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REVIEW ARTICLE

RIGHTS OF PRISONERS WITH SPECIAL REFERENCE TO WOMEN PRISONERS

Rights of Prisoners with Special Reference to Women Prisoners

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HISTORICAL BACKGROUND OF RIGHTS PRISONERS:

Crime, repression and injustice have always been parts of the human society, so also the prisons. Traditionally prisons and prisoners have been considered as somewhat violative and frightful entities by the societies. The history of prison and its use as a place of detention for the condemned persons is not of recent origin but is very old. The outlawed inmates of a prison, till the beginning of the century, were never considered fit to claim any right enjoyed by the law abiding citizens of the society. They were put in jail only to realize their folly and to pay for it through their sufferings.

Towards the middle of 16th century some experiments were carried out in Britain in respect of imprisonment with certain types of offenders like juveniles, sturdy beggars, vagabonds, etc. The London Bride Well, the Amsturdor Rasphius and Sphinhuis founded respectively in 1557, 1595 and 1597; Francis Florentine Hospice established around 1677; the reformatories for boys and women in St. Michael's Hospice in Rome founded in 1704 and in 1735 were the institutions founded for this purpose.¹ One of the significant contributions to the reformation of the British Prison System was the Gladstone Committee which was appointed to make 'a searching enquiry' into the main features of prison life. The report was the most important and far reaching document in the history of prisons. The report pointed out that undue stress had been laid upon the deterrent aim of imprisonment and too little stress upon the reform of the prisoners subject to prison confinement. The Committee recommended that the prisoners should not be merely taken as condemned but the system should be so designed as to be capable of being adapted to the special cases of individual prisoners. The committee also observed that hard labour, hard fare and hard bed are no more useful and are rather outdated concepts.² The five basic principles on which the existing prison system in England is based are :

- (i) that for all prisoners with sentences of suitable length the prison regime should be one constructive training, moral, mental and vocational.;
- (ii) that such training can be lawfully carried out only in homogeneous establishments set aside for the purpose;
- (iii) that the special training prisons need not provide the security of normal prison buildings;
- (iv) that the services of the community outside the prisons should be enlisted to help in the training of prisoners; and
- (v) that this continuing responsibility of society should be maintained after his discharge by effective aid towards social rehabilitation.

The first attention of the Government of India to the terrible and inhuman conditions existing in the Indian jails was drawn by Lord Macaulay. On his suggestion a Committee was appointed in 1836 to enquire into the affairs of the prison administration and prison conditions. However, the Committee could not recommend any reforms into the prison system on the pretext that the laxity of discipline would aggravate the situation.³

In 1894 the Prison Act was passed which provided the legal basis for the existing prison system in India. The Act does contain some useful and reasonable provisions. However, it mainly incorporates the ideas of English system of Prison Administration.

In 1948, a movement was started in the United Nations Organization in the form of Universal Declaration of Human Rights. This document provided certain basic principles which should be applied by the municipal codes in the process of administration of justice. Some of the principles embodied in the declaration are equality of treatment,

2. Fokes, The Modern English Prison, 1934, p. 22; Hinde,, The British Penal System, p.59.

3. Report of the Indian Jails Committee 1919, p. 29.

right to life, liberty and security of person, freedom from torture, cruel, inhuman or degrading treatment.

The European Convention on Human Rights is another major document which gave push to the human rights movement. It also provides for the humane treatment of prisoners and prescribes certain important safeguards against the arbitrary acts of the State. The major achievement of this document is that it provides a machinery for the protection of the human rights in the form of Human Rights Commission.

The Declaration on Protection from Torture, 1975 by the United Nations Organisation pleads for the humane treatment of subjects and provides many protections against the torture, inhuman, cruel or degrading treatment or punishment to them.

These documents have made an impact on the codes of the civilized countries and they have started recognizing the importance of reformative aspect of the punishment and considering the prisoners as persons who have to go outside and live in the society as reformed persons.

2. INTERNATIONAL CONVENTIONS ON RIGHTS OF PRISONERS

2.1 UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

In 1948 the General Assembly of the United Nations adopted a Universal Declaration of Human Rights. Important provisions of this Declaration are:

- (a) All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.⁴
- (b) Everyone has a right to life, liberty and security of person.⁵
- (c) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁶
- (d) Everyone has a right to recognition everywhere as a person before the law.⁷
- (e) No one shall be subjected to arbitrary arrest, detention or exile.⁸
- (f) Everyone is entitled in full equality to a fair and public hearing by independent and impartial

⁴. Article 1.

⁵. Article 3.

⁶. Article 5.

⁷. Article 6.

⁸. Article 9.

trial at which he has had all the guarantees necessary for his defence.⁹

2.2 DECLARATION ON PROTECTION FROM TORTURE, 1975

On 9th December, 1975 the United Nations by consensus adopted the Declaration on Protection from Torture, 1975. The important provisions of this Declaration are:

Any act of torture or other cruel inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration on Human Rights.¹⁰

No State may permit or tolerate torture or other cruel, inhuman, degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel inhuman or degrading treatment or punishment.¹¹

2.3 STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

The Amnesty International in 1955 adopted certain rules for the treatment of prisoners. Some of the important aspects of these rules are:

(a) General Rules

The important rule in this part has incorporated the principle of equality, that there shall be no discrimination on ground of race, sex, colour, religion, political, or other opinion, national or social origin, property, birth or other status among prisoners. Prison authorities are supposed to respect the religious beliefs and moral precepts of the community to which a prisoner belongs [(rule 6 (1) and (2)]. Another important rule states that the different categories of prisoners shall be kept in separate institutions or parts of the institutions on the basis of their sex, age, criminal record and other circumstances. Many of the countries like UK, USA, India, Australia, Japan etc., have given recognition to this rule.¹²

(b) Rules regarding Separation of prisoners

The standard rules have given due consideration to the separation of the different categories of prisoners. The rule states that the men and women shall so far as possible and practicable be detained

⁹. Article 10.

¹⁰. Article 2, Declaration from Torture, 1975..

¹¹. Article 3, Ibid.

¹². Rule 8.

in separate institutions and in institution which receives both, the whole of the premises allocated to women shall be entirely separate. (rule 8 (a). The untried prisoners should be kept separate from tried and convicted prisoners. There must be complete separation between the civil prisoners detained for the debt etc. and persons imprisoned by reasons of a criminal offence; young prisoners should be kept separate from the adult prisoners.¹³

Corporal punishment by placing in dark cell and all cruel, inhuman, degrading punishment shall be completely prohibited. So far as jail offences are concerned, no punishment can be given except through proper trial. The punishment like close confinement or reduction in diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that the prisoner is fit to sustain it. Instrument of restraint such as hand cuffs, chains, irons and strait jackets shall never be applied as a punishment.¹⁴

(c) Rules for Providing Minimum Facilities

Separate accommodation for different types of prisoners should be provided. The separate bedding and clothing giving due consideration to the hygienic conditions for living should be made. The food served must be of nutritional value adequate for health and strength. Services of qualified medical officers having some knowledge of psychiatry should also be made available. Facilities of T.V., radio, newspapers and magazines, should also be provided. Prisoners should be allowed to communicate with their family members and friends at regular intervals.¹⁵

(d) Rules for under-trials

Provisions should be made for separation of under-trials on age basis. Young untried prisoners should be kept separate from adults and shall be detained in separate institutions. They may have their own food at their own expenses through their family and friends. They may also be allowed to wear their own clothings.¹⁶

(e) Social relations and after care

Rules also provide reformative aspects of the punishment. The purpose of punishment should not be to torture but to reform the prisoner and to make him a good citizen. Rule 60(2) states that before the completion of the sentence, it is desirable that the necessary steps should be taken to ensure for the

prisoner, a gradual return to normal life in society. This aim may be achieved depending on the case by a pre-release regime organised in the same institution or any other appropriate institution or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

2.4 THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1953-69)

The Convention not only gave specific legal content to human rights in an international agreement but also provided for the establishment of a machinery for the supervision and enforcement. Important provisions of this convention are:

- (a) Everyone who is arrested shall be informed promptly in a language which he understands of the reasons for his arrest and of any charge against him.¹⁷
- (b) No one shall be subjected to torture or inhuman or degrading treatment or punishment.¹⁸
- (c) Everyone has a right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with the procedure prescribed by the Law:
 - (i) The lawful detention of a person after conviction by competent court;
 - (ii) The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
 - (iii) The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence when it is reasonably considered necessary to prevent him from committing an offence or fleeing after having done so;
 - (iv) The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

¹³. Rule 8 (b), (c) and (D).

14. Rule 30 (1), (2) and (3) and 31.

15. Rule 8(d), 15, 16, 19 and 20(1), and 22(1), 23(1) and 37, 38, 39

16. see rule 87 and 88

¹⁷. Article 2(1), European Convention. .

¹⁸. Article 3, Ibid..

- (v) The lawful detention of a person for the prevention of spreading of infectious disease of persons of unsound mind, alcoholics, or drug-addicts or vagrants.¹⁹

(d) Where the interest of juveniles or protection of the private life of the parties so require or to the extent strictly necessary in the opinion of court in such circumstances where the publicity would prejudice the interest of justice, the press may be excluded from hearing.²⁰

3. CONSTITUTIONAL AND OTHER STATUTORY PROVISIONS RELATING TO PRISONERS RIGHTS IN INDIA

Part III of the Constitution incorporates certain right which are available to the prisoners also. Besides the Constitution, there are certain other statutes like the Prisons Act, 1894, Prisoners' Act, 1900 and Prisoners' Attendance in Courts Act, 1955, where certain rights are conferred on the prisoners. Prisons and jail manuals of different States also provide for certain rules and safeguards for the prisoners and cause an obligation on the prison authorities to follow these rules.

3.1 CONSTITUTIONAL PROVISIONS

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.²¹ The rule that like should be treated alike and the concept of reasonable classification as contained in article 14 have been a very useful guide for the courts to determine the category of prisoners and their basis of classification in different categories.

Article 19 guarantees six freedoms to the citizens of India. Among these freedoms certain freedoms like freedom of movement', 'freedom to reside and to settle', and freedom of profession, occupation, trade, or business' cannot be enjoyed by the prisoners because of the very nature of these freedoms and due to the conditions of incarceration. But the other freedoms like 'freedom of speech and expression', 'freedom to become member of an association' etc., can be enjoyed by the prisoners even behind the bars and his imprisonment and sentence has nothing to do with these freedoms, and of course, with the limitations of the prisons.

'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.'²²

'No person shall be prosecuted and punished for the same offence more than once.'²³

Common law rule of nemo debet vis vexari, Constitution provides for an important safeguard to the under-trials and detenues. Under this clause the jail authorities or the police authorities cannot compel the prisoners to give testimony which is likely to expose them for criminal consequences.²⁴

ARTICLE 21 PROVIDES:

'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

Article 22(4) to (7) provides certain special safeguards for the 'detenues' detained under preventive detention laws. Clause (4) provides the maximum period for detention (3 months) for which a detinue can be detained without obtaining the opinion of Advisory Board. The detention beyond this period without obtaining the prior permission of the Advisory Board would render the order of detention void.

Clause (5) of article 22 guarantees two rights to a 'detinue'. These are:

- (a) The authority making the order of detention must 'as soon as may be' communicate it to the person detained along with the grounds of detention and facts which led the authority to making the order.
- (b) The detinue should be furnished with sufficient particulars to represent his case against the order of detention as soon as possible.

This clause casts a duty on the detaining authority to furnish the grounds of his detention and particulars required by the detinue to prepare his defence. Insufficient facts or particulars and the vagueness of the ground may render the detention invalid.

Clause (6) of article 22 provides that the authority can deny the disclosure of certain facts to detinue in the public interest. But on the other hand, in clause (5) the detaining authority is bound to disclose certain facts and furnish some particulars which are essential for the detinue to prepare his defence.

Under clause (7) of article 22, there is a provision for the formation of Advisory Board which shall be a body free from the executive control and will be an independent and impartial body.

3.2 RIGHT TO PHYSICAL PROTECTION

It is one of the essential duties of the State to protect the person physically. Hence, in Section 4 of the

¹⁹ . Article 5, Ibid.

²⁰ . Article 6, Ibid.

²¹ . Article 14, Constitution of India.

²² . Article 20, Ibid.

²³ . Article 20(2).

²⁴ . Article 20(3).

Prisons Act, there is a provision for the accommodation of prisoners.

3.3 ACCOMMODATION AND SANITARY CONDITIONS

The State Government shall provide for the prisoners in the territories under such government, accommodation in prisons constructed and regulated in a manner as to comply with the requisites of this Act in respect of the separation of prisoners.

Thus the prisoners cannot be kept in open exposed to sun, rain or cold or other vagaries of the weather. In addition to this, the prisoners are entitled to accommodation under a roof in some room type habitat.

Section 7 of the Prisons Act casts an obligation on the State Government to provide for temporary accommodation in case of overcrowding and outbreak of epidemic.

Under Section 13 the Medical Officer is responsible for the sanitary conditions.

MENTAL AND PHYSICAL STATE OF PRISONERS

Persons Act provides that the Medical Officer is required to submit a report regarding the mental condition of a prisoner whenever it appears that he is not fit. It provides:

“Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent together with such observations as he may think proper. This report, with the orders of the Superintendent thereon shall forthwith be sent to the Inspector-General for information.”²⁵

In the event of the death of prisoner in prison custody, a complete medical history showing the illness, treatment, diet, labour done by the prisoner and other necessary factors are to be recorded by the Medical Officer.

The Medical Officer is also required to examine the new inmates and shall advise the jailor regarding the nature of work carried out by the prisoner depending on the health and other factors of the prisoner.

SEPARATION OF PRISONERS

There is also a provision regarding the separation of prisoners. It provides:

‘In a prison containing female as well as male prisoners, the female shall be imprisoned in separate buildings, or separate parts of the same building in such a manner as to prevent their seeing or conversing or holding any intercourse with the male prisoners.

In a prison where male prisoners under the age of twenty-one years are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not.

Unconvicted criminal prisoners shall be kept separate from convicted criminal prisoners.’

SAFETY FROM FELLOW PRISONERS

In order to ensure the physical safety of the inmates from other fellow prisoners, it is provided that before admission of a prisoner into the jail, he shall be searched and any article which is found during search shall be handed over to the jailor. In case of female prisoner the search shall be carried out by matron.

SOLITARY CONFINEMENT

Solitary confinement is used to ensure the safe custody of other prisoners or is inflicted as a punishment. However, the Prisoners Act provides:

‘No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison and moreover, such prisoners must be examined by Medical Officer at least once a day if confined for a period of more than twenty-four hours.’²⁶

A controversial section of the Act stated that every prisoner under sentence of death shall be placed in a cell apart from all other prisoners and shall be placed by day and by night under the charge of a guard.

Handcuffing and bar fetters: Rule 26.23 of the Punjab Jail Manual provides:

‘Prisoners shall not be handcuffed while confined in lock up except in rule 26.4(3).

A prisoner who is charged only under section 124-A or 153-A of the Indian Penal Code shall not be handcuffed unless he is already undergoing sentence

²⁵. Sec. 14, Prisons Act.

²⁶. Sec. 29.

or the officer commanding the escort has definite reason for believing that such prisoner comes within the category described in rule 26.33 (e) or (f).'

So far as better class undertrial prisoners are concerned they should not be handcuffed except in the circumstances mentioned in clauses (1) (a), (b), (c) of rule 26.22. Moreover, if they are handcuffed otherwise than in these circumstances reasons should be recorded in writing by officer concerned.

TREATMENT OF PRISONERS

- (a) **Undertrials:** Undertrials are placed on a higher footing than the convicts and hence, they are permitted to have their own clothings, food, and other accessories from their own sources and are entitled to be permitted to contact these sources at reasonable hours and if such prisoners are unable to arrange, the same will be supplied by the jailor.
- (b) **Civil prisoners:** Civil prisoners are also placed and shall be treated like the undertrials. They are allowed to work in jail according to their will and can use their own implements for the same and shall be fully paid for the work.
- (c) **Criminal prisoners:** A criminal prisoner who is sentenced to labour shall not be allowed to work for more than nine hours a day. The Medical Officer is supposed to examine such prisoners every fortnight and to record the nature of work and its effect upon the weight of the prisoner in his history ticket. If it is found by the medical officer that the health of the prisoner is adversely affected by the labour and due to his employment, then such prisoner shall not be employed on that labour and is to be assigned the work which is suitable to him and is recommended by the Medical Officer.

PRISON OFFENCES AND PUNISHMENTS:

A number of prison offences like willful disobedience, use of force and foul language etc. have been defined in the Prison Act. The Superintendent has been given wide discretion for determining the offences and sentencing thereon. Punishment includes hard labour, separate confinement, reduction of diet, etc. But there is a prohibition of combining two or more punishments which have adverse effect on the health of prisoner, like the punishment of reduction in diet cannot be joined with hard labour.

The discretionary power of the Superintendent of the jail to inflict the punishments for prison offences has been controlled by the Inspector-General, as the Superintendent has to take prior per-mission from Inspector-General for inflicting the punishment.

Under section 49 of the Prison Act, there is a complete prohibition on awarding the punishments other than provided in section 46 of the Act. It is further provided that the Superintendent shall only act in accordance with the report of the Medical Officer that the prisoner concerned will be able to tolerate the punishment. But in case of heinous crimes committed by the prisoner, the case will be referred to the Court along with the record of facts.

Diet: The prisoners who are covered by 'better class' are to be given diet on the same scale as provided for A and B class convict prisoners. Undertrial prisoners classified as 'ordinary' are to be treated, so far as diet is concerned, like 'C' class prisoners. However, diet can be supplemented by the undertrials by private purchase through the authorities.

All food which is given by the relatives or friends to the prisoners is to be examined by the authorities.

SOCIAL AND CULTURAL RIGHTS,

'Undertrial prisoners are divided into classes based on previous standard of living. The classifying authority is the trying court subject to the District Magistrate; but during the period before a prisoner is brought before a competent court, discretion is to be exercised by the officer-in-charge of the Police Station concerned to classify him as either 'better class' or 'ordinary'. Only those prisoners are to be classified provisionally as 'better class' who by social status, education or habit of life have been accustomed to a superior mode of living. The fact that the prisoner is to be tried for the commission of any particular class of offence is not to be considered. The possession of a certain degree of literacy is in itself not sufficient for 'better class' classification and no undertrial prisoner shall be so classified whose mode of living does not appear to the police officer concerned to have been definitely superior to that of the ordinary run of the population, whether urban or rural.'²⁷

The above rule speaks of the category of prisoners on the basis of social status and other habits.

MEETINGS WITH FAMILY MEMBERS AND FRIENDS:

Punjab Jail Manual provides that the undertrial prisoners shall be allowed to maintain contact with their family members and friends twice a week.

Other rule provides that the convicted prisoners shall be allowed to meet the family members and friends once in a week.

The rules are silent so far as 'detenues' under preventive detention are concerned and have

²⁷. Rule 26.21 A, Jail Manual..

created a lot of confusion regarding the facility of visits by friends and family members.

Parole: is considered as a useful tool for the social rehabilitation of the prisoner because it provides an opportunity to meet the family members and hence, can realize his responsibility towards his family.

Section 58A provides that the appropriate government should make provisions for parole depending upon the nature and conduct of the criminal and gravity of the offence committed by him.

TEMPORARY RELEASE OF THE PRISONERS:

It is provided in the Prisons Act that prisoners should be temporarily released subject to certain conditions for a period not exceeding ten days in a year excluding the time required for journeys and the days of departure from, and the arrival at the prison.

However, no prisoner is to be released under above provision, unless—

- (a) he has, at the time of his release, served one-half of his sentence including remission or a period of not less than two years of his sentence including remission whichever is less;
- (b) his conduct in prison has been good;
- (c) twelve months have elapsed from the date of the expiry of the period of his previous release, if any under this provision.

POLITICAL RIGHTS

As prisoners are 'persons' and 'citizens' even behind the bars, basically they have all those political rights which are enjoyed by the outsiders. They can participate in the elections. Not only they have right to vote, if otherwise eligible, but also right to fight elections. Their imprisonment has nothing to do with the political rights of the inmates.

There are, however, some disqualifications which are mentioned in the Representation of Peoples' Act; the right of the prisoners to fight election or to be a voter are subject to these disqualifications. One of the major factors which has been duly considered in the Act is the moral turpitude. The persons, who have been disqualified from being voter or being a candidate are those who have been punished for the offences involving moral turpitude.

Disqualification for membership of Parliament and State Legislature: Section 8 of the Act provides:

'A person convicted of an offence punishable under section 153A or section 171E or section 171F or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code or under sections 125 and 135 of clause (a) of sub-section (2) of section 136 of this Act shall be disqualified for period of six years from the date of such convictions.

A person is also disqualified under the Representation of People's Act, if he has been convicted by a competent court for any offence and sentenced with imprisonment for not less than two years from the date of conviction and such qualifications continue for a period of five years.

A person who is convicted for offences under the law for the prevention of hoarding or profiteering or of adulteration of food or drugs and sentenced to imprisonment for not less than six months is also disqualified for the period of five years from the date of his conviction.

Disqualification for voting. Section 11-A states:

'A person is disqualified from being a voter if he is convicted of an offence punishable under section 171 E or section 171F of the Indian Penal Code or under section 125 or section 135 or clause (a) of sub-section (2) of section 136 of this Act.

JUDICIAL EXTENSION OF PRISONERS' RIGHTS IN INDIA

1. RIGHT TO PHYSICAL PROTECTION

(i) The electric surveillance

In *D.B.M. Patnaik v. The State of A.P.*²⁸ the Supreme Court has observed:

'Convicts are not, by mere reason of the conviction, denuded of all fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India, or the right to practice 'profession'. A man of profession would thus stand stripped of his right to hold consultations while serving out of his sentence. But the Constitution guarantees other freedoms under articles 19 and 21.'

(ii) Physical assault

28. A.I.R. 1974 S.C. 2092.

In the *Sunil Batra case*²⁹ the Supreme Court has given stress on the United Nations Declaration:

‘The treatment of prisoners should emphasize not their exclusion from the community but their continuing part in it. Community agencies should therefore, be enlisted wherever possible to assist the staff of the institution in the task of the social rehabilitation of the prisoners. There should be, in connection with every institution, social workers, charged with the duty of maintaining and improving the desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard to the maximum extent compatible with the law and the sentence, the rights relating to the civil interests, social security and physical security of the prisoners.’

(iii) Hand cuffing and bar fetters

In the *Prem Shankar Shukla Case*³⁰ the Supreme Court considered the concepts of the hand cuffing of prisoners. The Punjab Police manual stated that every under-trial who is accused of non-bailable offence punishable with three years prison term, shall be routinely hand cuffed. The Supreme Court has observed that this rule is violative of articles 14, 19 and 21. The Court has further observed that the combined effect of articles 21 and 19 of the Constitution along with article 5 of the Universal Declaration of Human Rights has been that a prisoner cannot be tortured or degraded to inhuman treatment. The Court further observed that the basis of heavy deprivation of liberty and putting a person in chains is that there was ‘clear and present danger’ of escape, breaking out of the police control; for this there must be a clear evidence and not mere assumption.

(iv) Solitary confinement

In *Kishor Singh’s case*,³¹ the Supreme Court has observed that the solitary confinement offends the spirit of the Constitution, if applied without any judicial control to inflict heavy punishment on prisoners, on flimsy ground like ‘loitering’, behaving insolently and in an uncivilized manner, tearing of his history ticket and like instances without giving the prisoner concerned a reasonable opportunity of being heard, cannot be regarded as ‘fair, just and reasonable’, within the sense of article 21 of the Indian Constitution. The Court issued directions to the State that the police and prison officials should be educated regarding high values of humanity and they should respect the Constitution and the human beings.

2. RIGHT TO FAIR PROCEDURE

(i) Right to bail

In the *Babu Singh’s case*³² it was argued before the Supreme Court that the refusal to grant bail without any reason and in the circumstances where all the five male members of the applicant’s family are in jail is unreasonable and against the canons of natural justice. The Supreme Court after considering the whole matter, granted bail to the appellant and laid down that the rejection of the bail in such circumstances amount to unreasonable deprivation of the liberty of the individuals.

(ii) Right to be represented in court

In the *Hoskot case*³³ the Court enumerated two ingredients of the fair procedure;

- (a) that the convict should be provided a copy of the judgement within a reasonable period so that he may exercise his right to appeal;
- (b) that the free legal aid should be provided to the person concerned if he somehow, is not able to arrange the same owing to his disablement or poverty.

(iii) Right to speedy trial

The concept of fair procedure also includes a reasonably speedy trial. In America the concept of the speedy trial has been expressly attributed to the Sixth Amendment which provides that;

‘In all criminal prosecutions the accused shall enjoy the right to speedy and public trial.’

In *Hussainara Khatoon’s case*,³⁴ the Court stated the concept in the following words:

‘Although, unlike the American Constitution, speedy trial is not specifically enumerated as a fundamental right, however, it is implicit in the broad sweep and content of article 21 as interpreted in the *Maneka Gandhi Case*.³⁵

3. POLITICAL RIGHTS OF PRISONERS

(i) Freedom of expression

Freedom of thought and expression is one of the important political freedoms granted by article 19(1)(a) of the Constitution. In *Pandurang Sanzgiri’s case*³⁶ the Supreme Court was considering the case of the petitioner detained by the Government of Maharashtra under rule 30(1)(b) of the Defence of India Rules, 1962, in the Bombay District Prison. The petitioner had written a book in Marathi entitled

29. A.I.R. 1980 S.C. 1579.

30. A.I.R. 1980 S.C. 1535

31. A.I.R. 1981 SC 625

32. (1978) 2 S.C.R 777

33. A.I.R. 1978 S.C. 1548

34. A.I.R. 1979 S.C. 1360

35. A.I.R. 1978 S.C. 597

36. A.I.R. 1966 S.C. 424

'Inside Atom' with the permission of the government. The Court has observed that the Book being purely of scientific interest the manuscript of the same can be sent out of the jail for publication. Any procedure which permits the impairment of the individual's rights without giving him a reasonable opportunity of being heard should be condemned as unfair and unreasonable. Every activity which is ancillary to and is essential for, the free exercise of a fundamental right is considered to be a part of that fundamental right.

(ii) Prisoners and press interviews

A prisoner also enjoys a right to be interviewed by the press if the press is also willing to take his interview see *Prabha Dutt's case*.³⁷

(iii) Death sentence and freedom of expression

A death sentenced prisoner who is willing to write something which is of great scientific, historical or educational value may be given enough opportunity and time to complete his work by suspending execution of death penalty for a reasonable period.

(iv) Freedom of Association

Article 19 (1)(c) of the Constitution speaks of freedom of association. Prisoners being citizens also enjoy this freedom. No doubt the State can impose reasonable restrictions on the persons behind the bar but still they can become member of any organization, social, cultural or political. But the practical aspect of this freedom is negligible. The reason behind this is that neither the jail authorities nor the State are interested to improve the conditions of prisoners and more so the prisoners themselves are so depressed in the jails that they cannot think of it. This right is generally asked by eminent political leaders who are detained in jails for some reasons to convey their messages to their political organization.

4. SOCIAL AND CULTURAL RIGHTS OF PRISONERS

The major defect of prison custody is that it provides frustration to the prisoners by shielding and cutting them off completely from the outside world. So in order to change the behaviour of the prisoner, it is not only necessary but compulsory for the State that it should provide the maximum attention to the social and cultural norms of a prisoner. The ultimate purpose of imprisonment is to make a prisoner a good citizen. A special care is required to be taken in the case of prisoners who are socially backward. In the case of women and children prisoners also, a different approach is necessary so as to confer on them social and cultural rights. The adverse effects of non-

socialisation were studied by Shri Jawaharlal Nehru in the case of the Naini Prison in the following words:

"For years and years, many of these 'lifers' do not see a child or woman, or even animals. They lose touch with the outside world completely and have no human contacts left. They brood and wrap themselves in angry thoughts of fear and revenge, hatred, forget the good of the world, the kindness and joy, and live only wrapped up in the evil, till gradually even hatred loses its edge and life becomes a soulless thing, a machine-like routine.... From time to time the prisoner's body is weighed and measured. But how is one to weigh the mind and the spirit which wilt and shunt themselves and while this was the terrible atmosphere of fear and oppression; people argue against the death penalty and their arguments appeal to me greatly. But when I see the long drawn out agony of a life spent in prison, I feel that it is perhaps better to have that penalty rather than to kill a person slowly and by degrees."

(i) Right to meet with family members and friends

In the *Francis Coralie case*³⁸ the Supreme Court considered the scope of article 21 for all the categories of prisoners. It observed that the right to life includes the right to live with human dignity and all that goes along with it namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings.

(ii) Right to religion

Article 25(1) speaks of freedom of religion. It provides:

'Subject to public order morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right, freely to profess, practice and propagate religion.'

The standard minimum rules for the treatment of prisoners – an international declaration – states:

'If the institution contains a sufficient number of the prisoner of the same religion, a qualified representative of that religion should be appointed or approved. If the number of prisoner justified it and conditions permit, the arrangement should made on full time basis.

So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending

37. A.I.R. 1982 S.C. 6

38. A.I.R. 1981 S.C. 746

the services provided in the institution and having in his possession the books of religious observance.³⁹

In India least consideration has been given to the religious beliefs of the prisoners.

REFERENCES

1. Datir, R.N.: Prison as a social system
2. Clemmer & Donald, The prison community
3. Grosser G.H., External Setting and Internal Relation of the Prison.
4. Galtung Johan, Social Function of Prison.
5. Richard a berk and peter rosse, Prison Reforms & State Elites.
6. John Howard and corn paul, Open Prison.
7. Vidya Bhushan, Prison Administration in India.
8. Panday J.N., Constitutional Law of India.
9. Mulla Committee Report.
10. Universal Declaration of Human Rights, 1948.
11. European Declaration on Human Right 1953-69.
12. The Eight United Nations Congress Report.
13. National Commission for Women Act, 1990.
14. Prison Institutions in India.
15. Organisation of Jail Administration.
16. Concept and Functions of Management.
17. Dr. J.V. George IPS, Administration of Jails: Issues in Correction.
18. New Jail Manual for Haryana
19. Health services of Jail Inmates in Haryana – jointly prepared by director general health services and director prisons Haryana
20. Reformatory steps – A Report by Prison Department Haryana.