

ROLE OF HUMAN RIGHTS IN THE PRISON SYSTEM

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ABSTRACT:

Every individual has their rights in the society. While considering the prisoners in the society, every individual had negative views on them. As a civilized community, it is essential we care about the experience of people whose rights will be restricted and whose every movement is controlled by the state for the duration of their term. The rights protected by the state laws about prisoners mentions that even though they lose their liberty, they deserve to human and respectful treatment as an inherent right. The restrictions do not void all their rights. Usually, a test is applied to assess the reasonable level of limitation on rights of incarcerated people. The Criminal Justice System should provide for their primary humane requirements like legal and medical aid, cultural rights, necessary sanitization, etc.

In this paper researcher has attempted to observe and assess the extent according to the law and Constitution of India, the prisoners get their predisposed rights and essentials.

Key Words: *Human Rights, Prisoner, Constitution, Law, Free legal aid.*

INTRODUCTION:

A fair trial in the Indian judicial systems signifies the right of the defendant to have a legal counsel of his choice according to the Article 22 (1) of the Indian Constitution. It is a crucial ingredient of a free and fair trial and the harmonious and cohesive functioning of the three segments of the Criminal Justice Systems. However, in practice, one often finds that it is not the case. The police often violate the human rights rather than promoting and protecting them. There are frequent reports of cases going unregistered, custodial deaths, arbitrary arrests and

custodial violence made against the police to the National Human Rights Commission. Incarceration does not mean the loss of human or fundamental rights merely by being an under-trial or a convict.

The burden of proof lies on the prosecution, i.e., the prosecution is responsible for proving the guilt of the accused beyond reasonable doubt. It is a cardinal principle of the criminal jurisprudence to bring out the guilt of the accused conclusively and affirmatively without taking the pretext loopholes in the defense version. The intent of the legislature behind this initiative is to ascertain that although hundreds of guilty go scot-free, no innocent should suffer punishment.

The criminal administration of justice guarantees some constitutional safeguards to the accused which as a mandate has to follow while during the process. The procedural aspects practiced by an arrestee is prescriptively laid down in the Criminal Procedural Code along with the rights of the arrested. Some provisions are intentionally created to favor the accused as a provision for the protection of their human rights.

PROHIBITION AGAINST SELF-INCRIMINATION

As a fundamental rule, every individual excluded from self-incrimination by the common law. This rule implies the presumption of the innocence of the accused until the prosecution proves otherwise. The accused cannot be forced to make a statement or be a witness against himself without his will according to Article 20 (3) of the of English and American jurisprudence.

Right to remain silent during arrest

Many legal systems across the world explicitly recognize the right of an individual to remain silent when taken into custody by convention.

The right covers some issues centered on the right of the accused or the defendant to refuse to comment or provide an answer when questioned, either before or during legal proceedings in a court of law. This can be the right to avoid self-incrimination or the right to remain silent when questioned. The right usually includes the provision that the judge or jury cannot make adverse comments or inferences regarding the refusal by a defendant to answer questions before or during a trial, hearing or any other legal proceeding. This right constitutes only a small part of the defendant's rights as a whole.

No individual should be forcibly subjected to any of the techniques in question, whether in the context of an investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty.

- (i) Section 53, 53-A and 54 of Criminal Procedure Code permits the examination include an examination of blood, blood-stains, semen swabs in case of sexual offenses, sputum and sweat, hair samples and fingernail dipping by the use of modern and scientific techniques including DNA profiling. However, the scientific tests such as Polygraph test, Narcoanalysis, and BEAF do not come within the purview of said provisions.
- (ii) It would be an unjustified intrusion into the mental privacy of the individual and also amount to cruel, inhuman or degrading treatment.
- (iii) Voluntary administration of impugned techniques are, however, permissible subject following safeguards, but test results by themselves cannot be admitted in evidence.

Person arrested to be informed of grounds of Arrest

According to Article 22 (1) of the Constitution that, a person arrested for an offense under ordinary law be informed soon as may be the grounds of arrest. In addition to the constitutional provision, Section 50 of Cr.P.C. also provides for the same.

Right to be defended by a Lawyer

It is one of the fundamental rights enshrined in our Constitution. Article 22 (1) of the Constitution provides that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. The Supreme Court proclaimed that a Judge must inform an indigent accused that he has the right to counsel. In *Ranjan Dwivedi v. The Union of India*, the Court also stated that there is “no doubt” that the accused is entitled to financial assistance to engage a counsel of the accused’s choice. It also remarked that the government should implement legislation that has appropriate schemes for free legal aid.

Person arrested to be taken before the Magistrate

Article 22 (2) of the Constitution provides that an arrested person must be taken before the Magistrate within 24 hours of arrest. A similar provision has been incorporated under Section 56 of Criminal Procedure Code. A police officer arresting without a warrant shall, without unnecessary delay and subject to the provisions

herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Person Arrested not to be detained more than twenty-four hours

Section 57 of Criminal Procedure Code provides that no police officer shall detain in custody a person arrested without warrant for a more extended period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a particular order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate Court. It may also be noted that the right has been further strengthened by its incorporation in the Constitution as a fundamental right.

Right to be released on bail in bailable offenses

Section 50(2) of Criminal Procedure Code provides that where a police officer arrests without warrant any person other than a person accused of a nonbailable offense, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf. This will undoubtedly be of help to persons who may not know about their rights to be released on bail in case of bail-able offenses.

Right to receive the copy of the receipt after search

Power to search under Section 51 of Criminal Procedure Code is available only if the arrested person is not released on bail. After a search, all the articles other than necessary wearing apparel found upon the arrested person are to be seized, and it has been made obligatory to give to the arrested person a receipt showing the articles taken in possession by the police. This would ensure that the articles seized are correctly accounted for. In case the arrested person is a woman the search can be done only by a female with strict regard to decency.

Right of medical examination of arrested person

Section 54 Criminal Procedure Code gives the accused the right to have himself medically examined to enable him to defend and protect himself adequately. It is considered desirable and necessary “that a person who is arrested should be given the right to have his body examined by a medical officer when he is produced before a Magistrate or at any time when he is in custody, with a view to enabling him to establish that the offence with which he is charged was not committed by him or that he was subjected to physical injury. According to the Supreme Court, the arrested, accused person must be informed by the Magistrate about his right to be medically

examined regarding Section 54.33 In case of the examination taking place at the instance of the accused under subsection (1) copy shall be given to him.

Right to free legal aid

The 'right to counsel' would remain empty if the accused due to his poverty or poor conditions has no means to engage a counsel for his defense. The state is under a constitutional mandate (implicit in Article 21 of the constitution, explicit in Article 39-A of the constitution-a directive principle) to provide free legal aid to an indigent accused person. Section 304 of the Code of Criminal Procedure also provides such a right to the accused.

Accused person as a competent witness

According to provisions of Section 315 of Criminal Procedure Code, the accused can be a competent witness for the defense and can give evidence in disproof of the charges made against him or his co-accused. He may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial but he shall not be called as a witness except on his request in writing, and his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

Right to speedy trial

Justice delayed is justice denied. This is all the truer in a criminal trial where the accused is not released on bail during the pendency of the trial and trial is inordinately delayed. However, the code does not in so many words confer any such right on the accused to have his case decided expeditiously. Section 437(6) of Criminal Procedure Code provides that if the accused is in detention and the trial is not completed within 60 days from the first date fixed for hearing he shall be released on bail. However, this only mitigates the hardship of the accused person but does not give him a speedy trial, and secondly, this rule is applicable only in case of proceedings before a Magistrate.

The Right of Appeal

The Supreme Court has observed: "One component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where a criminal conviction is fraught with loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure, natural justice, and normative

universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis. In short, a first appeal as provided in the Criminal Procedure Code manifests this value upheld in Article 21.”

Human Rights and Preventive Detention

Laws Preventive Detention laws have been enacted primarily to curb terrorism and other anti-national activities. Terrorism problem is not new, and it is not only the national problem, but it is an old and international problem. Terrorism can be controlled by the deterrent method of criminal administration of justice. However, misguided youths can be reformed by the reformatory theory of criminal administration of justice. According to the reformatory theory of criminal jurisprudence, man can learn the system of reform in every stage of life. There is no limit and time to learn the co-operation and co-existing activities of the society. This can be achieved by the reformatory process of criminal administration of justice.

SOME OTHER PROVISIONS FOR HUMAN RIGHTS OF ACCUSED

The above-said rights are not the exhaustive rights of accused/arrested persons, other rules have also been made in consideration of the interest of them. Some of them have been created by the judiciary and later on incorporated in the concerned laws. The idea underlying is to protect the fundamental human rights of accused in all circumstances. Some of these are as follows.

Rules for Bail

The regulation of bails “has to dovetail conflicting demands, namely, on one hand, the requirements of the society for being protected against the dangers of being uncovered to the misadventures of a person speculated to have devoted a criminal offense; and on the alternative, the fundamental rights of criminal jurisprudence, the presumption of innocence of an accused until he's found guilty. The first-rate of a nation's civilization may frequently be measured by the strategies it makes use of in the enforcement of crook regulation.

Right Against Solitary Confinement

One of the modes of punishment is solitary confinement, but certain restrictions have imposed on the type of punishment to protect the right of the convict to mingle with other convicts. In Sunil Batra (1) v. Delhi Administration, it was held 'if by imposing solitary confinement there is a total deprivation of friendship among co-prisoners co-mingling and talking and being talked to, it would violate Article 21 of the Constitution. The

freedom to move, a mix-up with other prisoners, mingle, talk, share, company with co-prisoners if substantially curtailed would be a violation of Article 21 unless curtailment has the backing the law.

Right Against Inhuman Treatment

The accused and convict in criminal system of the country have the rights to live with dignity. Therefore, they should not be subjected to the inhuman treatment. In *Kishore Singh v. the State of Rajasthan*, the Supreme Court held that the use of the third-degree method by police in violation of Article 21 and directed the Government take proper steps to give knowledge about rights to police to inculcate respect for the human person.

Fair Trial

The fair trial is the foremost requirement of criminal proceedings, and it is the absolute right of an accused. In the recent case titled as *Dr. Rajesh Talwar and another v. C.B.I.* Moreover, another⁸⁵ the Supreme Court observed that Article 12 of the universal declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, a fair trial is the heart of Criminal jurisprudence and, in a way, an essential facet of democratic polity and is governed by the rule of law. Denial of a fair trial is the crucifixion of human rights.

Right to Information

Under Right to Information Act, 2005 Even when a person is convicted and deprived of his liberty by the procedure established by law, a prisoner still retains the residue of constitutional rights. Article 14, 19 and 21 “are available to prisoners as well as freemen. Prison walls do not keep out Fundamental Rights.” The arrestee has a right to apply Superintendent Jail for receipt of documents/information as permissible under the Right to Information Act, 2005.

CONCLUSION:

The dictionary which means of the word proper is a “privilege.” but, while it is used in the context of “human rights” it is miles approximately something greater primary. Human rights are fundamental to the stability and development of countries everywhere in the world. "Human rights" as the expression is going, means man or woman rights which might be considered to be very primary for a man or woman's full physical, intellectual and religious development. Human rights encompass the essential principles of humanity, and these are the rights which every man or women is entitled to experience the truth of being born human. The theory of rights, which

14. http://defensewiki.ibj.org/index.php/Right_to_Counsel
15. https://en.wikipedia.org/wiki/Right_against_self-incrimination