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Rights of the Prisoners: An Overall Study

Vivek Kumar Rungta

“When a man is denied the right to live the life he believes in, he has no choice but to become an outlaw.”

- NELSON MANDELA

Talking about rights means the freedom provided by the constitution of India for the protection of personal and liberty attached to it. A prisoner is a person who either by suppression or otherwise breaks the law must be brought to justice but not in an inhumane condition. These rights are said to be basic ones as feeling of secured fundamentalism of any person in a prison enables him to grasp the uniqueness of our constitution for the need of rehabilitation of offenders and not only this but also it shows the protection of those fundamental rights for the personal life, liberty and freedom of him to live a better life in this society. The word prisoner is defined under section 3(2) of The Prisons Act, 1894 which says any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction, or by order of a court martial¹. The above lines said by Nelson Mandela depicts not only the basic rights of a person but it can also be interpreted for the person in prison as the life he need to live can be provided to him in the prison too so that the deterioration of humanity in that particular prisoner does not increase with time but due to the affection and lifestyle provided to him by the prison authority and administrative can make him a better person to live in this society and have a sustainable life. Any person who got to be denied any kind of human rights in the society for true existence of himself with statehood and personal dignity has no choice but to become an outlaw so that he also feels sustainability in the society. We are talking here about the person who is already in prison and these rights which are provided by administration is just not to be seen as fundamental ones but also utilitarian for personal development in the society. According to my interpretation the above line states that the person in society who got denied rights die to any discrimination based on race, sex, religion, caste or creed have no other option left but to commit some offence for stating his existence in the society for his personal need of dignity and sustainability, that's why it is said here for a society not to be divided in any particular manner but to treat everyone same in the eyes of law so that neither anyone becomes an outlaw and if, than never be pushed into that darkness from where he can never be brought back to the society.

While discussing rights of prisoners we must look into the meaning of punishment which is explained under modern penology as affixing the criminal liability of criminals in accordance with certain established principles and imposition of sentences on the basis of gravity of offences. Assessing the meaning of punishment with part III of the constitution gives us a final display of having a benefit of having a rigid constitution containing liberal views over human rights of a person so that no-one is denied the basic rights whether he is outsider or a citizen of this country, they must be provided proper justice and during the term of their confinement their personal dignity is not to be disturbed to the extent which the punishment allows. In this dissertation we are going to look and define the extent regarding the offences, punishment and lastly rights which is to be provided to under trial prisoners.

¹ The Prisons Act, 1894

“Human rights are not a privilege conferred by government. They are every human being's entitlement by virtue of his humanity.”

- MOTHER TERESA

Human rights in this world along with covenants and conventions of UN provide wide scope for rights of the prisoners. Surplus having Indian Constitution, we have provided a wide range of facilities which is not to be said as privileges but to be seen as basic human needs which must be provided to any person thereof for securing the dignity of a personal being with the view of rehabilitation or having utilitarian or a futuristic view.

According to the theories of criminology and penology, it is seen in India that we care for the utilitarian justice in our system where we lack sometimes, and for this we have to look for the human rights of offenders under prison so that if they have not committed any offence, they must not become a rebel due to improper care and poor conditions in jail.

Crime is a pathological aberration that the criminal can ordinarily be redeemed that the state has to rehabilitates rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times.

According to section 41 of the code of criminal procedure, 1973² it has been provided that the police administration has the power to arrest any person upon the grounds of reason to believe that such person has committed some offence or have some reason to believe that person undergoing arrest have a potential to commit any crime and any such act which is going to disturb the maintenance of law and order in the state.

The person undergoing arrest for such act which he has not committed but person arresting or person providing information of any such act has reason to believe that he had either committed that crime or have a reason to commit any such offence must be entitled for the human rights or fundamental rights or basic rights so that after acquittal from such crime, he will be able to sustain his life with full liberty in the society.

“Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care”.

- MAHATMA GANDHI

M. K. Gandhi by this quote stated the born of crime in the society that it is an outcome of a diseased mind that can be either caused by the criminal nature of himself and environment in which he has been seeking knowledge since childhood. The person become that what he perceives from environment and society in which he lives. And further he said that the jails

² 41. When police may arrest without warrant.

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-
(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

must have an environment of treatment and care for those who are offenders that they must feel the statehood and have some belief that the crime is not the only way and must pursue his life according to law and order. And where he saying that treatment and care should be provided to the offenders then it must be interpreted that there must be rights for the prisoners who are arrested only upon reason to believe. In conclusion he was trying to state that the person undergoing arrest might be a criminal or not but he must not be maltreated upon the grounds that he has committed crime. There can be discrimination done on the basis of offence which a person has committed or upon repetition of such crime.

The person who is declared for a term under confinement is provided accommodation, medical treatment and other facilities including treatment for sick offenders and basically communication between the jail authority under the provisions of The Prisons Act,1894 and the offender freely so that he has not denied any rights for which he is entitled irrespective of the boundaries. State provides that no person shall be deprived of his rights but if a person enjoys the liberality of state for the offence committed, the state is not going to be liable for infringement of such rights of persons under confinement.

According to V.R. Krishna Iyer,

“In our world prisons are still laboratories of torture, warehouses in which human commodities are sadistically kept and where spectrums of inmates range from drift-wood juveniles to heroic dissenters”.

Prison according to criminal jurisprudence is a place for deterrent and retributive aspects of keeping a person who has committed some wrong. And accordingly, keeping a person in prison is not just about giving punishment or making the life of that person harsh and inhumane for a living. But a prison is a place where an offender who has committed a crime is a person who can repeat that particular act in the society outside, so that the prison also works as a safety for public by keeping offenders away from society till they are not able to live in that society as a free being having respect and dignity as equal to other persons. This can be brought into notice from the Doctrine of Fair Procedure which was expounded in *Maneka Gandhi V. Union of India*³, which evolved a new prison jurisprudence striking a balance between "the dignity of the human beings ruled within the walls and the powers of the jail authorities that rule them.

Constitution provides various fundamental rights and these rights are enshrined for person where it does not discriminate on the basis of offender or not and therefore a person under confinement is going to be enjoying those rights till they are not barred from the rules and provisions of Indian Penal Code and criminal jurisprudence. In the case of *State of A.P. V. Challa Ramakrishna Reddy*⁴, it was held that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. In *Maneka Gandhi V. Union of India*⁵, Supreme Court iterated that “the attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and context by a process of judicial construction”.

³ 1978 AIR 597

⁴ (2000) 5 SCC 712

⁵ AIR 1978 SC 597

Starting with the initial rights, Article 14 of the Constitution means every person is entitled equality before law and equal protection from law. Impliedly it provides the rights to every person who shall not be discriminated upon any such grounds which is not thereby specially provided under any such other law which deals with either penal provisions or provisions relating to barring of any such rights which are to be protected under this article.

Another fundamental provision is freedoms provided under Article 19 of the Constitution which states that which mainly revolves around freedom of speech and expression which impliedly in this topic says that every person whether offender or not has right to speak freely means they have the rights for appeal to the higher courts irrespective of the offence done to the extent to which procedure extends. A person has a fundamental right of expressing his speech and expression freely and for this in the case of offender in prison upon him commission of any offence is alleged or there is any reason to believe for that person to be resided in prison, has a personal right to get himself free from detainment of the state through appealing in the courts for acquittal of offences.

Part III of the Constitution personally provides the right of personal life and liberty including dignity, prosperity, health and sanitation and other rights which are suitable according to the punishment provided or the general confinement upon suspicion or upon reason to believe.

In the case popularly known as Pavement Dwellers Case, the Supreme Court observed that the word 'life' in Article 21 included the 'right to livelihood'. Right to livelihood means having a life of a man's own choice and infringement of that right means that depriving such person with any of such necessities which is required by him for fulfilment of basic needs or for enjoyment of his life and personal liberty with full dignity. Therefore, it can be said that "right to livelihood is an integral facet of the right to life"⁶.

Imprisonment under this section is based on the terms of strictness of other penal statutes although Supreme Court has its liberal outlook over the matters of imprisonment of prisoners and their livelihood term under prison which are discussed by the courts in various cases which deals with the fact that whether a person is an offender or not it is the matter of the administration to respect and maintain the personal dignity of an offender in such manner that it must not be treated in an inhuman manner as discussed above.

Some of the rights are discussed in the case of Sunil v. State of M.P.⁷, that handcuffing is permissible only in extraordinary circumstances. Further in the case of Citizens for Democracy v. State of Assam⁸, the police and the jail authorities on their own shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport and in case of extraordinary circumstances necessitating handcuffing special orders of the magistrate must be obtained. Some of the fundamental rights are provided for the offenders punished under death sentence or capital punishment, first of all the constitution provides a basic provision as to apply for pardoning of sentence to the President of India under Article 72. Under the case of Attorney General V. Lachma Devi⁹, court said that public hanging of a convict is violative of Article 21.

⁶ Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180

⁷ (1990) 2 SC 409

⁸ AIR 1996 SC 2193

⁹ AIR 1986 SC 467

Some of the rights which are the derivatives of Article 21, provided by the pronouncements of the Supreme court in the following cases;

- a) That an under trial prisoner already in jail for a period more than the maximum awardable for the offence he is charged of must be released.¹⁰
- b) That refusal to grant bail in a murder case without reasonable ground would amount to deprivation of personal liberty under article 21.¹¹
- c) That arrestee subjected to inhuman treatment during police custody should be paid compensation by the state; the quantum of compensation depends upon the facts of each case.¹²
- d) That it is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting for legal formalities to be complied with by the police under Cr.P.C.¹³; failure to give timely medical treatment to a seriously injured person is violation of his right to life.¹⁴
- e) That compelling a person to live in sub-human conditions also amounts to the taking away of his life, not by execution of a death sentence but by a slow and gradual process by robbing him of all his human qualities and graces, a process which is much more cruel than sending a man to the gallows.¹⁵
- f) That the requirement of a public hearing in a court of law for a fair trial is subject to the need of proceeding being held in camera to the extent necessary in public interest and to avoid prejudice to the accused;¹⁶
- g) That section 309 IPC is Ultra Vires the constitution as a person cannot be forced to enjoy the right to life to his detriment.

Article 22 states that the detention of persons without trial was a common feature of the colonial rule and a major issue during the struggle for freedom. As it is provided that no person shall be detained without providing him with the information of the grounds of such arrest and not to be denied the right to consult his rights upon detention and must be produced before magistrate within 24 hours.

While concluding the whole topic it is to be seen that the Indian Administration system provides for strict interpretation of penal laws while discussing the sentence of any offender upon the commission or having reason to believe that such offence has been committed by such person and the circumstances are to be discussed by the courts depending upon the facts of the case but the condition of imprisonment to be discussed by the administration under the provisions of the Constitution of India which is having its provisions written for the interpretation by the courts. While discussing part III of the Constitution, Supreme Court always interpreted the provisions liberally as it was discussed above. Basic point of liberally construing the fundamental provisions for prisoners is that there must not be an inhuman behaviour, torture or any kind of cruelty

¹⁰ Hussainara v. State of Bihar AIR 1979 SC 1369

¹¹ Babu Singh v. State of U.P. AIR 1978 SC 527

¹² D.K.Basu v. State of W.B. AIR 1997 SC 610

¹³ Paramanand katara v. Union of India AIR 1989 SC 2039

¹⁴ Paschim Banga Khet Mazdoor Samity v. State of W.B. AIR 1996 SC 2426

¹⁵ AIR 1988 Cal. 136

¹⁶ Vineet Narain v. Union of India AIR 1998 SC 889

which is likely to happen to him must be ignored for the purpose of saving the human rights of such person as well as providing him punishment for the offence which he has committed. Rights of the prisoners includes basic accommodation facilities, health care, sanitation visiting rights and right to appeal for proving to the court that whatever offence has been alleged upon him either is justified or totally wrong for that purpose. Another right which is provided under the criminal procedure code, section 360 states that a person upon his good behaviour or such behaviour in which he shows that he is able to live in this society while maintaining the dignity of others must be released upon probation whose sole ground will be good behaviour and nothing else. Therefore, it can be said that the person undergoing confinement of Indian Administration enjoys a right of personal liberty at the least conditions which the state can provide to him under which the health facilities are t6he basic one and further the state frees the offender to appeal to the court for granting of any other such right for which the prisoner feels himself deprived of.