89.1%), Bihar (83.5%), Meghalaya (83.9%), Jammu & Kashmir (79.3%), Delhi (73.5%), Jharkhand (72.8%), Odessa (71.0%) and Manipur (70.2%). Only a very few States like Himachal Pradesh (942 convicts, 665 under trials), Tripura (569 convicts, 330 under trials) Pondicherry (130 convicts, 112 under trials), have got less number of under trials than that of convicts. While we are looking at the all India statistics on prison population we can see that the number of under trials is more than double, than that of convict prisoners (128592 convicts, 241200 under trials). The percentage of under trial prisoners to the total prisoners in prison is 64.7% in the country and the share of convicted prisoners is 34.5%. Their number has increased as in 2011(2,41,200) over 2005(2,3,7076). It has also increased marginally by 0.5% in 2011 (2,41,200) over 2010 (2,40,098). From this we can see that the number of under trial prisoners in the prison is increasing³. The presence of large number of under trial prisoners is really shame to any criminal justice administration. For this we have to take these under trials out of the prison or not to keep them for a long period as well as not to sent more under trials to the prison.

Human Rights of under trial prisoners at national and international level

The binding principle at an international level is that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of a human person."⁴ In particular, that prisoner will not be tortured or subjected to cruel, inhuman or degrading treatment or punishment.⁵ According to Article 10 the United Nations Human Rights Committee on International Covenant on Civil and Political Rights, the State party has a positive obligation towards those persons who are particularly vulnerable because of their status as persons deprived of their liberty.⁶ The Committee considers the treatment of all persons deprived of their liberty with humanity and dignity a fundamental and universally applicable rule, the application of which, as a minimum, does not depend on the material resources available within a State party.⁷ All the State parties are obligated to apply the UN

¹ "[India - The Penal System](#)". Country-data.com. Retrieved 4 June 2013.

² Dr. Bindu M.Nambiar Volume : 2 | Issue : 9 | Sept 2013 ISSN - 2250-1991

³Prison Statistics India-2013

⁴International Covenant on Civil and Political Rights, 1966, Article 10(1). This is also reiterated by Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1979, and Article 2 of the Code of Conduct for Law Enforcement Officials, 1979.

⁵Article 7 of the International Covenant on Civil and Political Rights.

⁶General Comments No. 21, UN Human Rights Committee on Civil and Political Rights, 1992, para 3.

⁷ General Comments No. 21, UN Human Rights Committee on Civil and Political Rights, 1992, para 4.

standards relevant to the treatment of prisoners.⁸ The UN Committee, in its general comments indicated, inter alia, the following factors as being relevant to its consideration whether the conditions of detention in any country are humane as required by the Covenant. First, whether the Standard Minimum Rules for the Treatment of Prisoners and other UN standards are being implemented.⁹ Second, details about prisoners' diet, in terms of both quality and quantity; prison sanitation; over-crowding, that is, the average number of prisoners per cell; and health care.¹⁰ The Constitutional Court in the Government of the RSA and Others v Grootboom and Others¹¹ affirmed that human dignity, freedom and equality are the foundational values of our society and that those without food, clothing or shelter are denied these rights. Affording people these socio-economic rights enables them to enjoy the other rights enshrined in the Bill of Rights.¹² More pertinent to this discussion is the UN Standard Minimum Rules for the Treatment of Prisoners¹³ that describes in detail what is "generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions." It stipulates in detail, amongst others, the type of accommodation, food, education and medical services that should be afforded to prisoners. The Human Rights Committee emphasized in its general comments, that penitentiary system should essentially seek the reformation and social rehabilitation of the prisoner, and not only retributory.¹⁴

Rights of under trial Prisoners in India

1. 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.

In *Hussainara Khatoon (II) v. Home Secretary, State of Bihar*, the Court while dealing with the cases of under trials 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.

2. Rights against Inhuman Treatment of Prisoners

Human Rights are part and parcel of Human Dignity. 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. The Supreme Court of India in various cases has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners and persons in police custody. The Supreme Court read the right against torture into Articles 14 and 19 of the Constitution. The court observed that "the treatment of a human being which offends

⁸ Enforcement Officials, 1979; the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982; The African Charter on Human and Peoples' Rights and the Kampala Declaration on Prison Conditions in Africa, 1996.

⁹ General Comment No. 21, op.cit., para 5 also lists other UN standards.

¹⁰ Paul R Williams, *Treatment of Detainees: Examination of Issues Relevant to Detention by the United Nations*.

¹¹ 2001 (1) SA 46, para 23.

¹² General Comments No. 21, UN Human Rights Committee on Civil and Political Rights, 1992, para 23.

¹³ The Standard Minimum Rules for the Treatment of Prisoners, was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and was subsequently approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

¹⁴ General Comment No. 21, op. cit., para 10

human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14”¹⁵

3. No handcuffing:

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.¹⁶

4. Right to be informed and to meet Family members and friends

The Right to Life and Personal Liberty enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to have interview with the members of one's family and friends is clearly part of the Personal Liberty embodied in Article 21. Article 22 (I) of the Constitution directs that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. This legal right is also available in the code of criminal procedure under section 304. In the case of Sunil Batra(II) v. Delhi Administration, the Supreme Court recognized the right of the prisoners to be visited by their friends and relatives. The court favoured their visits but subject to search and discipline and other security criteria. The court observed: Visits to prisoners by family and friends are a solace in insulation, and only a dehumanized system can derive vicarious delight in depriving prison inmates of this humane amenity.

These rights are inherent in Articles 21 and 22(1) of the Constitution and require be recognizing and scrupulously protecting. For effective enforcement of these fundamental rights, the court issues the following requirements:

1. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.
2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.
3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

5. Right to have Interview with Lawyers

The court has held that from the time of arrest, this right accrues to the arrested person and he has the right of choice of a lawyer. In a series of cases the Supreme Court of India considered the scope of the right of the prisoners or detainees to have interviews with family members, friends and counsel.

In Hussainara Khatoon vs. Home Secretary, Bihar, the Supreme Court has held that it is the Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons 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 the Article 21.

6. Narco Analysis/Polygraph/Brain Mapping

In Selvi Vs State of Karnataka, (2010), the Supreme Court has declared Narcoanalysis, Polygraph test and Brain Mapping unconstitutional and violative of human rights. This decision is quite unfavorable to various investigation authorities as it will be a hindrance to furtherance of investigation and many alleged criminals will escape conviction

¹⁵D.K. Basu Vs Union of India

¹⁶Prem Shanker Shukla v. Delhi Administration

with this new position. But the Supreme court further said that a person can only be subjected to such tests when he/she assents to them. The result of tests will not be admissible as evidence in the court but can only be used for furtherance of investigation. With advancement in technology coupled with neurology, Narco analysis, Polygraph test and Brain mapping emerged as favorite tools of investigation agencies around the world for eliciting truth from the accused. But eventually voices of dissent were heard from human rights organizations and people subjected to such tests. They were labeled as atrocity to human mind and breach of right to privacy of an individual. The Supreme Court accepted that the tests in question are violative of Article 20 (3), which lays down that a person cannot be forced to give evidence against himself. Court also directed the investigation agencies that the directives by National Human Rights Commission should be adhered to strictly while conducting the tests. These tests were put to use in many cases previously, Arushi Talwar murder Case, Nithari killings Case, Abdul Telagi Case, Abu Salem Case, Pragma Thakur (Bomb blast Case) etc. being ones which generated lot of public interest.

7. Right to Legal Aid

Though, the Constitution of India does not expressly provide the Right to Legal Aid, but the judiciary has shown its favour towards poor prisoners because of their poverty and is not in a position to engage the lawyer of their own choice. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution. This is the most important and direct Article of the Constitution which speaks of Free Legal Aid. Though, this Article finds place in part-IV of the Constitution as one of the Directive Principle of State Policy and though this Article is not enforceable by courts, the principle laid down there in are fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making laws. While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it many a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The parliament has enacted Legal Services Authorities Act, 1987 under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39-A. Under the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases.

In Madhav Hayawadan Rao Hosket vs. State of Maharashtra, a three judges bench (V.R.Krishna Iyer, D.A.Desai and O.Chinnappa Reddy, JJ) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and section 304 of Cr.P.C together declared that the Government was under duty to provide legal services to the accused persons.

CONCLUSION

To conclude, a review of the decisions of the Indian Judiciary regarding the protection of Human Rights of prisoners indicates that the judiciary has been playing a role of rescuer in situations where the executive and legislature have failed to address the problems of the people. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature. From the perusal of the above contribution it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the people. It has, through judicial activism forged new tools and devised new remedies for the purpose of vindicating the most precious of the precious Human Right to Life and Personal Liberty.¹⁷

¹⁷ <http://www.legalservicesindia.com/article/article/role-of-judiciary-in-protecting-the-rights-of-prisoners-1616-1.html>