

# Judicial Response Towards the Protection of Prisoners Human Rights in India

Bheemabai S Mulage

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## ABSTRACT

All the people are born free and equal in dignity and rights. This guiding principle of the Universal Declaration of Human Rights, 1948 lives strong in the hearts and minds of millions of people. Human rights, being the birth right, are, therefore, inherent in all the individual as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. Therefore, human rights do not mean merely the right to live with humanity but mean the right to live with dignity.

The fundamental object of criminal justice system is to provide protection to the innocent and to punish the offenders. Every society has a judicial system for the protection of its law abiding members; it has to make provisions of prisons for the lawbreakers. However, it does not mean that the prisoners have no rights. Except right to movement, right to form an association, right to carry on any trade or business, occupation, prisoners are equally entitled to enjoy many constitutional and human rights like any other ordinary man.

As per the Constitutional mandates, every country's judiciary has a great responsibility to protect the human rights of their citizens. Though judicial interpretation that has in the Indian context, progressively expanded the human rights content of the law and the Supreme Court, in the recent past, has been very vigilant against violations of the human rights of the prisoners. But, in many cases still prisoners are denied the very rights that are fundamental to their being a human being. With this view, the author attempted to analyze the judicial response in standardizing the norms to mitigate the hardship caused to prisoner in the given circumstances.

**Keywords:** Prisoner rights; Human rights violation and Judicial Response.

**Author Affiliation:** Assistant Professor, Karnataka State Law University's Law School, Navanagar, Hubballi 580025, Karnataka, India.

**Corresponding Author:** Bheemabai S Mulage, Assistant Professor, Karnataka State Law University's Law School, Navanagar, Hubballi 580025, Karnataka, India.

**Email:** [bheemakslu@gmail.com](mailto:bheemakslu@gmail.com)

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## INTRODUCTION

Judiciary is the most important and independent organ of the government, which is expected to function as the custodian of the Constitution, protector of right of the citizens and a watch dog against the arbitrary actions of the administrative apparatus of the state. The main function of the judiciary is to ensure equality before law by



interpreting the Constitution. The duty assigned on judiciary is to protect individuals from other individuals and groups and also from the high handedness of the government against the unjust actions and the rights confirmed on judiciary under Constitution is to hear and decide all civil and criminal cases.

As per the 'mandate' of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High Courts. The Supreme Court of India is very active in protection of Human Rights and has a great reputation of independence and credibility. The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoner's rights to maintain human dignity. Any violation of this right attracts the provisions of Article 14 of the Constitution, which enshrines right to equality and equal protection of law.<sup>2</sup> Article 21 of the Constitution of India provides that "No person shall be deprived of his life and personal liberty except according to procedure established by law". The right to life and personal liberty are the backbone of human rights. Through its positive approach and activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of human rights.

## OBJECTIVES

The purpose of this article is to analyze the rights, status and problems of prisoners in India. Hence, the study proceeds with the following objectives to:

- Highlight the rights of prisoner guaranteed under the Indian Constitution.
- Examine the role of judiciary to uphold prisoners' interest in India.

## HYPOTHESIS

- Among all the sections of the society, prisoners constitute the most vulnerable group who face massive violation of human rights due to lack of education and awareness.
- Judiciary played a vital role in protecting prisoners' rights in India.

## METHODOLOGY

This paper has been prepared to highlight the prisoners' condition in India. The method

undertaken for this research is purely doctrinal. The paper divided into seven parts. First part is introduction, which says about the general conception of prisoner in India. Second part discusses about the objectives of the research paper. Third part deals about the hypothesis. Fourth part deals about the methodology adopted for the study and Fifth part deals with the main text of the research paper, which specifically focuses on the status of prisoner, their problems and violation of human rights, and last part is about conclusion.

## MAIN TEXT

### *a. Prisoners and the Human Rights*

The word prisoner means any person on commission of an act prohibited by law is kept under custody in jail or prison is known as prisoner. We can also mean prisoner as any person whose liberty is deprived against his will. Section 1 of The Prison Security Act, 1992 defines the term prisoner. The word prisoner means any person for the time being in a prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody. Whereas, the term Human rights means those rights, which are inherent to the human beings. Every human being is entitled to enjoy his or her human rights without distinction of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>3</sup>

A prisoner is a person who deprived of his personal liberty due to the conviction of a crime and imprisonment is the most common method of punishment provided by all legal systems. Imprisonment makes the prisoner repent about his past conduct. It was from the beginning of 20th century that the prisoners were recognized as societal human beings who should be made useful to the society. The Universal Declaration of Human Rights recognizes that the individual is entitled to certain basic rights. The universal norm is that human rights are sacrosanct regardless of the individual. It is therefore imperative to recognize that prisoners too are human beings and as human beings, they are entitled to certain basic rights even while in incarceration. Deprivation of prisoner's liberty is a serious in-road into time existence and exercise of human rights. The scope and extent of the rights of the prisoners are the matters of judicial interpretation. With judicious caution, the Indian Supreme Court has examined a variety of reliefs that could remedy the wrong done to the individual. The Supreme Court of India in the recent past has

been very vigilant against encroachments upon the Human Rights of the prisoners. By giving a liberal and comprehensive meaning to “life and personal liberty,” the courts have formulated and have established plethora of rights.<sup>4</sup>

In *A.K. Gopalan's* case<sup>5</sup>, the court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21. But in *Maneka Gandhi* case, court held that Fundamental Rights enshrined in Article 21 are not mutually exclusive but form a single scheme in the Constitution by stating that “the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive”. Nevertheless, in the following cases like *Maneka Gandhi*<sup>6</sup>, *Sunil Batra*<sup>7</sup>, *M. H. Hoskot*<sup>8</sup> and *Hussainara Khatoon*<sup>9</sup>, the Supreme Court has taken the view to give widest possible interpretation to the provisions of part III. Though, there is no specific mention about right to legal aid, speedy trial, right to have interview with friend, relative and lawyer, protection to prisoners in jail from degrading, inhuman, and barbarous treatment, right to travel abroad, right to live with human dignity, right to livelihood, etc. in fundamental rights under Article 21 of the Constitution but Supreme Court of India has widened the scope of Article 21 by including the above mentioned rights with an aim to safeguard the fundamental rights of the prisoners and for effecting prison reforms.

#### **b. Rights against Hand Cuffing**

According to Encyclopedia Britannica, the “handcuffs” are the devices for shackling the hands and they are used by the police on prisoners under arrest. Handcuffing of prisoners with any reasonable cause would not only damage the reputation and decency of life, but also violates fundamental rights to life under Article 21 of the Indian Constitution. The Supreme Court in cases like *Premshankar Shukla vs. Delhi Administration*<sup>10</sup>, *Sunil Batra vs. Delhi Administration*<sup>11</sup>, *Sunil Gupta vs. State of Madhya Pradesh*<sup>12</sup>, *Delhi Judicial Service Association vs. State of Gujarat*<sup>13</sup> etc., has held that putting handcuffs to prisoners or any detained persons, while bringing them to prison, police station or court would tarnish the dignity of the person enshrined in the Constitution. The freedom of movement, which is guaranteed under Constitution, cannot be completely taken away from the prisoners by handcuffing them. The court also opined that “hand cuffing is *prima facie* inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict “irons” is to resort to

Zoological strategies repugnant to Article 21 of the Constitution”.

#### **c. Right to Speedy Trial**

The fundamental object of criminal justice system is to provide protection to the innocent and to punish the offenders. Right to speedy trial is the right of the accused, which is an integral part of right to life enshrined under Article 21 of the Indian Constitution. The fair, just and reasonable procedure implicit in the Article 21 creates a right in the accused to try him as early as possible, the guilt or innocence of the accused is to be determined as quickly as possible in the circumstances. The concept of speedy trial has been observed by the Supreme Court in the following cases like *Hussainara Khatoon vs. Home Secretary, State of Bihar*<sup>14</sup>, *Kadar Pahadia vs. State of Bihar*<sup>15</sup>, *Srinivas Pal vs. Union of Territory of Arunachal Pradesh*<sup>16</sup>, *Kartar Singh vs. State of Punjab*<sup>17</sup>, *K.E. Mahaboleshwara vs. State of Karnataka*<sup>18</sup>, *Mir Mohammad Ali vs. State of Andhra Pradesh*<sup>19</sup> etc. In *A.R. Antulay vs. R.S. Nayak*<sup>20</sup>, the Supreme Court held that the right to speedy trial flowing from Article 21 of the Constitution is available to accused at all stages like investigation, inquiry, trial, appeal, revision and retrial.

#### **d. Rights against Solitary Confinement and Bar Fetters**

The courts have strong view against solitary confinement it held that imposition of solitary confinement will highly degrade the dignity and status of prisoner. The Supreme Court has taken a very strong stand in *Sunil Batra* case by considered the validity of solitary confinement, stating that only in exceptional cases solitary confinement can be inflicted where the convict was of such a dangerous character that he must be segregated from the other prisoners. The Supreme Court has also reacted strongly against putting bar fetters to the prisoners. The court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of the Constitution of India.

#### **e. Rights against inhuman Treatment of Prisoners**

Human Rights are part and parcel of Human Dignity. The Supreme Court of India in various cases like *Raghubir Singh vs. State of Bihar*, *Kishore Singh vs. State of Rajasthan*, *D.K. Basu*<sup>21</sup> has taken a serious note of the inhuman treatment on prisoners

and has issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners and persons in police lock-up. The decision of the Supreme Court in the case of *D.K. Basu* is noteworthy. While dealing the case, the Court specifically concentrated on the problem of custodial torture and issued a number of directions to eradicate this evil, for better protection and promotion of human rights.

**f. Right to have Interview with Friends, Relatives and Lawyers**

The Prisoner in the jail also enjoys right to information, communication and have interview with their relatives, friends and counsel. The fact that the prisoners are in jail does not curtail their constitutional rights except freedom of movement. Supreme Court in cases like *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi*<sup>22</sup>, *Sheela Barse vs. State of Maharashtra*<sup>23</sup>, etc., held that whenever the relatives or friends of the prisoners visit the jail to talk to them, prisoners must be provided an opportunity to meet them or they should be allowed to talk with their relatives or friends. In *Dharmbir vs. State of Uttar Pradesh*, the Court directed the State Government to allow family members to visit the prisoners and for the prisoners, at least once a year, to visit their families, under guarded conditions.

**g. Right to get free Legal Aid**

In cases like *Hussainara Khatoon vs. Home Secretary, State of Bihar*, *Sunil Batra vs. Delhi Administration*, *Khatri vs. State of Bihar*, *Kadra Pahadiya v. State of Bihar* etc., the Supreme Court held that, it is the Constitutional right of every accused person who is unable to engage a lawyer and secure free legal aid and legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the state and the state is under Constitutional duty to provide a lawyer to such person if the needs of justice so require. If free legal services are not provided the trial itself may be vitiated as contravening the Article 21.

In *Madhav Hayawadan Rao Hosket vs. State of Maharashtra*, a three judges bench (V.R. Krishna Iyer, D.A. Desai and O. Chinnappa Reddy, JJ) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and section 304 of Cr.P.C. together declared that the Government was under duty to

provide legal services to the accused persons.

**h. Narco Analysis/Polygraph/Brain Mapping**

In *Selvi vs. State of Karnataka*, (2010), the Supreme Court has declared Narco Analysis, Polygraph Test and Brain Mapping are unconstitutional and violates human rights. However, the apex Court further said that, a person can only be subjected to such tests when he/she assents to them. The result of tests will not be admissible as evidence in the Court. But can only be used for furtherance of investigation. These tests were put to use in many cases like, *Arushi Talwar murder Case*, *Nithari killings Case*, *Abdul Telagi Case*, *Abu Salem Case*, *Pragya Thakur (Bomb blast Case)* etc.

**i. Privacy rights of Prisoners and their spouses**

In *Rahmath Nisha vs. Additional Director General of Prisoner and Ors*,<sup>24</sup> The Madras High Court had dealt with the privacy rights of a prisoner. In this case, the accused prisoner had been given 10 days leave to visit his wife at his home, which was duly granted to him, but by the time he reached his home followed by a police escort, his wife was shifted to hospital and was admitted to ICU. The contention of the public escort was that the permission was limited to his house and therefore he could not be allowed to meet his wife at the hospital. Relying on Justice K.S. Puttaswamy<sup>25</sup> decision, the Madras High Court rejected the argument that the couple should meet only in presence of police. The Court held that not only the prisoner should be taken to the hospital to meet his wife, but also, the conversations between the prisoner and his spouse should be unmonitored.

**j. Parole Rights of Prisoners**

In *Kantilal Nandlal Jaiswal vs. Divisional Commissioner, Nagpur & Ors*,<sup>26</sup> the Bombay High Court struck down the proviso to Rule 19 (2) of the Prisons (Bombay Furlough and Parole) Rules, 1959. The said proviso mandated that there has to be a difference of at least one year till regular or emergency parole is again granted to a prisoner except in case of death of the nearest relative. The Court ruled out that although, parole, is a limited legal right, then also if a person is fulfilling the criteria to be granted parole, he cannot be deprived of such right. Such classification cannot be said to be based on an intelligible differentia and it cannot be said to have a rational nexus with the object of such classification. The Court, therefore, struck down the proviso to Rule 19(2) classifying the



same in violation of Article 14 of the Constitution of India.

**k. Right of the prisoner to seek transfer to prisoner nearer to his house**

In *V. Radhakrishnan vs. The State of Tamil Nadu*,<sup>27</sup> the Madras High Court had allowed the prisoner to be transferred to the Madhurai Central Prison. In this case, the Petitioner was a death row convict and was commuted to imprisonment for life and was housed in Trichy Central Prison. Since his mother was 92 years of age and wanted to see his son/petitioner more often, the Petitioner had sought a transfer to Madhurai Central Prison. The Ld. Single Judge of the Hon'ble Court had allowed the plea but was thereafter rejected by Division Bench of the Court upon Appeal filed by Prison authorities. The matter of the Petitioner was thereafter given liberty to file application afresh and the same shall be considered on the grounds enumerated under Rule 568 of the Tamil Nadu Prison Rules, 1983.<sup>28</sup>

## CONCLUSION

From the above decisions of the Indian Judiciary, regarding the protection of human rights of prisoners indicates that the judiciary has been playing a role of saviour in situations where the executive and legislature have failed to address the problems of the people. From the perusal of the above contribution, it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the people. Undoubtedly, it can be accepted that, among all the sections of the society, prisoners constitute the most vulnerable group who face massive violation of human rights due to lack of education and awareness and judiciary played a vital role in protecting prisoners' rights in India.

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