ABSTRACT

“Hate the sin not the sinner”- Mahatma Gandhi. This article talks about proving legal rights and liberties to the under trial prisoners by treating him with humanness and ensure rights of prisoners under the constitutional provisions, criminal jurisprudence, human rights jurisprudence and the judgment of the courts. Criminal jurisprudence cannot be appreciated without such rights and protections and also sets out the need for improving the prison administration, improving the conditions of prisoners and implementing more laws and legislations for the benefits of the convicts, accused or under trials. The role of judiciary is also been recognized and the landmark judgments pronounced providing a framework for reducing the problems faced by the prisoners and revolutionizing the prison reforms. We have found out the awareness of rights among the accused, under trial prisoners and other members of the society. This article also talks about the constitutional rights, the findings of The National Human Right Commission and the measures to improve the conditions of the prisoners in India, the various provisions under the criminal laws before and after the Independence of India. There is a need to improve the techniques of handling the prisoners and improving the conditions of prisoners at administrative and legislative level. There is also a need to give to avoid delay in investigation and speedy trial which is not only harmful to the accused but also harmful for the whole society. The work which is as follows is of national importance and the challenge before the society is to correctly implement these rights without discrimination and providing equitable justice irrespective of their classes.

Keywords: (Prisoners, Criminal Jurisprudence, Constitutional Provisions, NHRC, Undertrials).

INTRODUCTION

Ordinarily, a person is considered as an accused when an F.I.R. lodged against him in respect of an offence before an officer competent to investigate it or when a complaint was made relating to the commission of an offence before a Magistrate competent to try or send another Magistrate for trial of the offence. Such accused may in custody either police or judicial or outside on Bail issued by the competent authority. Prisoners have basic legal rights that can’t be taken away from them, including right to food and water, right to have attorney to defend himself, protection from torture, violence and racial harassment.

“Every saint has a past, every sinner has a future”- Oscar Wilde.

Treatment of the prisoners in India is violative of their fundamental rights and statutory provisions. The Supreme Court of India stuck with the matter of inhuman treatment of under trial prisoners in India mainly due to overcrowding
of prisons, lack of training to prison officials, infrastructure and urging to the state and central government to improve their conditions. Due to illiteracy, poverty and lack of legal knowledge not only within the poor class but other sections of the society rights of these people are violated and they are deprived of the benefits provided to them by the legislature. The rights and protections which aims at providing benefit to the poor sections of the society results to the centralization of power to the richer sections of the society. The prison administration and the personnel remains in powerful position which tends them to abuse the powers of the prisoners.

“Power tends to corrupts and absolute power corrupts absolutely.”-Lord Acton

Indian Constitution and Under Trial Prisoners

Under the provisions of constitution of India under trial prisoners have following rights:

**Right to Citizenship**

An accused does not become a non-citizen by merely being arrested or suspicion.

Article 10 of the Constitution provides that every person who is or is deemed to Indian under any of the foregoing provisions of Part-II of the Constitution dealing with citizenship shall, subject to the provisions of any law that may be made by parliament, continue to be such citizen. The right to citizenship secured under the foregoing provisions can be destroyed only by an express enactment of parliament made for the purpose and cannot be taken away indirectly.

**Right To Equality (Article 14)**

Article 14 declares that ‘the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India’. Both these expressions aim at establishing what is called “equality of status” in the preamble of constitution. However under trial prisoner are to be kept segregated from convicted person for the purpose of legislation, juvenile offenders can be classified from adult offenders as well.

**Right To Freedom (Article 19)**

Article 19 of the constitution guarantees to the citizens of India right to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, and to practice any profession or to carry on any occupation, trade or business. However, these rights are not absolute. The six freedoms are however, not absolute. The restrictions of these freedoms are provided in clause 2 to 6 of Article 19 of constitution. But the courts have power to decide whether the restrictions are reasonable or not.

It must be mentioned that the accused, who are in jail custody or in police custody cannot properly enjoy these rights. Under trial prisoners who are in jail custody are subject to prison laws. Therefore, such persons are deprived of fundamental right to move freely throughout the territory of India.

**Protection To Accused Persons (Article 20)**
Article 20 of the constitution gives three distinct rights to the accused person:

1. Article 20(1) lays down that a person can only be convicted of an offence with the Act charged against him which was an offence under the law of force on the date of the commission of the Act.

The second part of Article 20(1) guarantees that no person shall be subject to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

2. Article 20(2) gives protection against double jeopardy. A man cannot be tried for one and the same offence more than once.

3. Article 20(3) provides that no person accused of an offence shall be compelled to be a witness against himself. Article 20(3) is a protection against self incrimination.

**Protection of Life and Personal Liberty Article (21)**

Article 21 lays down that no person shall be deprived of his life or personal liberty except according to procedure established by law.

An Accused Person Has Following Benefit under Article 21

**BAIL**

An accused is entitled to get Bail. Granting bail is rule and jail is exception.

The Apex Court in India held that the refusal to grant bail in a murder case without reasonable grounds amounts to deprivation of personal liberty (*Babu Singh -Vs- State of U.P.*).¹

**SPEEDY TRIAL**

Under trials are entitled to get speedy trial.

Speedy trial means reasonably expeditious trial which is an integral part of right to life and liberty enshrined in Article 21.

**LEGAL AID**

An accused who has no sufficient means to provide a lawyer is entitled to get free legal aid. The Supreme Court held that free legal service to the poor and the needy is an essential element of any reasonable, fair and just procedure

**RELEASE**

An accused is entitled to release, if such accused has been confined without trial for a long period. And that period of confinement is greater than the maximum period of punishment that could be imposed had he been convicted of the offence with which he had been charged.

¹A.I.R. 1978 SC 527.
The Supreme Court under its wide interpretation of fundamental rights of chapter III of Indian Constitution have given various judicial pronouncements recognizing the rights of the accused, undertrial and convicted persons. The Supreme Court has laid down a framework of prison and police jurisprudence and recognized various fundamental rights of the prisoners by giving out judgments for improving the prison conditions and giving rights and liberties to the prisoners. But legislation has shown a passive attitude towards codification of these rights. There has been a visible change in the prison reforms through some of the landmark decisions.

For the first time situation of rights of prisoners was discussed in Hussainara Khatton Vs State of Bihar\(^2\). In 1979 where number of under trial prisoners were languishing in prisons for the longer period than their maximum term, the court observed that the disclosure was totally illegal and a violation of fundamental rights guaranteed under Article 21 of the Indian Constitution. The court also observed that speedy trial of the prisoners is a constitutional mandate and the state cannot deny it on the basis of its financial or authoritative inability.

More recently the Supreme Court in its landmark decision in Ramamurthy Vs State of Karnataka\(^3\) has identified nine major problems which need immediate attention for implementing prison reforms. The court observed that present jail system is affected by nine major problems-

1. Overcrowding of jails
2. Lengthy trial and delay of appeal
3. Third degree torture and ill treatment
4. Neglecting health issues and hygiene
5. Insufficient food and inadequate clothing
6. Prison vices
7. Communication blockage
8. Streaming of jail visits and
9. Administration of open air prisons.

It was also suggested to improve the environment of jails and to bring friendly relationship between jail staff and prisoners. There is a need for every person related to criminal justice system to work together and improve the prison system. It is possible to reduce blockage of criminal cases if the judicial and the lawyers work together and reduce repeated adjournments which are unnecessary.

In the case of AK Gopalan Vs State of Madras (1950)\(^4\) where the petitioner was detained in Madras Jail under the Prevention Detention Act, 1950, Supreme Court upheld the detention and held that it did not violated article 21 as it was done as per ‘procedure established by law’. The same position was reiterated by the Court in the case of ADM Jabalpur Vs. Shiv Kant Shukla (1976)\(^5\) that during emergency the ambit of life and liberty gets suspended. But in the landmark case of Maneka Gandhi Vs. Union of India (1978)\(^6\) the Apex Court broadened the scope of ‘life’ under Article 12 and held that any procedure made by the State must be just and reasonable. This case opened the floodgates for the rights of the people and the construction of Article 21 by the courts, whereby every basic right needed for the survival for the human have been included in it.

\(^2\)(1980)S.C.C.88
\(^3\)(1997)2SCC642
\(^4\)1950AIR57, 1950 CSR 58
\(^5\)1976 AIR 1207, 1976 CSR 172
\(^6\)1978 AIR 597 SCR(2) 621
Findings of National Human Rights Commission of India and measures for control and reduction of under trials in prisons

The National Human Rights Commission\(^7\) has been taking steps to arrange the release of under trials from various prisons in the country, looking at the problem both from the human angle as well as the perspective of better Prison Management.

Under trial prisoners constitute about 75 per cent of the prison population in the country\(^8\). The National Human Rights Commission has constantly been urging the release of under trial prisoners on bail, if they are entitled to it. Studies have shown that under trials are often languishing in jail because they are not produced in court owing to the shortage of police escorts. The position is aggravated by the slow rate of disposal of cases in the courts of law.

There are about 400 prisoners in Tihar jail released by the court on bail, but could not be released as they could not furnish sureties. Subsequently, NHRC took the matter to Tihar jail authorities and to the Delhi Legal Aid Board. The latter appointed lawyers to study the cases of such prisoners. The joint efforts of Tihar jail authorities and Delhi Legal Aid Board resulted in release of nearly 200 prisoners.

The Commission has also urged to the Chief Justices and Judges of the High Court to look into the matter of these undertrials. Shri V.K Bali, Judge of Punjab and Haryana High Court visited various jail in Punjab and inspected the reports of these under trials. He has ordered the release of more than 100 under trial on bail or on personal bond, on the spot.

The Bihar Legal Services Authorities have informed the commission that the had designated 17 lawyers to solve the problems of undertrials. A large number of ticket-less train travelers have been lying in prisons without being produced before the court. The State Legal Service Authorities has suggested the Railway Magistrates to hold their courts periodically in the jails to solve the matters of under trials.

In a seminar ‘Prison Reforms’\(^9\) organized by NHRC with collaboration with The National Institute of Criminology and Forensic Sciences it was found out that more than 70 percent prisoners are undertrials and more sensitivity on the part of the Judges across the country to make prison reforms effective has been called for. Justice Verma has urged all the wings of the criminal justice system to come forward and to solve the problem of human rights violation of human rights of undertrials.

---

\(^7\)https://nhrc.nic.in/press-release/human-rights-and-custody-management-undertrials

\(^8\)https://nhrc.nic.in/press-release/7418-cent-prison-population-are-undertrials-nhrc

\(^9\)https://nhrc.nic.in/press-release/nhrc%E2%80%99s-initiatives-prison-reforms
RIGHTS OF UNDERTRIAL UNDER THE CRIMINAL LAWS OF INDIA

Prisons Act, 1894

The present jail system and administration operates on the Prisons Act, 1894\textsuperscript{10}. There has been no substantial change in the Act. However, there has been continuous change in prison reforms and identifying the problems related to it. After independence several committees and commissions were appointed by the central as well as by the state government and importance of humanness in conditions of the jail was identified. In the report of the Indian Jail Committee 1919-20, for the first time ‘reformation and rehabilitation’ of offenders were identified as an objective of prison administration. The need for strengthening the prison reforms constantly has been highlighted.

The following are some of the important provisions related to prisoner right:

- Provisions relating to physical and mental health of the prisoners.
- Separation of prisoners for male, female, convicts, undertrials.
- Provisions for treatment of under trials, civil prisoners, parole and temporary release of prisoners.
- Accommodation and sanitary conditions for prisoners.
- Examination of prisoners by qualified medical officer.

After independence many substantial Acts were enforced providing rights and relief to the prisoners and for improving prison administration such as The Prisoners Act, 1990; The Transfer of Prisoners Act 1950; The Prisoners (Attendance in Courts) Act, 1955.

In 1951, the Government of India invited United Nations expert on correctional works, Dr.WC.Reckless, to suggest policy reforms while undergoing a study on prison administration. In his report ‘Jail Administration in India’ he suggested to transform jails into reformation centers\textsuperscript{11}. The Reports also recommended the revision of outdated jail manuals. In 1952, the report of Dr. Reckless was supported by the Eighth Conference of The Inspector General of Prisons regarding prison reforms. In 1957, All India Jail Manual Committee was appointed by government of India to prepare a model on prison manual, it submitted its report in 1960 and the Report mad forceful need for formulating a uniform policy and latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school etc. The Report also suggested amendments in the Prisons Act 1894 to provide a legal base for correctional work on the reformatory theory of Mahatma Gandhi.

All human beings are guaranteed with civilized treatment in all circumstance. But because of poverty and illiteracy among most of the citizens their rights and liberties are infringed by prison authorities. These rights and liberties ensure that certain acts cannot be done to these prisoners by prison authorities against their will. Such individuals whether guilty or innocent find them in the situation adverse to them and are helpless before prison authorities in absence of rightful legal provisions.


\textsuperscript{10}http://www.legalserviceindia.com
\textsuperscript{11}https://www.academia.edu
For knowledge of criminal jurisprudence there shall be understanding of rights given to persons at the time of trial, before trial as well as after the trial. These rights and liberties protect persons against miscarriage of justice and provide fair trial.

The right of the accused to be produced before the court within 24 hours of arrest (Article 22 of the constitution of India and Section 76 of Cr. P.C.), right of bail to the accused (1st schedule of Cr. P.C.), reasonable right to be released on bond (Section 440(i) Cr. P.C.), right to have counsel and legal aid (Article 22(3) and Article 39-A of constitution of India), also section 303 and 304 of Cr. P.C, the principle of legality, the principle of presumption of innocence section 101 of India Evidence Act 1872, right to speedy investigation and trial etc.

Our criminal justice system even today finds itself helpless to provide fair, speedy, free, cheap justice. No efforts have been made to bring a reform in penal norms, whereas the provisions include or amendments made to provide justice to the poor aims to provide justice to the rich only.

CONCLUSION

Justice delayed is justice denied. In many cases prisoners have to spend more time in prisons than they would be awarded by the court if they are found guilty. To remove the problem penal laws should be implemented properly. The prisoners should not be discriminated at the time of taking custody or at conviction on the basis of their race, gender, ethnicity, financial or social status. Life is not merely existence, every person have the right to exercise their fundamental rights even if they are behind the bars. The rights given under Article 21 of the Constitution of India are for everyone and even the state cannot deny it. Every prisoner have the same rights that of a free man under some restrictions, sending behind the bars does not mean that the person is deprived of their fundamental right 12. Right to speedy trial and right to bail is a fundamental right and are to be enforced by the judiciary properly for full access to the justice. It is the duty of the prison authorities to follow the written procedures and also work as per the guidelines of the Supreme Court which have been laid down throughout the span of many years. Techniques of handling the prisoners and prison manuals need to be improved to bring in a reform in prisons. In the case of Nirbhaya, where decision of delaying the death punishment of the convicted offenders is upheld by the court and the Delhi court held that Article 21 protects the rights of convict till his last breath and the convict can exhaust his legal remedies till his last breaths whereas, under trial prisoners have to face the hardships and they are deprived of their fundamental rights and have to undergo long term trials for getting justice 13. The Central and the State government are under obligation to not only provide infrastructure and humane-conditions but also to provide the knowledge of rights of prisoners at the right time. There are number of cases where rights of prisoners are violated, the murder of Munna Bajrangi in Varanasi jail is one of its example, to handle this issue more appropriately there should be circulation of rights and knowledge to the prisoners, vast publicity of prisoners right in media and the problems faced by them and corner to corner surveillance of prisoners could prove in upholding the rights of prisoners right in India.

The prisoners have many rights under Constitution, criminal laws, prison manuals etc, but the main problem is proper implementation of the laws and procedures. There should be a nexus between the prison authorities and the prisoners to work together towards a reformative approach rather than discriminating the rights of the prisoners. There is a need

---

12 https://timesofindia.indiatimes.com
13 https://www.livelaw.in
to strengthen the human right laws to fight against the abuse and oppression of the rights of the accused. Basic idea is to change the attitude of the prison authorities and to actually apply constitutional mandate practically and to work it out for the benefit of the prisoners.

REFERENCES

5. https://www.academia.edu
6. https://timesofindia.indiatimes.com
7. https://www.livelaw.in
10. (1997)2SCC642
11. 1950AIR57,1950 CSR 58
12. 1976 AIR 1207, 1976 CSR 172
13. 1978 AIR 597 SCR(2) 621