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## REVIEW ARTICLE

# JUDICIAL PROTECTION OF HUMAN RIGHTS OF PRISONERS IN INDIA

# Judicial Protection of Human Rights of Prisoners in India

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A human being continues to have his dignity, self-respect and HRs even while under any form of detention or imprisonment. He should not be subjected to torture, cruel or degrading treatment or punishment. Even those facing death penalty have their basic rights.<sup>1</sup>

Today, HRs of prisoners in India are fairly well protected, thanks to the rich HRs provisions of the Constitution and good deal of concern shown by the Supreme Court for the prison justice. Article 21 of the Indian Constitution guarantees the right of 'personal liberty' and thereby prohibits any inhuman, cruel or degrading treatment to any person whether he is a national or foreigner. Any violation of this right attracts the provisions of Article 14 of the Constitution which enshrines the right to equality and equal protection of laws. In addition, the question of cruelty to prisoners is also dealt with specifically by the Indian Prison Act of 1896. If any excesses are committed on a prisoner, the prison administration is responsible for that. However, it is the judiciary especially the Supreme Court which has played a key role in promoting and protecting the HRs of prisoners in India.

The Apex Court has taken the view that every fundamental right of the prisoners cannot be infringed and held that:

Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, if

flouted, frowned upon or frozen by the prison authority.<sup>2</sup>

Indeed, the Supreme Court, as a Constitutional sentinel, has recognised several important rights of the prisoners.

## 1. SOLITARY CONFINEMENT, HANDCUFFING & BAR FETTERS AND PROTECTION FROM TORTURE.

The Supreme Court has favoured the application of fair Procedure in prisons and held:

Whether inside prison or outside, a person shall not be deprived of his guaranteed freedoms save by methods, 'right, just and fair.'<sup>3</sup>

The Apex Court in *Sunil Batra(I)*<sup>4</sup> held that solitary confinement could be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from other prisoners. This was reaffirmed in *Kishore Singh*<sup>5</sup> in which the Court held that 'Solitary Confinement' could be imposed in 'rarest of rare cases':

Keeping in view the HRs and recognising human dignity, the Apex Court forbade putting any prisoner in bar fetters, and expressed its concern over putting fetters in the following words:

To fetter prisoner in irons is an inhumanity unjustified save where safe custody is otherwise impossible. The routine resort to handcuffs and irons bespeaks a barbarity hostile to our goal of human dignity and social justice.<sup>6</sup>

<sup>1</sup>. With a view to promoting and protecting the HRs of prisoners, the UN has prescribed the following standards for the treatment of prisoners: (a) Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 Dec. 1988, adopted without vote); (b) Standard Minimum Rules for the Treatment of Prisoners (adopted by the first UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the ECOSOC by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977); and (c) Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (Approved by ECOSOC resolution 50 of 25 May, 1984). Besides, the CAT lays out the steps to prevent torture and other cruel inhuman or degrading treatment or punishment of prisoners.

<sup>2</sup>. *Sunil Batra(I) v. Delhi Admn.*, A.I.R., 1978 SC 1975 at 1679.

<sup>3</sup>. *Rakesh Kumar v. B.L. Vig. Supdt. Central Jail*, New Delhi, A.I.R., 1981 S.C. 1767.

<sup>4</sup>. *Ibid.*, at 1693.

<sup>5</sup>. *Kishore Singh v. State of Rajasthan*, A.I.R. 1981 S.C. 625.

<sup>6</sup>. *Sunil Batra (II) v. Delhi Admn.*, A.I.R. 1980 S.C. 1579 at 1593.

In *Kishore Singh*,<sup>7</sup> the Supreme Court held that bar fetters should be imposed only in 'rarest of rare cases' and that is also for 'convincing security reasons' and must comply with the principles of natural justice.

In *Harbans Singh v. State of UP.*,<sup>8</sup> the Supreme Court once again reiterated that under trial prisoners should not be kept in fetters in jails as it is inhuman (to keep them in fetters while they are awaiting trial).

In *Prem Shanker Shukla v. Delhi Administration*,<sup>9</sup> Justice Krishna Iyer emphasised that handcuffs should not be used in routine and they were to be used only when the person was 'desperate,' 'rowdy' or the one who was involved in non-bailable offence. He rightly observed:

Handcuffing is *prima facie* inhuman and, therefore, unreasonable, is over-harsh and at the first, flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Article 21.

The HRs savior Supreme Court has protected the prisoners from all type of torture. In *Sunil Batra (I)*, the Court observed:

The human thread of jail jurisprudence's that runs right through is that no prison authority enjoys amnesty for unconstitutionality, and forced farewell to fundamental rights is an institutional outrage in our system where stone walls and iron bars shall bow before the rule of law.<sup>10</sup>

In *Kishore Singh*, the Supreme Court brought home the deep concern for this by observing against police cruelty in the following words:

Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our Constitutional culture than a state official running berserk regardless of HRs.<sup>11</sup>

The Supreme Court, in consonance with HRs instruments, has made it clear beyond doubt that any form of torture of cruel, inhuman or degrading treatment is offence to human dignity and constitutes an inroad into the right to life and, therefore, prohibition of Article 21 of the Constitution.<sup>12</sup>

This approach of the Supreme Court is in consonance with Article 5 of the UDHR, Article 7 of the ICCPR and Declaration on the Protection of all persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## 2. RIGHT TO MEET FRIENDS AND CONSULT LAWYER

The Supreme Court in *Sunil Batra (II)* recognised the right of the prisoners to be visited by their friends and relatives. The Court observed:

Visits to prisoners by family and friends are a solace in insulation, and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity.<sup>13</sup>

In *Farcis Coralie Mullin*,<sup>14</sup> the Supreme Court again stressed upon the need of permitting the prisoners to meet their friends and relations. In this case, the Court went a step ahead from *Sunil Batra (II)* when it recognised the prisoner's right to consult legal adviser also. The Court held that this right could be included in the right to live with human dignity and it was part of 'personal liberty.'

In *Joginder Kumar v. State of UP.*,<sup>15</sup> the Supreme Court has recognised the right of the arrestee to have his friend, relative or some other known person informed about his arrest. The police officer must make an entry in his diary about the person who was so informed. It was further held that the Magistrate must be satisfied about compliance with these requirements in all cases of arrest.

## 3. RIGHT TO BAIL

The Apex Court has recognised the right to bail as a part of personal liberty.<sup>16</sup> The Court has also decided not to favour taking of heavy bail from poor.<sup>17</sup> Moreover, the Court has held that if the Court was satisfied on a consideration of the relevant factors that the accused had his ties in the community and there was no substantial risk of non-appearance, the accused might, as far as possible, be released on his personal bond.<sup>18</sup> In another case the Court held that when an under trial prisoner was produced before a Magistrate and he had been in detention for 90 days or 60 days, as the case may be, the Magistrate must, before making an order of further remand to judicial custody, point out to the under trial prisoner that he was entitled to be released on bail. Section 438 of

<sup>7</sup>. The Supreme Court has interpreted this provision as implicit in Articles 14 and 16 of the Constitution and thus made it enforceable in the Court of law. The Parliament has also enacted the 'Equal Remuneration Act, 1976', for achieving the objectives of Article 39(d).

<sup>8</sup>. A.I.R. 1991 S.C. 531.

<sup>9</sup>. A.I.R. 1980 S.C. 1535.

<sup>10</sup>. *Op. cit.*, supra note 7, at 1713.

<sup>11</sup>. *Op. cit.*, para 5 See also *Kewal Pati v. State of U.P.*, (1995) 3, S.C.C. 600.

<sup>12</sup>. See *Francis Coralie Mullin v. U.T. of Delhi*, A.I.R. 1981 S.C. 746 para 7.

<sup>13</sup>. *Op. cit.*, Supra note 9 at 1595.

<sup>14</sup>. *Op. cit.*, Supra note 51.

<sup>15</sup>. (1994) 4 S.C.C. 260.

<sup>16</sup>. *Babu Singh v. State of U.P.*, A.I.R. 1978 S.C. 527.

<sup>17</sup>. *Moti Ram v. State of U.P.*, A.I.R. 1978, S.C. 1594.

<sup>18</sup>. *Hussainara Khatoon v. State of Bihar*, A.I.R. 1979 S.C. 1360 at 1363-1364.

the Criminal Produce Code contains the provision for 'anticipatory bail' in certain cases.

#### **4. 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 societal interest also, does not make it any less the right of the 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.

#### **5. RIGHT TO LEGAL AID**

The talk of HRs 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 HRs. In 1976, a new Article 39-A dealing with 'equal justice and free legal aid' was added in the in Hussainara Khaton v. State of Bihar,<sup>19</sup> the Court explained the true concept of Article 39-A in the following words:

This Article also emphasises that free legal service is an unalienable element of reasonable, fair and just procedure— for without it a person suffering from economic or other disabilities would be deprived of an opportunity for securing justice. . . it must be held implicit in the guarantee of Article 21 (of the Constitution).

In Khatri v. State of Bihar<sup>20</sup> again the Court held that the right of free legal services was clearly an essential ingredient of an offence and it was implicit in the guarantee of Article 21.

In this case the Court made it even obligatory for the Magistrate or the Session Judge, before whom the accused appeared, to inform the accused that if he was unable to engage the services of a lawyer on account of poverty or indigence, he was entitled to obtain free legal services at the cost of the State.

In Suk Das v. U.T. of Arunachal Pradesh,<sup>21</sup> the Court followed the previous judgement and held that free legal aid at the State expense was a fundamental right of the person accused of an offence. And this right was not conditional upon the accused applying for free legal assistance.

In order to fulfil the objectives of free legal aid, the Parliament has also passed 'Legal Services Authorities Act, 1987.' The basic aim of this Act is to provide free and competent legal services to the weaker sections ensuring that opportunities for

securing justice are not denied to any citizen by reason of economic disability.

#### **6. RIGHT TO COMPENSATION**

The judiciary in India has not only protected the HRs of prisoners but also led to the granting of exemplary compensation to the victims of police atrocities, which resulted in HRs violation. In Khatri v. State of Bihar,<sup>22</sup> popularly known as Bhagalpur Blinding case, the Supreme Court has recognised the liability of State to pay compensation for infringing Article 21.

In Rudul Sah v. State of Bihar<sup>23</sup> the Supreme Court for the first time openly declared that compensation ought to be paid for the violation of basic human right i.e. right to life and liberty under Article 21 of the Constitution.

In Peoples' Union for Democratic Rights v. State of Bihar<sup>24</sup> the Apex Court laid down the working principle for the payment of compensation to the victims of ruthless and unwarranted police firing.

In Nilbati Behera v. State of Orissa,<sup>25</sup> a case of custodial death, the Supreme Court once again reiterated that in case of violation of fundamental rights by State's instrumentalities or its servants, the Court can direct the State to pay compensation to victim or his heir by way of 'monetary amends' and redressal. The Court clarified that 'public law proceedings' are different from private law proceedings' and the award of compensation in proceedings for the enforcement of fundamental rights under Articles 32 and 226 of the Constitution is a remedy available in public law. It was observed:

The Court is not helpless and the wide powers given to the Supreme Court by Article 32, which itself is a fundamental right, imposes a Constitutional obligation on the court to forge such new tools which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution which enable the award of monetary compensation; in appropriate cases...<sup>26</sup>

To support the above observation, the Court rightly referred to Article 9 (5) of the ICCPR and held that the said provision indicates that an enforceable right to compensation is not alien to the concept of a guaranteed right.<sup>27</sup>

<sup>19</sup>. *Op. cit.*, Supra note 80.

<sup>20</sup>. A.I.R. 1981 S.C. 928.

<sup>21</sup>. A.I.R. 1986 S.C. 991.

<sup>22</sup>. A.I.R. 1981 S.C. 1068 at 1074.

<sup>23</sup>. A.I.R. 1983 S.C. 1086.

<sup>24</sup>. A.I.R. 1987 S.C. 355.

<sup>25</sup>. A.I.R. 1993 S.C. 1960.

<sup>26</sup>. *Id.* at 763-64.

<sup>27</sup>. *Id.* at 764.

## 7. RIGHT TO REASONABLE WAGES IN PRISON

The Supreme Court has consistently held that prisoners whenever they are made to work, are entitled to get reasonable wages not below the minimum wages prescribed by Minimum Wages Act, otherwise it will violate Article 23 of the Constitution.<sup>28</sup>

## 8. CAPITAL PUNISHMENT: RAREST OF RARE CASE

Article 6 (2) of the ICCPR says that the countries which have not abolished death sentence, it may be imposed for the most serious crimes in accordance with the law in force at that time after the final judgement of the competent Court. Article 6 (4) of the Covenant further says that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. In 1989, the General Assembly adopted and proclaimed the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty. The Protocol holds that abolition of the death penalty contributes to enhancement of human dignity and progressive development of HRs.

The Indian Penal Code provides for death penalty for only seven types of offences.<sup>29</sup> Even in these offences, death sentence need not necessarily be meted out, for, generally other punishments are also provided for the same offence depending upon the circumstances of each case. Further, in spirit of Article 6 (4) of the ICCPR, the President of India under Article 72 of the Constitution has been empowered to grant pardons, commute or remit death penalty in appropriate cases.

In addition to this, there are procedural safeguards. For example, if a Session Court passed a sentence of death, - the proceedings shall be submitted to the High Court for confirmation without which the sentence cannot be executed. Appeal lies from the High Court to the Supreme Court in cases where the High Court has, on appeal reversed an order of acquittal of an accused person and convicted him and sentenced him to death. The Criminal Procedure Code, 1973 further provides that the execution of sentence of death is to be postponed in case an appeal is pending before the Supreme Court. Moreover, when the conviction is for

an offence punishable with death, the judgement should state 'special reasons' for such sentence.<sup>30</sup> The Criminal Procedure Code-1973 also requires the High Court to postpone the execution of death sentence on pregnant women and may if it thinks fit, commute the sentence to imprisonment.<sup>31</sup>

In spite of these protections, the judiciary in India following the humanist approach has tested the Constitutionality of death penalty on the touchstone of Articles 14, 19, and 21, known as the golden triangle for the protection of HRs in India. The Supreme Court has held that death sentence though Constitutionally permissible<sup>32</sup> but it should be awarded in rarest of rare case.<sup>33</sup> The Court is required to take into consideration all 'aggravating circumstances' as well as 'mitigating circumstances.'

<sup>28</sup>. *Gurdev Singh v. State of H.P.*, A.I.R. 1992 H.P. 76. See Also, *Mohammad Giasuddin v. State of A.P.*, A.I.R. 1977 S.C. 1926 at 1935.

<sup>29</sup>. For waging war against the Government of India (Section 121); for abatement of mutiny by a member of the armed force (Section 132); for giving false evidence leading to conviction of an innocent person and his execution (Section 194); for murder punishable with death (Section 302); for abatement of suicide of a person under eighteen years of age or of an insane or delirious or idiot or intoxicated person (Section 306); for an attempt to murder by a life convict (section 307 para 2); and for dacoity accompanied by murder (Section 396).

<sup>30</sup>. See Sections 354(3) and 235(2) of the *Criminal Procedure Code*.

<sup>31</sup>. Section 416 of the *Criminal Procedure Code*, 1973.

<sup>32</sup>. See *Jagmohan Singh v. State of U.P.*, A.I.R. 1973 S.C. 916.

<sup>33</sup>. See *Bachan Singh v. State of Punjab*, A.I.R. 1980 S.C. 898.