

HUMAN RIGHTS OF PRISONERS

IRSHAD AHMAD HURRAH

Ph.D., Research Scholar,

Department of Political Science, Jiwaji University, Gwalior, Madhya Pradesh, India

Email: hurairshadhura@gmail.com

Abstract: *Human rights are universal in nature and it applies to all human beings and 'rights of prisoners', being a part of these human rights, must be taken more seriously and it must be given the same status and level of importance as any other human right. Having a conscience as a result of being human, it is imperative that we understand that we cannot let another fellow human being suffer in such deplorable and disheartening conditions and we must all work together in spreading awareness and uplifting this section of the human society.*

Key Words: *Human Rights, prisoners, jail, Judiciary.*

1. INTRODUCTION:

Human Rights are the inalienable rights to which every human being is entitled to as a part of the human society. It enables human beings to live a dignified and respectful life and provides equal rights, freedoms and justice to all. A prisoner is a person who is serving time in prison for the crimes he or she has committed. His rights are curtailed as a punishment for breaking the law. A prisoner is also a human being and hence is entitled to some basic rights to live a modest and reasonable life. Although going to prison involves restriction of one's rights, a prisoner, irrespective of the crime he or she has committed, deserves certain basic rights as a part of the human fraternity. Over the years, 'rights of prisoners' have developed considerably and are now being taken more seriously. From being treated in a barbaric manner with minimum to no rights, today, there are organizations working tirelessly for the recognition of rights of prisoners and even the governments of different countries have come up with laws to protect these rights. Prisoners must be allowed to live with dignity and must be granted certain basic rights such as protection from cruel and harsh punishments, torture, sexual harassment and mental and medical health care.

2. RIGHTS OF PRISONERS:

There are numerous rights to which the prisoners are entitled to residing in prisons. Some of the important rights are:

- **Right to Basic and Minimum Needs**

Right to Basic and Minimum Needs connotes "Right to fulfillment of basic minimum needs such as adequate diet, adequate potable water for drinking, bathing and cleaning purposes; recreation facilities; health and medical care and treatment, access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment; and recreation."¹

- **Right to free legal aid**

A substantial part of the prison population in the country consists of undertrials and those inmates whose trials have yet to commence. Thus, access to court and legal facilities is essential for giving a free and fair trial to these inmates, which is the mandate of Article 21 of the Constitution. 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 liberty.² Legal service is clearly an essential ingredient of reasonable, just and fair procedure for a person accused of an offence and it is implicit in the guarantee of Article 21. The State Government cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The Supreme Court make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or also in communicate situation. The Supreme Court while considering the prisoners' right to have a lawyer and reasonable access to him without undue interference from the prison staff. A prison regulation cannot prescribe any unreasonable and arbitrary procedure to regulate the interviews between the detainee and the legal advisor.³

¹ National Human Rights Commission of India- Living Conditions and Human Rights of Inmates, Volume I, 2013.

² Sukdas v. Arunachal Pradesh, AIR 1986 SC 991

³ Francis Corahe v. Delhi Administration, AIR 1981 SC 746

- **Right to speedy trial**

The Supreme Court held that right to speedy trial is a part of the fundamental right envisaged under Article 21 of the Constitution. Delay in disposal of cases is denial of justice, so the court is expected to adopt necessary steps for expeditious trial and quick disposal of cases.⁴ The court held that the right to speedy trial flowing from Article 21 is available to accused at all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial. The court further said that the accused cannot be denied the right of speedy trial merely on the ground that he had failed to demand a speedy trial.

- **Right to interaction with society**

The Supreme Court held that lawyers nominated by the District Magistrate, Session Judge, High Court and the Supreme Court will be given all facilities to interview, right to confidential communications with prisoners, subject to discipline and security considerations. Lawyers shall make periodical visits and report to the concerned court, results of their visits. The Supreme Court struck down the provisions, which were prohibiting the detainee to have interviews with a legal advisor of his choice and held that it was violating of the Articles 14 and 21 of the Constitution, hence such provisions are unconstitutional and void. It would be quite reasonable if, a detainee has to be entitled to have interviews with his legal advisor at any reasonable hour during the day after taking appointment from the Superintendent of the Jail. Such appointment should be given by the Superintendent without avoidable delay.

The Hon'ble Supreme Court held that, the word personal liberty in Article 21 is of the widest amplitude and it includes the "right to socialise" with members of family and friends, subject of course, to any valid Prison Regulations which must be reasonable and non-arbitrary. The person detained or arrested has a right to meet his family members, friends and legal advisers and woman prisoners are allowed to meet their children frequently. This will keep them mentally fit and respond favourably to the treatment method.⁵

- **Right to bail**

The Hon'ble Supreme Court held that "refusal to grant bail" in a murder case without reasonable ground would amount to deprivation of personal liberty under Article 21. Personal liberty of an accused or convict is fundamental right and can be taken away only in accordance with procedure established by law. So, deprivation of personal liberty must be founded on the most serious consideration relevant to the welfare objectives of the society specified in the Constitution. All the under-trial prisoners, who have been in remand for offences other than the specific offences under the various Acts, who have been in jail for period of not less than one half of the maximum period of punishment prescribed for the offence shall be released on bail forthwith in accordance with the direction of the Supreme Court.⁶ All the under-trial prisoners have been in jails for maximum term of which they could be sentenced on conviction, shall be released on bail on furnishing a personal bond of an appropriate amount.

- **Right to be released on due date**

No doubt, all the prisoners shall be released from prison on the completion of their sentence. It is the duty of the prison staff to notify the releasing date of every prisoner in the register to be maintained by Jailer. If, any formality is needed to be done for releasing purpose, should be completed before the releasing date.

- **Right to reasonable wages for work**

The Hon'ble Supreme Court has held that labour taken from prisoners without paying proper remuneration was "forced labour" and violative of Article 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and the court is under duty to enforce their claim. The Court went one step ahead and said that there are three kinds of payment - 'fair wages', 'living wages' and 'reasonable wages'. The prisoners must be paid reasonable wages, which actually exceeded minimum wages.⁷

The Hon'ble Supreme Court held that no prisoner can be asked to do labour without wages. It is not only the legal right of a workman to have wages for the work but it is a social imperative and an ethical compulsion. Extracting somebody's work without giving him anything in return is only reminiscent of the period of slavery and the system of *begar*. Like any other workman a prisoner is also entitled to wages for his work.

- **Protection against instruments of restraint**

⁴ Kadra Pahadiya v. State of Bihar, AIR 1983 SC 1167

⁵ Francis Coralie v. Delhi Administration, AIR 1981 SC 746

⁶ Common Causes v. Union of India, (1994) 4 SCC 33, and as modified in (1996) 6 SCC 775; and Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507

⁷ Sanjit Roy v. State of Rajasthan, AIR 1983 SC 328

Instruments of restraint, such as handcuffs, chains, irons and straitjacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- On medical grounds by direction of the medical officer;
- By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.⁸

Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. And drinking water shall be available to every prisoner whenever he needs it.⁹ A convict lodged in jail must have reasonable accommodation to live a healthy life and enjoy his person liberty to the extent permitted by law.

2. CONCLUSION:

Prisoners are human being and as such they retain their rights even when in prison. This is so because human rights are universal. This means that every person, including a prisoner, has human rights, no matter who he is, where s/he lives or his/her class, race, sex, age, social status, etc. Also, human rights are said to be inalienable. This means that they cannot be taken away from a person, including a prisoner. At the same time prisoners cannot enjoy all rights as everyone else. The enjoyment of human rights may be restricted or limited in certain circumstances. Even though prisoners lose a lot of their citizen's rights when they are convicted, they still have certain rights that make sure that they are treated fairly. Some of those rights include freedom of speech and religion, freedom from arbitrary punishment and cruel and unusual punishment, and the right to have access to the courts through Habeas Corpus. These rights are guaranteed so that prisoners are not treated unfairly, or even in an inhumane fashion. If these rights were not guaranteed to prisoners, abuse and neglect would be rampant and violence would be worse than it is now. The prisoners' rights movement has had its effects on the individual prisoner. They now have more access to the courts and benefit from internal procedures which help to resolve disputes within the prison. Because of the prisoners' rights movement, individual inmates now expect better treatment than prisoners before them had received. The bad side of prisoners having more rights is that some may want more and more rights. This causes the social behaviour of the inmates to be of the attitude that they deserve to be treated a certain way. Unfortunately, some prisoners believe that they should be given more freedoms than they currently have.

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⁸ Rule-20 of "Standard Minimum Rules for the Treatment of Prisoners, 1957" adopted by UN