

CONSTITUTIONAL RIGHTS OF THE ACCUSED AND ANALYSIS OF PRISON ADMINISTRATION

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ABSTRACT

With the attainment of Independence and the Declaration of our Constitution quick walks have been made in all fields and the Rights of an individual are secured by Part III of the Constitution. i.e. Fundamental Rights. But, there are some areas in the legal system which are redundant and are kept aloof which is rather draconian for an individual in need. One such is Rights of a Prisoner, where there has been minimal development in the past left with loopholes resulting in the gross violation of human rights. Presumption of innocence until proved guilty¹ as one of the basic tenet of Indian Constitution demands certain safeguards and rights to be provided to the arrested persons. Sacrosanctity of the rights of each individual needs to be maintained. Only because a person is arrested, it does not give the mandate even to the lawmakers to take away certain fundamental rights provided in the constitution of India. The author has discussed in brief, the life of a prisoner with his inherent rights, and the legitimate rights provided by the Constitution of India. The remedies available to the Prisoner, Convicted and Under trial at various stages right from starting when a person is approached by a police officer until the trial and sentencing stage has been covered. These rights of the convicted need to be understood in a broader sense by paying focus to prison administration. The Article emphasizes a thorough study of prisons as its inhuman and dissolute conditions add to the

¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNITS 171 (ICCPR) art 14(2), Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 11, State of Uttar Pradesh v. Samman Das, (1972 AIR 677 1972 SCR (3) 58), Indian Evidence Act 1872 ss 113A, 113B, and 114A.

trauma of the prisoners. Sporadic attempts have been made with limited vigour to improve the plights of the accused in prison after being convicted. Some maladies in prison administration have been discussed with some corrective actions that will help prisons to become an all-around agency where they not only undergo sentences but also turn into reformed citizens. It is also pertinent to note that unjustified police action also accounts for unnecessary expenditure on the prison administration which is a major flaw of administrative mechanism in India.

INTRODUCTION

The motive behind an arrest is to bring the arrested under the watchful eye of a court or generally secure the administration of the law. Prisoners retain certain rights within the constitution which cannot be taken away. There have been landmark cases with regards to the prisoners which is a blot on the judiciary system and has left a question which is unanswered with legal ramifications. The Legislature is also equally liable for the miscarriage of justice by making such laws ever since the inception of imprisonment, also arrested persons are deprived of some basic rights, as the speedy trial is just for sheer namesake that favours mostly the richer prisoners. Level headed discussions, and approach remedies around this issue regularly are not established in sound information which has led to the undermining of various endeavours to enhance a framework which is from various perspective broken and unsound.

“Presently the powers of the arrest available to the police give ample scope for harassment and humiliation of persons, prompted by mala fide considerations. In actual practice, several persons who ought to be arrested are let free on account of political influence or other considerations, while harmless persons who need not be arrested at all are often arrested and even remanded to police custody on inadequate grounds. Some malafide arrests get exposed on habeas corpus petitions filed in High Courts and Supreme Court but such exposures are rare compared to a large number of unjustified arrests that take place all the time².”

² Ministry of Home Affairs, Government of India, National Police Commission, ‘Some Selected Recommendations of the National Police Commission: *Third report*’ (1977)5 http://humanrightsinitiative.org/old/publications/police/npc_rec_ommendations.pdf accessed 22 Jan 2018

CLASSIFICATION OF RIGHTS

The Rights of the Accused are further classified into different categories:

1. Rights at the time of arrest

“To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of statecraft³.” There exist a cutthroat rivalry between the societal interest and the interest of the individual affecting the constitutional right possessed by the Accused.

Determination of unfair, unjust, or unlawful about the arrest should be done in the court, but certain remedies are also available handy to the persons being arrested as the arrest of persons without due diligence causes gross harm to reputation and self-esteem which is irreparable. As soon as a person is approached by a police officer, he has the right to ask for the reasons for his arrest. In a case, the Police Officer effected the arrest of the person without the orders of the Magistrate which was further appealed in the Supreme Court by writ petition on the grounds of Habeas Corpus, and it was held to be illegal detention⁴. Also, suspicion of complicity cannot be regarded as the grounds for arrest⁵.

The foremost right that a layman thinks of what can he do if he is approached by a police officer for an arrest needs to be subjected to discussion. The arrest of a person is dealt with extensively in Chapter 5 of CrPc⁶, where the accused is provided with certain rights which corresponds to Article 227 of the Constitution of India.

3 Smt. Nandini Satpathy v. P.L. Dani AIR 1978 SC 1025, 1032, quoting Lewis Mayers.

4 Madhu Limaye And Others v. State of Bihar 1969 (1) SCC 292

5 Joginder Kumar v. State of U.P. And Others 1994 (4) SCC 260 p. 261.

6 Code of Criminal Procedure 1973 s 41-60.

7 Protection against arrest and detention in certain cases.

Section 50 which is analogous to Article 22(1) of the Constitution creates an obligation upon the police officer to communicate the person arrested⁸, the full particulars of the offence for which he is arrested or any other grounds related with offence. The arresting police officer must be able to justify the arrest apart from his powers to do so; A person cannot be arrested on mere suspicion of complicity in an offence. There must be a reasonable justification.

The information also includes the right to be informed by the police officer that the person being arrested is entitled to be released on bail and that he may arrange for sureties on his behalf⁹. A person may challenge a constable's power for arrest i.e., he has the right to know when a Constable arrests him, under what power he is acting and if the constable expresses that acts under certain power which the man knows he lacks, he is entitled to object to such an arrest and to escape from custody when he is arrested. Section 56 of CrPC¹⁰ read with Article 22(2) of the Constitution, provides that the person arrested shall not be kept in custody of a police officer for a longer period than is reasonable and that in any event, such period shall not exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court, a person cannot be detained beyond the said period without the authority of the Magistrate. In *Khatri V. State of Bihar*¹¹, these rights are not provided to any alien enemy or to a person who has been arrested under any law providing for preventive detention¹².

The court in *Joginder Kumar V. State of UP and Ors*¹³ stated some guidelines for arrest which gave implied rights to the persons arrested. An arrested person being held in custody is entitled if he requests to have one friend, relative or any 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 he is being detained¹⁴. The Police Officer shall inform the arrested

8 177th Law Commission of India Report, 'Consultation Paper on Law, Relating to Arrest', 3 (1999), <http://lawcommissionofindia.nic.in/reports/177rpt2.pdf>

9 Ibid, at 4.

10 Code of Criminal Procedure 1973 s56

11 *Khatri V. State of Bihar* 1981 SCR (2) 408.

12 in The Constitution of India 1950 art 22(3).

13 *Joginder Kumar V. State of UP and Ors* 1994 AIR 1349

14 *Joginder Kumar V. State of UP and Ors* 1994 AIR 1349

person when he is brought to the police station for this right. An entry shall be required to be made in the Record Book as to who was informed of the arrest. This will act as a safeguard against the unfairness in police investigation as proper records will be reflected in the book which can be referred¹⁵. These protections from power must be held to flow from Articles 21 and 22 (1) of the Constitution and enforced strictly.

Likewise, similar guidelines have been explicitly stated in *DK Basu V. State of West Bengal*¹⁶ where the court has reiterated the same guidelines with few additions to it. The person arrested must be made aware of the right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained and the arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time¹⁷.

There have been many incidents of arbitrary arrest where the masses were arrested and tortured in the Institution. Consolidating the laws passed by the Parliament of India, there exist such repugnant laws that are violative of Fundamental Rights of a Citizen as the Person has right to know his grounds of arrest, and its antithesis is the Armed Forces (Special Powers) Act, where one of its provisions lay down very clearly to arrest a person without warrant merely upon suspicion to commit a cognizable crime or any act which is or attempts to threaten the Security of the State. Protection against such arbitrary or unlawful arrest needs to be properly assured¹⁸.

“In many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorises detention under Section 167 of Cr.PC, he has to be that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. if the arrest effected by the police officer does not satisfy the

15 Ashok Kumar v. State 1979 Cr.L.J. 1477.

16 *DK Basu V. State of West Bengal* AIR 1997 SC 610.

17 *ibid*

18 Code of Criminal Procedure 1973 ss 93,94,97,100(4) to (8) and 165.

*requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused*¹⁹.”

In the latest judgment by Supreme Court in *Rajesh Sharma And Ors V. State of UP and Ors*²⁰, it has given guidelines to prevent misuse of Section 498 of IPC which acts as a weapon rather than a shield against the accused.

The Delhi High Court made the following observations/ directions regarding arrests under section 498A/406 IPC. The Court observed that Sections 498A/406 IPC which "are much abused provisions and exploited by the police and the victims to the level of absurdity...every relative of the husband, close or distant, old or minor is arrested by the police...unless the allegations are very serious in nature and highest magnitude arrest should always be avoided".²¹

2. Rights at the time of Search and Seizure

One of the fundamental concepts of Indian Constitution is justice and fairness which is also granted to all the prisoners by giving them the right to be heard (*Audi Alteram Partem*) and to defend themselves. Article 20(3)²² guarantees the right to self-incrimination. It is the basic protection available to a person accused of an offence. Though there is no express or implied mention of this right in our constitution. The concept of search and seizure have been a topic of discussion under the ambit of Right to Privacy under Article 21 of the Constitution.

Also, one of the aspects of search and seizure is derogatory to the right to privacy. The misuse of power and the extent of search being conducted by the competent authority goes beyond its boundary resulting in the infringement of the Right to Privacy.

19 *Arnesh Kumar V. State of Bihar, C.A No.1277 OF 2014, SLP(CRL.) No.9127 of 2013*

20 *Rajesh Sharma and Ors V. State of UP and Ors, 2017 SCC OnLine SC 821.*

21 *Court On Its Own Motion Vs CBI CrI. M (M) 3875/2003*

22 No person accused of any offence shall be compelled to be a witness against himself

In *Gurbax Singh v. State of Haryana*²³, it was held that when an empowered officer or a duly authorised officer acting on prior information is about to carry out a search of a person as distinguished from the search of the premises. One is required to be informed about his right to be searched before a Gazetted Officer or the Magistrate²⁴.

Section 50 of The Narcotic Drugs and Psychotropic Substances Act, 1985 states that a person may be searched by the authority without the permission when it is not possible to take that person to the nearest Gazetted Officer. It was held in *State of Punjab v. Labh Singh*²⁵, upon the omission on the part of search officer to inform the accused of his right to be searched in the presence of a Gazetted Officer, that effect of such omission depends upon the facts and circumstances.

3. **Right at the time of trials**

At the time of trials, multiple rights have been safeguarded by different Conventions and Precedence. Starting from **Right against Self-Incrimination** enshrined in Article 20(3) of the Constitution of India which means accused cannot be witness against himself (*Nemo tenetur seipsum accusare*)²⁶. The right to self-incrimination includes the basic right to remain silent. Sec. 161(2) of the Code of Criminal Procedure, 1973 grants a right to silence during interrogation by police corresponds to Article 20(3) and Article 21 of the Constitution. Mere refusal to answer a question or choosing to remain silent during the trials cannot be inferred as a presumption of guilt. It is the major weapon in criminal trials where there are interrogations made to the accused. The Sanctity of the rights available under Art 20 and 22 can be derived from the facts that these rights are not suspended even in the emergency. "It is well established that Article 20(3) is directed against self-incrimination by the accused person. Self-incrimination must mean conveying information based upon personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw a light

²³ *Gurbax Singh v. State of Haryana* (2001) 3 SCC 28.

²⁴ *State of Punjab v. Baldev Singh* (1999) 6 SCC 172; Section 50 Narcotic Drugs and Psychotropic Substances Act, 1985

²⁵ *Punjab v. Labh Singh*, (1996) 5 SCC 520.

²⁶ "No man, not even the accused himself can be compelled to answer any question, which may tend to prove him guilty of the crime, he has been accused of the crime"- Definition by Black Law Dictionary, 9th Edition.

on any of the points in the controversy, but which does not contain any statement of the accused based on his personal knowledge²⁷." Protection against conviction or enhanced punishment under the ex-post facto law under Article 20(1) of the constitution is a well-knitted cover against such punishments. Protection against double jeopardy is provided to the prisoners under article 20(2) where a person cannot be convicted for the same offence twice.

Right to silence is one of the basic aspects of fair trials where duress should not be behind giving evidence in the interrogation procedure, right to silence along with its companion right against self-incrimination is watered more by interpretation than by legislature. In the light of extracting truth from the accused, advancement in technology like brain mapping, narco-analysis or the truth serum has paved the way for forcible intrusion in one's mind. Contentions have been made that these tests are a blatant violation of the constitutional rights of the prisoners i.e. the right to privacy. The results obtained through the involuntary administration of either of these tests come within the scope of 'testimonial compulsion'. If these techniques were used compulsorily it would violate Article 20 (3) of the Constitution²⁸.

4. The right of Speedy Trial, Free Legal Services, Right of the Under trials

The right to speedy trial is a facet of personal liberty under Article 21 of the Constitution. Consistent delay in the trials leads to a deep mental agony of the accused, laying restrictions on the freedom of movement of some vulnerable sections of the society who need special care and protection. Recourse to the court has to be made in this matter to make efforts to formulate "Speedy Trial Act" to dispose of justice faster. There is a predominance of undertrials in many jails. The data collected regarding prison population in India represents a grim scenario. It indicates that 67 per cent of the prison population is awaiting trial in India. Inconsistency in bail system may be one of the reasons for the overcrowding of prisons across the country and giving rise to another set of challenges to the Prison

²⁷ State of Bombay V. Kathi Kalu Oghad 1961 AIR 1808.

²⁸ Smt. Selvi & Ors Vs State of Karnataka Cr A No. 1267 of 2004.

Administration and 'State' thereto. Freedoms, as guaranteed under Part III of the Constitution, has a unique relationship with the ideas and objectives enshrined in the Preamble of the Constitution of India i.e. Justice – economic, social and political. It remains one of the solemn duty of the republic and its realisation in its full sense is one of the cherished goal²⁹. Many of them who have committed petty offences are languishing in jails because their cases are not being decided early for reasons which it is not necessary to reiterate. "The problems of under trial prisoners has now assumed an alarming dimension. Almost 80% of prisoners in Indian jails are undertreated majority of under-trial prisoners are people coming from poorer and underprivileged sections of the society with the rural and agricultural background. The Supreme Court in a memorable judgment *Common Cause (a registered society) Vs. Union of India*³⁰ 1996, has given the following directions regarding the release of undertrials on bail.³¹"

- (a) Undertrials accused of an offence punishable with imprisonment up to three years and who have been in jail for a period of 6 months or more and where the trial has been pending for at least a year, shall be released on bail.
- (b) Undertrials accused of an offence punishable with imprisonment up to 5 years and who have been in jail for a period of 6 months or more, and where the trial has been pending for at least two years, shall be released on bail.
- (c) Undertrials accused of offences punishable with imprisonment for 7 years or less and who have been in jail for a period of one year and where the trial has been pending for two years shall be released on bail.
- (d) The accused shall be discharged where the criminal proceedings relating to traffic offence have been pending against them for more than 2 years.
- (e) Where an offence compoundable with the permission of the court has been pending for more than 2 years, the court shall after hearing public prosecutor discharge or acquit the accused.
- (f) Where in-cognizable and bailable offence has been pending for more than 2 years, without trial being commenced the court shall discharge the accused.

29 268th Law Commission of India Report, 'Amendments to Code of Criminal Procedure 1973, Provisions Relating To Bail', 4(2017), <http://lawcommissionofindia.nic.in/reports/Report268.pdf>.

30 *Common Cause (a registered society) Vs. Union of India* 62 (1996) DLT 55

31 National Human Rights Commission Of India, 'Human Rights in prison', Sankar Sen, Special Rapporteur, D.O.No. 11/1/99-PRP & P 24 Apr 1999.

(g) Where the accused is discharged of an offence punishable with the fine only and not of recurring nature and the trial has not commenced within a year, the accused shall be discharged.

(h) Where the offence is punishable with imprisonment up to one year and the trial has not commenced within a year, the accused shall be discharged.

(i) Where an offence punishable with an imprisonment up to 3 years and has been pending for more than 2 years the criminal courts shall discharge or acquit the accused as the case may be and close the case.

In case of *Rajdev Sharma v State of Bihar*³², the accused was not found responsible for the delay in disposal of the criminal case and proceeding having endlessly delayed. After 13 years not a single witness had been examined after framing the charges. In such circumstances attitude of the investigating agency was absolutely callous. The court held that prolonged trial because of the fault of prosecution is a sufficient ground to set aside the trial³³. Right to speedy trial is provided to a prisoner even when it is not demanded and is available at all the stages i.e. investigation, inquiry, trial, appeal, revision and retrial.

5. Right to Bail

The state of criminal justice in India shows the underpinned state of bail system in India. In *Moti Ram v. State of Madhya Pradesh*³⁴, the Supreme Court clarified that the definition of the term bail includes both releases on personal bond as well as with sureties. It is to be noted that even under this expanded definition, 'bail' refers only to release on the basis of monetary assurance—either one's own assurance (also called personal bond or recognizance) or third party's sureties.³⁵ The law relating to bail got suitably modified, in tune with the constitutional objectives and sought to strike a fine equilibrium between the 'Freedom of Person' and 'Interest of Social Order'. The provisions namely sections 436,

32 *Rajdev Sharma v State of Bihar* (1998) 7 SCC 507

33 *Raj Dev Sharma v State of Bihar*, AIR 1998 SC 3281

34 *Moti Ram v. State of Madhya Pradesh*, AIR 1978 SC 1594

35 n29.

437 and 439 of Chapter XXXIII Cr.P.C. were streamlined in 1973³⁶. The need for a Bail Act in India was emphasised by Department of legal affairs, Ministry of Law and Justice. Many times, poor people are detained in prisons for alleged involvement in bailable offences primarily because they are unable to furnish surety. It has become a norm than an aberration in most jurisdictions including India that the powerful, rich and influential obtain bail promptly and with ease, whereas the mass/ common / the poor languish in jails³⁷. This is a serious concern because in such cases, bail is a matter of right and people end up spending long periods in jail merely because they are poor. Former Supreme Court Judge B.S Chauhan recommended that undertrials who have completed one-third of the maximum sentence for offences up to seven years be released on bail. Those who are awaiting trial for offences punishable with imprisonment of more than seven years should be bailed out if they have completed one-half of their sentence. Provisions for remission should be included to cover those undertrials who have already endured the full length of the maximum sentence. Prolonged periods in prison where undertrials and convicts were not segregated would only make hardened criminals of the former³⁸

6. Free Legal Services

Section 304(1) of IPC, 1860 relating to criminal matters which corresponds to Article 39A gives the mandate of free legal aid at the expense of the state to the accused and the prisoners. A large number of prisoners are languishing in Indian jails without the trials demands slew efforts in this direction by providing immediate legal aid to the accused who is unable to arrange for the lawyer on account of indigence or like. The Supreme Court held that a free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty³⁹. This obligation arises right from the time when the accused is produced in front of the magistrate and continues until the trials.

³⁶ See, 41st Law Commission Report 1969, 'The Code Criminal Procedure', 1898, Vol. I

³⁷ Jason Gilbert, 'Blame our bail system for overcrowded Ottawa jail' *The Ottawa Sun* (Ottawa, 14 Jan 2016) <http://www.ottawasun.com/2016/01/14/blame-our-bailsystem-for-overcrowded-ottawa-jail> accessed 25 Jan 2018).

³⁸ n29

³⁹ Sukdas v. Arunachal Pradesh AIR 1986 SC 991

Though the Constitution of India does not expressly provide the right to legal aid, 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. Legal Services Authorities Act, 1987 has been authorized by the Parliament under the provisions of the constitutional right of free legal aid. Schemes of free legal aid are also being run by various state government by setting up state legal services authorities.

If a prisoner is unable to exercise his constitutional and statutory right of appeal including Special Leave to Appeal for want of legal assistance, the court will grant such right to him under Article 142, read with Articles 21 and 39A of the Constitution. The power to assign counsel to the prisoner provided that he does not object to the lawyer named by the court. On the other hand, on the implication of it he said that the State which sets the law in motion must pay the lawyer an amount fixed by the court⁴⁰. Apart from this right an accused can avail the right to get the copy of judgment free of cost, if not it will be a violation of Article 21 of the Indian Constitution.

RIGHT OF THE PRISONERS UNDER ARTICLE 21 AS THE BACKBONE OF BASIC HUMAN RIGHTS IN INDIA

The human rights of a person are the inherent rights that are the dignity of each human being as a human being. There has been a rampant encroachment on the human rights of the prisoners in India. The Supreme Court of India has developed human rights jurisprudence for the preservation and protection of prisoners' right to human dignity by interpreting Article 21. The decision of the Supreme Court in *Sunil Batra v. Delhi Administration*⁴¹ was a watershed in the development of prison jurisprudence in India. In India, the substantive rights of the prisoners' flow from the following instruments such as Statutes, the Constitution of India, International Conventions and Judicial pronouncements.

⁴⁰ *MH Hoskot v. State of Maharashtra* (1978) 3 SCC 544, AIR 1978 SC 1548.

⁴¹ *Supreme Court in Sunil Batra v. Delhi Administration* 1980 AIR 1579, 1980 SCR (2) 557.

1. Human rights under Article 21 under Constitution of India

Allowing humane conditions in the jail is the basic human right of the prisoner. The right to physical and moral integrity includes the right against torture, severe inhuman treatment, infliction of cruel punishment. Force should be used only when it is necessary. It is worthwhile to note that solitary confinement is still retained in the Prisoners Act⁴². With its insertion, the liberty to move, mix, talk and share would be curtailed resulting in the violation of Article 21. The issue of custodial death needs to be zeroed into carefully.

Right to communicate the outside world, essentially through the use of mails and conversation with various subject to the matters of discipline⁴³. In addition to the above privileges, every prisoner has got the right to have an interview with his friends and relatives once in a week and to receive three letters each a month during the term of his imprisonment⁴⁴.

Handcuffing is also one such problem where a person is taken on the streets while being handcuffed thereby violating Article 21 as an Undertrial cannot be a victim to unwarranted humiliation and indignity being a Citizen of India⁴⁵. In another case, where a boy in police custody succumbed to the injuries⁴⁶, Writ Petition was filed by the mother of the deceased and she was given a compensation of Rs.1,50,000. But, the serious issue of protecting an Accused starts right from his arrest and he cannot be deprived of his life, guaranteed by Article 21 of the Constitution of India. Adequate standards of living which mandate ensuring of proper clothing, shelter, drinking water, bedding etc, proper flooring, measures for proper air. New clothes must be provided with proper arrangements for washing of clothes and cleanliness.

⁴² The Prisons Act 1894 s 29

⁴³ See, Kerala Prisons Rules 1958, Rule 435 provides "Every newly convicted prisoner shall be allowed reasonable facilities for seeing and communicating with his relatives, friends or legal advisers with a view to the preparation of an appeal or to the procuring of bail and shall also be allowed to have interviews or 'write letters to his relatives; friends or legal advisers, once or twice, or often if the superintendent considers necessary, to enable him to arrange for the management of his property or other family affairs'".

⁴⁴ *ibid* Rule 436, Article 19(1)(a) of the Indian Constitution.

⁴⁵ *State Of Maharashtra and Ors. v. Ravikant S. Patil* 1991(2)SCC 373.

⁴⁶ *Nilabati Behera v. State of Orissa* 1993 (2) SCC 746.

Use of fetters and chains must be completely abolished, also confinement must be done away with. While a prisoner is deprived of his rights such as Food and Sanitation, the very fact cannot be ignored that he is also kept under solitary confinement in dungeons and is given third degree for duress is the ultimate act of cruelty which the prisoners basically who are convicted for grievous offences like Rape, Murder, etc. are subjected to which is a form of inhuman treatment meted out to the prisoners.

Remuneration which is not less than the minimum wages has to be paid to anyone who has been asked to provide labourer or service by the state. It will amount to 'forced labor' within Article 23 of the constitution if the payment made is not equivalent to the services rendered no difference between prisoner serving sentence inside prison walls and free man in society - all prisoners of various categories in all jails in state are entitled to be paid reasonable wages for work they are called upon to do in jails and outside jails - wages left to be decided by state government within reasonable.....⁴⁷

A prisoner has every right to improve and nurture his skills while in custody, for this he must be assisted with proper study material which will help him become productive citizens once they are released from the jail. The personal liberty under Article 21 includes the right of a detenu to send his writings outside the jail. As these are the fundamental rights of prisoners there is no right to the jail authority or the government to prevent him from exercising these rights.⁴⁸

A prisoner is entitled to an adequate standard of health which includes proper medical checkup, provisions for medical treatment in case of ill prisoners. Sick prisoners who cannot be treated in the prison shall as mentally retarded persons should be transferred to a civilian hospital. All prisoners have the right to be in contact with the outside world i.e., they can meet their families and thus can be in touch with the affairs of the outside world.

⁴⁷ Gurdev Singh and Ors. Etc. Vs. State of Himachal Pradesh and Ors AIR1992HP70,
Prisons Act, 1894 s 33,
Minimum Wages Act, 1948 s 3 & 22.

⁴⁸ State of Maharashtra v. Prabhakar Pandurang A.I.R. 1966 S.C. 424.

Conjugal Rights of the Prisoners- 'Right to life and personal liberty' guaranteed by the Constitution also includes the right of convicts or jail inmates to have conjugal visits and artificial insemination⁴⁹. This gives the prisoners right to family life which is a bliss of happy life.

2. International Convention

With regard to the treatment of the prisoners, certain guidelines have been laid down internationally which finds a larger acceptance though not being mandatory in nature until ratified. Article 5 of the Universal Declaration of Human Rights, 1948 stated that no one shall be subjected to torture or cruel treatment, inhuman and degrading treatment or punishment⁵⁰. Every person has liberty and freedom from arbitrary arrest and exile.⁵¹ It is the inherent right of a person to be presumed as innocent until proven guilty⁵² and be provided adequate opportunity for defence in public trial

Article 6 of the Universal Declaration of Human Rights, 1948, runs as "Everyone has the right to recognition everywhere as a person before the law". Article 10(1) of the International Covenant on Civil and Political Rights lays down that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

The International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate its provisions into a domestic level. ICCPR states procedural fairness and rights of the accused under Article 14, 15 and 16. The International Covenant on Economic, Social and Cultural Rights (ICESCR) states that prisoners have a right to the highest attainable standard of physical and mental health. Apart from civil and

49State of Punjab v Vikram Singh, CRIMINAL M.P.NOS.16673-16674 OF 2016 & CRIMINAL M.P. NOS.16675-16676 OF 2016 IN REVIEW PETITION (CRL.) NOS.192-193 OF 2011 IN CRIMINAL APPEAL NOS.1396-1397 OF 2008

⁵⁰ UDHR art. 5

⁵¹ Ibid art. 9

⁵² Ibid art. 11.

political rights, the so-called second generation economic and social human rights as set down in the ICESCR also apply to the prisoners.

JUDICIAL PRONOUNCEMENTS

Judiciary had glorified more rights which constitute certain new rights for prisoners. The Supreme Court in *D.B.M. Patnaik v. State of Andhra Pradesh*⁵³ stated that detention of the prisoners behind the bars does not mean that their basic fundamental rights are deprived of them. In *Hiralal Mallick v. State of Bihar*⁵⁴, the Supreme Court reiterated the need for rehabilitation reforms for the inmates like reducing tensions and deep relaxation of the body through meditation etc. In *R.D. Upadhyay v. State of A.P and Ors*⁵⁵ it was stated the pre-requisite of sound prison administration are the availability of the right of fair treatment and judicial remedy. Fetters and chains on daily basis for the convicts were disallowed by the court in *Prem Shankar Shukla v. Delhi Administration*⁵⁶. The judiciary also stressed time and again for prison reforms and improvement of conditions of the prison⁵⁷

Under para 873 of the Punjab Jail Manual, the body of the condemned convict, after it falls from the scaffolds is required to remain suspended for a period of half an hour. This practice was contested to violate the right to dignity and fair treatment continues in respect of the dead body of the condemned man.⁵⁸ Provided that, the Prisoner is undergoing the punishment and the victim shall be awarded compensation with the remuneration earned by the said prisoner, or there shall be the common feasible fund from which the amount shall be credited to the victim. The court recommended to the State concerned to make law for setting apart a portion of wages earned by the prisoners to be paid as compensation to the deserving victims.⁵⁹

⁵³ *D.B.M. Patnaik v. State of Andhra Pradesh* AIR 1974 (SC 2092)

⁵⁴ *Hiralal Mallick v. State of Bihar* AIR 1977 (SC 2237)

⁵⁵ *In R.D. Upadhyay v. State of A.P and Ors* AIR 2001 (SCC 437)

⁵⁶ *Prem Shankar Shukla v. Delhi Administration* AIR 1980 (SC 1535)

⁵⁷ *Hussain Ara Khatun v. State of Bihar* AIR 1979 (SC 1377)

⁵⁸ *Paramanand Katara v. Union of India and another* (1995) 3 S.C.C.248

⁵⁹ *In Re Prison Reforms, Enhancement of Wages of Prisoners v. Unknown*, A.I.R. 1983 Ker 261.

See also *State of Gujarat and another v. Hon. High Court of Gujarat*, A.I.R. 1998 S.C. 3164.

PRISONERS UNDER SPECIAL CATEGORY

Article 15(3) of the Indian Constitution empowers the children and women with special provisions. The concept of Affirmative Action, which is for the upliftment of the socially exploited and vulnerable Classes also includes Women and Children, and the Parliament is empowered to make any such laws as it deems fit in the name of justice, equity and good conscience.

1. Women Inmates

There shall be equal enjoyment and protection of all human rights.⁶⁰ They shall be detained separately from male prisoners and no kind of contact shall be allowed⁶¹. They must not be subject to any form of discrimination. Women prisoners shall be supervised by the female staff and a male staff can enter only when accompanied by female staff⁶². The pregnant woman prisoner and nursing mothers shall be provided with the adequate medical facility and at the time delivery of a child, the woman shall be taken into hospital which is outside the prison.⁶³ But, implementation of the laws relating to female inmates is a far-sighted practicality. There have been comprehensive committee reports focusing on this issue such as Justice Mulla Committee Report on Prison Reforms (1982-83) and the Justice Krishna Iyer Committee on Women Prisoners (1986-87). The Justice Krishna Iyer committee laid emphasis on training of custodial staff in prisons to handle women prisoners with a reformative attitude. Finally, the Expert Committee on 'Women Prisoners' constituted by the Government in 1986-87 under the Chairmanship of Mr. Justice V.R.

60 UDHR art 3, Everyone has the right to life, liberty and security of person

61 Principles on Detention or Imprisonment, principle 5 r 8 (a)

62 Standard Minimum Rules for the Treatment of Prisoners (SMR) r 53, Adopted by the First United Nations Congress on the 'Prevention of Crime and the Treatment of Offenders', held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

63 SMR r 23 (1)

Krishna Iyer made a number of very useful recommendations for women prisoners and suggested a National Policy for Custodial Justice for Women⁶⁴

2. Juveniles in conflict with the law

The juveniles have the upper hand due to their tender age, as they are given a benefit of *Principle of presumption of innocence*⁶⁵. They are entitled to all the human rights inherent to a human being and are thus kept in Observation Homes and not in jails.⁶⁶The Juvenile Justice Act, 2016 aims to provide substantial development of the juveniles while they are in Observation Homelike. The juvenile shall be entitled to follow up upon the final order of the Children's Court, which includes the rehabilitation plan.⁶⁷ Further, no child shall be awarded a life imprisonment or death sentence by any Court, as in the case of adults.⁶⁸ For children between the age of six to fourteen years, Right to Compulsory Education⁶⁹ is effected which also includes skill development; occupational therapy; life skill education and so on⁷⁰.

64 Ministry of Home Affairs And Ministry of Human Resource Development (Department Of Women And Child Development). Committee On Empowerment of Women (2001-2002) (Thirteenth Lok Sabha), 'Women in Detention', *Ministry of Home Affairs and Ministry of Human Resource Development (Department Of Women And Child Development)*.

65 Juvenile Justice Act 2016 s 3(1)

66 Juvenile Justice Act 2016 s 4(1)

67 Juvenile Justice Act 2016 s 19(2)

68 Juvenile Justice Act 2016 s 21

Beijing Rules, art 37 (a); r 27

Rules for Juveniles, rr 64, 66 and 67.

69 International Covenant on Economic, Social and Cultural Rights [hereinafter "ICESCR"]; art 13,

Convention on the Rights of the Child [hereinafter "CRC"] art 28

Rules for Juveniles, rr 38 and 42.

70 Juvenile Justice Act 2016 s 53(1)

Right of Children to Free and Compulsory Education Act 2009 s 1(i)

Constitution of India art 21(a)

IMPROVEMENT IN BASIC RIGHTS OF THE PRISONERS CAN BE DONE THROUGH PRISON REFORMS AND RECOMMENDATIONS

A modern jail organisation has the basic function of care, custody and treatment. The main aim of punishment was to make imprisonment deterrent which with due course of time took an overhaul and changed to a different course which included gross indiscipline and violations of the human rights. Prisoners include the most underpinned section of the society.

Revision of the basic prison provisions need to be considered as prison reforms forms the basic part of the administrative law. A pragmatic prison administration policy needs to be carved out to strategize correctional administration.

1. A brief pre-independence history of prison reforms in India

Modern prison system beings originated by TB Macaulay in 1885⁷¹, the Indian prison system still follows the legacy of the colonial rule. The need for good punishment infliction machinery is the need of the hour. Prisons are the public institutions and therefore they must perform the function assigned to them by law. The law declares simply and precisely that if individuals are convicted of crimes, they shall be placed on probation, fine, or undergo a sentence of imprisonment in safe custody. The recent tendency is, of course, that prison system is meant for reformation of the prisoners that they may return to society as useful members and this function of the prison is now termed as discipline⁷².

2. Post-independent prison reforms

The turmoil created by the aftermath of the partition led the administrative mechanism to absolute darkness in which an underpinned area such as prison administration needed much attention. Prison reforms in India can be divided into pre-independence and post-

71 Ministry of Home Department Prisons in India: Rajasthan Government, 'An overview of reforms and current situation 2(2017)' <http://home.rajasthan.gov.in/content/dam/pdf/StaffCorner/Training-Material/Useful-Presentations-And-Videos/Overview%20of%20prisons%20in%20India.pdf> accessed 29 Jan 2018.

72 BS Haikerwal, *A Comparative Study of Penology*, (Ram Narayan Lal Law Publisher, Allahabad 1979)97.

independence reforms. Humanitarian aspect was a major driving force for the post-independence committees to re-draft recommendations for prison reforms. There is a dire need of reformatory framework which is in tune with the international standards. The Prison administration lack unique standards as the subject of prison administration has been granted to State Government instead of enlisting it in the Concurrent list⁷³. The present prison system is still in tune with the Government of India Act, 1935. Uniform standard of prison administration can only be achieved through national legislation and doing away with various obsolete state legislation. Prisons in India are governed by the Indian Prisons Act, 1894 and also by various regulations of the Prisons Act of various states. After Independence, the Government of India invited UN expert WC Reckless on whose recommendation a committee on All India Jail Reforms was set up in 1957 which touched upon various aspects of prison administration. Transfer of Prisoners Act, 1950 provided for the transfer of prisoners from overpopulated to less congested jails for rehabilitation and for providing vocational training to the inmates. A large number of committees at national and state level were set up which suggested a slew of measures and recommendations on reforms on prison administration in India in line with scientific footing with the most landmark being All India Committee on Prisons Reform (1980-83), universally known as Mulla Committee, which had a reformatory attitude towards prison administration in India. Protecting society and rehabilitating the offenders were the basic objectives of the Committee. One of the main reasons for the general deterioration of the prisons, according to the Committee, was the lack of national commitment. Post National Emergency Trends Emergence of Judicial Activism, Emergence of National Human Rights Commission 1994 NHRC, a draft of India Prison Bill 1998, All India Model Prison Manual Committee 2000, Model Prison Manual 2003, National Draft Policy on Prison 2008 The Emergency (1975-77) was a landmark event for the prisoners. A large number of political arrests were made. This gave leaders a feeling of the arbitrary nature of the state and made them conscious of the hardships undergone by the inmates of prisons.

Other landmark committees constituted like the R.K. Kapoor Committee (1986) and Justice Krishna Iyer Committee (1987), and the Committee of Empowerment of Women (2001-2002) have all highlighted the need for a comprehensive revision of the prison laws but the

73 The Constitution of India 1950 sch 7 Lst II Ent 4

pace of any change has been disappointing. One such another major committee was the Malimath Committee on Reforms of Criminal Justice System (2001-2003).

PRISON ADMINISTRATION NEED DEEP SURGERY TO REMOVE THE PRESENT LACUNAE

The present conditions of the prison demand immediate action with several areas where stringent efforts need to be made to sort out the maladies. Overcrowding in prison is a serious issue with several prisoners languishing in small prisons, this has been even worsened due to a large number of undertrial prisoners. Scheme for modernisation of prisons under Draft National Policy On Prison Reforms and Correctional Administration suggests construction of new prisons. This also demands bail bonds for undertrial prisoners under section 436A of Cr.PC.

1. Reformation and rehabilitation of prisons

One of the major aims of the prison administration demands to transform prisoners into constructive individuals. Prisoners are mainly termed as unproductive so it is needless to point out that prison administration must make them self-sustained. For this adequate vocational staff to impart training to nurture the skills of the prisoners must be deployed. The prison staff must have changed in approach towards prisoners. There must be a separation of undertrial prisoners from such hardened criminals of rape, murder so that the mind of young undertrial prisoners be not influenced by them.

2. Staff and budget

The Government has to spend a lot on prison administration ranging from day to day activities, food lodging to the payment of salaries to the prison officials, all this is included in the 'Non-Plan Expenditure'. This expenditure needs to be strictly regulated through a regulatory body to remove the existing lacunas in prison administration. Many times due to lack of budget, many desirable developments are not taking place in many prisons. There

must be a separate cadre for prison services in line with the service of police or judiciary. Surveys must be done in jails to detect the problems relating to staff and such inadequacy needs to be resolved through proper recruitment.

3. Security inside the prison

There have been several incidences of security threats inside the prison where prisoners are not only threatened by co-prisoners but by prison officials, whereby incidences of custodial deaths also take into place. Also, many times hazardous weapons such as the knife, guns take the entry inside the prison, escaping of prisoners from the prison through manholes needs to be checked. Prison administration must also lay emphasis on improving the security of the prisons.

CONCLUSION

In reviews of powers of the police authorities in arresting and the subsequent rights of the prisoners, it is noticeable that police authorities go beyond the purview of powers vested and deploy despicable and oppressive practices in arrest of persons who remain unaware or attacked by archaic mechanism, thus it is the duty of not only police but government and judiciary to protect the rights of the individuals arrested. Special accentuation need not be given to the duty of the court to prevent abuse of the rights of the prisoners. It is well stated in the report of Malimath Committee on prison reforms. The accused has the right to know his rights and how to enforce such rights. Awareness must be made at all levels to make arrested persons as well as convicted prisoners aware of their right which can be rightly done by not only lawmakers but by police and prison authorities. Prison welfare schemes must be endorsed to solve the problems of prisoners stated by SC in *Rama Murthy v. State of Karnataka*⁷⁴. It is rightly said by Mahatma Gandhi "Hate the crime, not the criminal".

⁷⁴ *Rama Murthy v. State of Karnataka* (1997) 2 SCC 642.