

**PRISON
ADMINISTRATION AND
REFORMS WITH SPECIAL
EMPHASIS
ON LEGAL AID AND
LEGAL SERVICES**

PAPER CODE- LAJ/V-I/I-2/10

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A quite few years ago the condition of the prisoners were even more barbaric and disgusting, it was with the advent of the struggle with the state that the idea of a new dawn of recognising human rights for prisoners were espoused. A criminal, just being so, does not deprived to be a human being who has complete right to live with human dignity. To ensure the same the authors of the Indian Constitution via Article 21 has enshrined prohibition of any cruel or degrading treatment toward any person whether Indian or foreigner. In case of any violation of this aforesaid right, Article 14 comes into picture which provides for Right to equality and equal

protection of laws, to which prisoners are no exceptions. Moreover, the vigilant judiciary has also played a vital role in pronouncing human rights of the prisoners within past few years. Out of which one such corner stone was the right to legal aid for them, which is no more a matter of empathy and sympathy but now an obligatory constitutional right, a right which is an ingredient of fair procedure¹. Another in the row is the right of speedy trial, exclusively for those who since decades are behind bars are looking towards justice. The apex court while dealing with the problem held, “what faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind the bars not because they are guilty; But because they are too poor to afford bail and the courts have no time to try them”.² This paper is an endeavour to demarcate the role of due process of law with that of the rights of the prisoners against cruelties of inhumane treatment, torture, solitary confinement and uncalled for handcuffing in certain cases. As life is not merely an animal existence and people behind the bars cannot be shorn of the same.

¹ M.H. Wadanrao Hoskot v. State of Maharashtra, 1978 AIR 1548.

² Hussainara Khatoon v. State of Bihar, 1979 AIR 1369.

INTRODUCTION

Hon'ble *Justice Durga Das Basu* once quoted,

"Human Rights are those minimal rights, which every individual must have against the State, or other public authority by virtue of his being a member of human family irrespective of any consideration."

In the last few years human rights have become at least in the free world, a live and vibrant issue. Various developments connected therewith are indeed, milestones on the path of human progress.³ Our Indian Socio-Legal system is fundamentally based on mutual harmony, due respect and dignity followed by the ideology given by the father of the nation i.e. non-violence. A person, who commits a crime, just because committing so, does not get deprived of some essential dignified ways to life. A criminal, for the reason of being called so, cannot be subject to the inhuman and cruel torture, as it is completely against the heart and soul of the thoughts of Constitution makers. Vigorous judiciary, who have been consistently passionate so as to make sure that the people behind the bars are not deprived to be treated like humans, have

pronounced a lot of judgments to secure some rights for them, keeping constancy with the due process of law, have played a vital role. In fact, at the global echelon, efforts have been made to curb the constantly degrading conditions of the prisoners. Thus, this paper is an endeavour to highlight the role of all three wings of the democracy, i.e. the legislature, executives and judiciary in curbing and reforming the prison administration with special reference to the rights of the prisoners.

COMPREHENSIVE MEANING OF LIFE

"Even until the death sentence is executed the prisoner has the right to be treated with dignity. The law in India stands for life, even for dying man's life."

Justice V.R. Krishna Iyer⁴

"Life", as per Article 21 of the Constitution has the extended meaning given to the word and those citizens who are detained in prisons either as under-trials or as convicts are also entitled to the benefit of the guarantees subject to reasonable restrictions.⁵ Right to life is one

³ Justice Palok Basu, *Law relating to protection of Human Rights*, 2nd Edition., Modern Law Publications, New Delhi, Pg. 10

⁴ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675 (1692).

⁵ *Sheela Barse v. State of Maharashtra*, 1988 (1) Bom CR 58 at P. 64.

of the most basic and essential right guaranteed to every person via Article 21 of the Indian Constitution. A prisoner, irrespective of his status, continues enjoying fundamental rights which includes Right to Life. Thus, the Fundamental Rights, which also includes basic human rights, continue to be available to a prisoner and those rights cannot be defeated by pleading the old and archaic defence of immunity in respect of sovereign acts which has been rejected several times by the Supreme Court.⁶

RIGHTS OF PRISONERS AND INDIAN CONSTITUTION

It is obvious that dignity of the individual being a core value, and the aim of a welfare state through human development being fundamental to governance, the essence of constitutional governance is emphasis on human rights, and that is our constitutional philosophy.⁷ The Constitution of India in Parts III and IV dealing with the Fundamental Rights and the Directive Principles cover almost the entire field of the Universal Declaration of Human Rights. The human rights enshrined in Part III of the Constitution have been made non-derogable under

⁶ *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, AIR2000 SC 2083 at pp. 2088, 2090.

⁷ K.D. Gaur, *Criminal Law Criminology and Administration of Criminal Justice*, 3rd Edition, Universal Law Publishing, Gurgaon, Pg. 357.

Article 13(2)⁸ and their enforcement has been guaranteed under Article 32 of the Constitution as one of the basic rights.⁹

Article 21 of the Constitution guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatment to any person whether he is a national or foreigner.

Article 20(1) protect the person from ex post facto laws or retroactive criminal legislation; i.e. when at the time, he committed the crime, if no conditions of harsh labour was prescribed by the court, then, it cannot be enacted or inflicted upon him, for which the imprisonment is prescribed.

Article 20(2) provides that no person shall be put into trouble twice for the same offence (rights against double jeopardy) i.e. the principle of *nemo debet vis vexari*.

Article 20(3) provides for the protection against 'testimonial compulsion', i.e. the protection against self incrimination in other words protection against compulsion to be a witness is only confined to persons accused of an offence.

⁸**Laws inconsistent with or in derogation of the fundamental rights-** (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

⁹K.D. Gaur, *Criminal Law Criminology and Administration of Criminal Justice*, 3rd Edition, Universal Law Publishing, Gurgaon, Pg. 437.

Article 19 talks about “freedom of speech and expression”, “freedom to become member of an association” and also the rights to acquire, hold and dispose property are enjoyed by the prisoners even they are behind bars, within the limitations of the prison.

Article 14 states the right to equality and equal protection before laws. So, prisoners too have their own rights. If any unrestrained behaviour committed on a prisoner by the police, is considered as a violation of rights and it warrants the attention of the legislature and judiciary. Right to free legal aid is also provided under this article 14 and 21.

According to **Article 22(1)**, the prisoner also has the right to consult and to be defended by a lawyer under this article.

Article 22 (4) to (7) provides special safeguards for the protection of prisoner’s rights. A prisoner has the right to be informed about the grounds on which he was arrested, under this article.

Article 39(A), The state shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities If a prisoner

sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, for want of legal assistance, there is implicit in the court under Article

142 read with Article 21 and 39 A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so required, assign competent counsel for the prisoners defense, provided the party doesn’t object to that lawyer. Some of the basic rights of the prisoners have been briefly discussed later in this paper.

IMPORTANT ENACTMENTS

While talking on this subject it is necessary to acquaint ourselves with certain enactments concerning prisoners and their rights, namely,

1. The Prisoners Act, 1900
2. The Prisons Act, 1894
3. The Prisoners (Attendance in Courts) Act, 1955
4. The Transfer of Prisoners Act, 1950
5. The Repatriation of Prisoners Act, 2003

6. The Repatriation of Prisoners
Rules, 2004

**OBSERVANCE OF HUMAN RIGHTS
IN DETENTION: A JUDICIAL
PROSPECTIVE**

Various aspects of prisoners' rights have been coming before Indian courts and they have interpreted the rights rather liberally in spite of the absence of anything like a "due process" clause in our Constitution. This in particular has been made possible by giving a deeper and innovative meaning to the concept of "procedure" and "liberty" in Article 21 of the Constitution; a trend which commenced with the Supreme Court's decision in *Maneka Gandhi v. Union of India*¹⁰ and which has made a significant contribution to what is referred to as the emergence of "judicial activism" in the country. The constitutional rights of prisoners cover a wide range of rights of personal and political nature including rights such as pertaining to religion, associates and elections; what, however, follows is regarding rights which are more vital and of direct relevance in the context of prison reforms in India.¹¹ A convict lodged in a prison is not denuded of all his fundamental rights though it is true that he

¹⁰ (1978) 1 SCC 248.

¹¹ Ahmad Siddique, *Criminology and Penology*, 6th Edition., Eastern Book Company, Lucknow. 2011, Pg. 198.

does not enjoy all his fundamental rights like other persons because if the fetters imposed on him in accordance with the law.¹²

RIGHT TO FREE LEGAL AID

In *M.H. Hoskot v. State of Maharashtra*,¹³ held that if a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142, read with Article 21 and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice. Also, the Supreme Court has pointed out the obligation of the State to provide free legal aid to those who cannot afford to engage counsel and bear the expensive litigations in *Sukhdas v. Union Territory of Arunchal Pradesh*.¹⁴ In *State of Maharashtra v. Manubhai Pragaji vashi*,¹⁵ the Court has considerably widened the scope of the right to free legal aid. The Court held that in order to provide "the free legal aid", it is necessary to have well-trained lawyers in the country.

¹² Prof. N.V. Paranjape, *Criminology & Penology with Victimology*, 16th Edition, Central Law Publications, Allahabad, Pg. 493.

¹³ AIR 1978 SC 1548.

¹⁴ 1986 (2) SC 401.

¹⁵ (1995) 5 SCC 730.

RIGHT OF SPEEDY TRIAL

The apex court while dealing with the problem held, “what faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind the bars not because they are guilty; But because they are too poor to afford bail and the courts have no time to try them”.¹⁶ In *Moti Lal Saraf v. State of Jammu and Kashmir & Anr.*,¹⁷ the Supreme Court held that the speedy trial is implicit in the spectrum of Article 21 of the Indian Constitution. In the case of *Abdul Rehman Antulay v. R.S. Nayak*,¹⁸ the Court held that the Right to a speedy trial was a part of fair, just and reasonable procedure implicit in Article 21.

SOLITARY CONFINEMENT OF PRISONERS

Question of sending a prisoner to a solitary and a separate cell, where he loses contacts to the outer world completely was first raised before the Supreme Court in *Sunil*

Batra v. Delhi Administration,¹⁹ where Solitary confinement was challenged being an infringement of Article 21 of the Constitution where the Apex Court held that it is a violation of right to personal liberty.

COMPLAINTS OF FRAIL FOOD AND CLOTHING

Rules contained in the jail manual which deals with food and clothing, etc. To be given to prisoners are not fully complied with always. All that can usefully be said on this aspect is the persons who are entitled to inspect jails should do so on shortest notice so that the reality becomes known on inspection. The system of complaint box introduced in Tihar jail during some periods needs to be adopted in other jails also. The complaint received must be fairly inquired and appropriate action against the delinquent must be taken. On top of all, prisoners must receive full assurance that whoever would lodge a complaint would not suffer any evil consequence for lodging the same.²⁰

¹⁶ *Hussainara Khatoon v. State of Bihar*, 1979 AIR 1369.

¹⁷ AIR 2006 SC 56,59-62.

¹⁸ (1992) 1 SCC 225.

¹⁹ AIR 1978 SC 1675.

²⁰ *Rama Murthy v. State of Karnataka*, AIR 1997 SC 1739 at p. 1748.

FACILITY OF HOME FOOD TO PRISONERS

The unamended provision of law in Section 31 of the Prisoners Act, 1894 permitted the unconvicted criminal prisoners as well as the civil prisoners to have home food subject to the examination and to such rules, as may be approved by the Inspector General. The facilities which are provided under the amended Section 31 to the unconvicted criminal prisoners are restricted to maintain themselves and to purchase or receive from private sources at appropriate hours the clothing and bedding, subject of course to examination and to such rules, as may be approved by the Inspector General. However, the facility for home food is conspicuously absent in the said provision of law. At the same time, such facility is continued to be available to the civil prisoners as well as to the prisoners who are remanded on account of their participation in non-violent agitation.

Undoubtedly, the prisoners which are remanded on account of involvement in non-violent agitation as well as those who are civil prisoners have been classified in different categories from the one comprised of unconvicted criminal prisoners. There can be no grievance about such

classification either being discriminatory or to be in violation of Article 14 of the Constitution. Indeed, the prisoners who are remanded merely on account of participation in non-violent agitation or those who are civil prisoners cannot be grouped in one and the same class to which unconvicted criminal prisoners belong. Besides, it is essentially for the authorities to deal with the aspect of the classification. Undoubtedly it should not disclose total arbitrariness or unreasonableness.²¹

MEDICAL TREATMENT OF PRISONERS

In a case where some prisoners were undergoing the life imprisonment, suffering from serious illness namely, serious eye trouble, severe pain in Abdomen Lucas and blood, internal piles and hypertension, chest pain, etc. And have not been taken for their medical treatment by taking them to the hospital. The Court directed the I.G. to take utmost care to see that the convict-prisoners are not neglected and denied.²²

²¹ *Asgar Yusuf Mukadam v. State of Maharashtra*, 2004 Cri LJ 4312 at p. 4316 (Bom) (DB).

²² *Rasikbhai Ramsing Rana v. State of Gujarat*, 1998 Cri LJ 1347 at pp. 1347.

PRISONER'S HEALTH

Society has an obligation towards their health for two reasons. *First*, the prisoners do not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access; no physician of choice, no second opinion, and few if, any specialists. *Secondly*, because of, the conditions of their incarceration, inmates are exposed to more health hazards than free citizens. Prisoners, therefore, suffer from a double handicap.²³

RIGHT TO READ AND WRITE

In *State of Maharashtra v. Prabhakar*,²⁴ Article 21 of the Constitution was made available perhaps for the first time to a prisoner while dealing with the question of his right of reading and writing books in jail. The rights of prisoners to ask for observance of the human rights has been recognised by the Apex Court in *Charles Shobhraj v. Superintendent, Central Jail, Tihar*,²⁵ and in *Sunil Batra v. Delhi Administration*,²⁶ the fruits of Article 21 were made available to the prisoners while dealing with the question of their right of reading and writing books in jail.

²³ *Rama Murthy v. State of Karnataka*, AIR 1997 SC 1739 at p. 1747.

²⁴ AIR 1966 SC 424.

²⁵ AIR 1978 SC 1514.

²⁶ AIR 1978 SC 1675.

COMMUNICATION NEEDS OF PRISONERS

While in jail, communication with outside world gets snapped with a result that the inmates does not know what is happening even to his near or dear ones. This causes additional trauma. Liberalised view relating to communication with kith and kin specially is desirable. Insofar as communication by post is concerned, there does seem to be any plausible reason to deny easy facility to an inmate.²⁷

CITIZENS FACE TO FACE WITH PRISONERS VIA INTERVIEWS

For the sake to maintain the rule of Right to Information it becomes necessary to permit citizen's access to interview prisoners, though this access it subject to be controlled and regulated. As, when factual information is collected as a result of interview the same should usually be cross checked with the authorities so that wrong picture of the situation may not be published. While disclosure of the correct information is necessary, it is equally important that there should be no dissemination of wrong information.²⁸

²⁷ *Rama Murthy v. State of Karnataka*, AIR 1997 SC 1739 at p. 1739.

²⁸ *Sheela Barse v. State of Maharashtra*, 1988 (1) Bom CR 58 at P. 64.

LEGALITY OF ONE INTERVIEW WITH THE FAMILY MEMBERS

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,²⁹ a challenge was made to a prison rule which permitted only one interview with the family or legal advisor in a month which was declared violative of Article 21 of the Constitution.

EQUITABLE WAGES TO PRISONERS

It is imperative that the prisoners should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to the prisoners the State Government shall constitute wage fixation body for making recommendations. All the State Government was directed to fix the rate of interim wages within six weeks. The Supreme Court also directed the State concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to the deserving victims of the offence.³⁰

INHUMAN TREATMENT, CUSTODIAL DEATH AND OPPRESSIVE MEASURES

A judicial inquiry conducted by Mr Justice Ismail in a Tamil Nadu prison, the Supreme Court observed in *Batra case*³¹

“The black hole of Calcutta is not a historical past but a present reality. The report finds the detenues were deliberately lodged in the ninth block which was previously occupied by leprosy prisoners....the judge finds that the beating of detenues took place on the night of 2nd February 1976 was a premeditated, Pre-planned and deliberate one and not undertaken on the spur of the moment either because of any provocation offered by the detenues to go into the cells as contended by the jail officials”.

In *Bhuyan Mohan Pattnaik v. State of Andhra Pradesh*,³² a three-judge bench stated that resort to oppressive measures to curb political beliefs (the prisoner was a naxalite because of which he was put in quarantine and subjected to inhuman treatment) could not be permitted.

In *Prem Shankar v. Delhi Administration*,³³ and *Kadra Prahadiya v.*

²⁹ AIR 1981 SC 746.

³⁰ *State of Gujarat v. Hon'ble High Court of Gujarat*, AIR 1998SC 3164.

³¹ *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488.

³² AIR 1974 SC 2092.

³³ AIR 1980 SC 1535.

State of Bihar,³⁴ the Court prohibited putting of under-trial prisoners in leg-irons.

It need not be stressed that death in police custody is one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens and is an affront to human dignity.³⁵ The UDHR marked emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that “No one shall be subjected to torture or to cruel, inhuman or degradation treatment or punishment.” Despite the pious declaration, the crime continues unabated, though, every civilized nation shows its concern and takes steps for its eradication.³⁶

VICES AMONGST PRISONERS

In *Rama Murthy v. State of Karnataka*,³⁷ the Apex Court observed that “many of the vices are related to sexual urge, which remains unsatisfied because of snapping of marital life of the prisoner. If, something

could be done to keep the thread of family life unbroken some vices may take care of themselves, as sexual frustration may become tolerable.”

RIGHT TO MEMBERS OF PROTECTIVE HOMES

In *Vikram Deo Singh Tomar v. State of Bihar*,³⁸ through a public interest litigation it was brought to the notice of the Court that the female inmates of the “care home Patna” were compelled to live in inhuman conditions in an old ruined building. They were provided with insufficient and poor quality of food and no medical treatment is afforded to them. The Supreme Court held that the Right to live with human dignity is the fundamental right of every citizen and the State is under duty to provide at least the minimum conditions ensuring human dignity.

RIGHT OF LIFE CONVICTS

In *Sunil Batra v. Delhi Administration*,³⁹ the Court held that even a life convict is also entitled to fundamental rights as the conviction does not reduce the person into a non-person whose rights are subject to the whim of the prison administration and he is also entitled for observing of the procedural safeguards.

³⁴ AIR 1981 SC 939.

³⁵ Dr. Awasthi & Kataria, *Law relating to protection of Human Rights*, 2nd Edition, Orient Publishing Company, Allahabad, 2011, Pg. 811.

³⁶ *D.K. Basu v. State of West Bengal*, 1997 Cri LJ 743 at 747.

³⁷ AIR 1997 SC 1739.

³⁸ AIR 1988 SC 1782.

³⁹ AIR 1978 SC 1575.

NO HANDCUFFINGS

In *Citizen for Democracy v. State of Assam*,⁴⁰ the Court held that handcuffing of prisoners should be in exceptional circumstances as it is against the human dignity and violative of Article 21.

RIGHT TO BAIL

In *Babu Singh v. State of U.P.*⁴¹ it was 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 is fundamental 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 objective of the society specified in the Constitution. Also, in *Gurbaksh Singh v. State of Punjab*,⁴² that imposing of unjust or harsh conditions, while granting bail, are violative of Article 21 of the Constitution.

RIGHT AGAINST DELAYED EXECUTION

In *T.V. Vatheeswaran v. State of Tamil Nadu*,⁴³ a two-judge bench of the Supreme Court held that delay in execution of death sentence exceeding two years would be sufficient grounds to invoke the protection of article 21 and the death sentence would be commuted to life imprisonment. In *Sher Singh v. State of Punjab*,⁴⁴ the three-judge bench of the Court agreed with this view that prolonged delay in the execution of the death sentence was an important consideration for invoking Article 21 for judging whether sentence to be allowed to be executed or should be converted into sentence of imprisonment. Prolonged detention to evade the execution of a sentence of death is a unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the death sentence. However, the court held that this cannot be applied as a rule in every case and each case should be decided on its own facts.

In, *Kehar Singh v. Union of India and Ors*,⁴⁵ the Constitutional Bench of the Supreme Court observed that imposition of death sentence is an exception for which

⁴⁰ AIR 1996 SC 2193.

⁴¹ AIR 1978 SC 5287.

⁴² AIR 1980 SC 1632.

⁴³ AIR 1981 SC 643.

⁴⁴ AIR 1983 SC 465.

⁴⁵ AIR 1989 SC 653.

the special reason must be given as enshrined under Article 21. In, *Triveni Ben v. State of Gujarat*,⁴⁶ delay in execution of death sentence was found to be barbaric.

RIGHT TO COMPENSATION

The remedy of compensation to prisoners must be available in appropriate situations involving legal injuries to them during detention. It is only recently that the courts have become less hesitant in giving relief to prisoners in cases of wrongful imprisonment and physical injuries suffered by prisoners due to intentional or negligent acts of prison staff.⁴⁷ In *Rudul Sah v. State of Bihar*,⁴⁸ the Supreme Court has, however, changed its stance and awarded damages to a victim of wrongful imprisonment for fourteen years after his acquittal.

PROBLEM VIS-A-VIS RIGHT TO NUTRITION AND HYGIENE

The problem of health hazards in Indian prisons has been felt acutely right from the beginning of the present system in the middle of the last century. To begin with, mortality rate among prison inmates was

so high the jail committees of 1864 found the number of persons who died in jails to be 46,309 in one decade. They attributed the main causes to the following factors⁴⁹-

- Overcrowding
- Bad ventilation
- Bad conservancy
- Bad drainage
- In sufficiency of clothing
- Sleeping on the ground
- Deficiency of personal cleanliness
- Bad water
- Extraction of labour from unfit persons, and
- Insufficient medical inspection

Also, 78th Report of the law commission on “Congestion of Under-trial Prisoners in Jail” made some recommendations so as to curb the aforesaid problem which included liberalisation of conditions of release on bail.⁵⁰

⁴⁶ 1989 (1) SCC678.

⁴⁷ Ahmad Siddique’s *Criminology and Penology*, 6th Edition, Eastern Book Company, Lucknow. 2011, Pg. 201.

⁴⁸ (1983) 4 SCC 141.

⁴⁹ Indian Jails Committee Report (1864) at p. 10.

⁵⁰ *Rama Murthy v. State of Karnataka*, AIR 1997 SC 1739 at p. 1745.

RIGHT AGAINST**NARCOANALYSIS/POLYGRAPH/BR
AIN MAPPING**

In *Selvi v. State of Karnataka*,⁵¹ the Supreme Court has declared Narcoanalysis, Polygraph test and Brain Mapping unconstitutional and violative of human rights. The Supreme Court accepted that the tests in question are violative of Article 20 (3), which lays down that a person cannot be forced to give evidence against himself. Court also directed the investigation agencies that the directives by National Human Rights Commission should be adhered to strictly while conducting the tests. These tests were put to use in many cases previously, Arushi Talwar murder Case, Nithari killings Case, Abdul Telagi Case, Abu Salem Case, Pragya Thakur (Bomb blast Case)etc.

**PRISONER MOTHERS AND THEIR
CHILDREN**

For the care welfare and development of the children, special and specific provisions have been made both on part III and IV of the Constitution of India. The best interest of the child has been regarded as the primary consideration in our Constitution. Article 15 prohibits

discrimination on the grounds of religion, race, caste, sex or place of birth. Article 15(3) provides that this shall not prevent the State from making any special provision for women and children. Article 21 inserted by 86th Constitutional amendment provides for free and compulsory education to all children of the age to six to fourteen years. Article 24 prohibits employment of children below the age of fourteen years in any factory or mines or engagement in other hazardous employment. The other provisions of part III that may be noted are Article 14, 21 and 23. Under Part IV of the Constitution some provisions are also relevant. Which includes article 39(e) which directs the State to ensure that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 39 (f) directs the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against

⁵¹ (2010) 7 SCC 263.

exploitation and against moral and material abandonments.⁵²

The National Institute of criminology and Forensic Sciences conducted a research study of children of women prisoners in Indian Jails, such as –

1. No appropriate programmes were found to be in place in any jail for their proper bio-psycho-social development. Their looking after was mostly left to their mothers. No trained staffs were found in any jail to take care of these children.
2. Most of the children were living in real difficult conditions and suffering from diverse deprivations related to food, health care, accommodation, education, recreation etc.
3. No separate or specialised medical facilities for children were available.
4. The stay in jail provided a negative impact on the physical as well as the mental development of the children.

5. No special prison office was there to take care of the children and their mothers, etc.

In *R.D. Upadhyay v. State of A.P. and Ors.*,⁵³ the State Government and Union Territories were requested by the Supreme Court to provide an effective suggestion for the aforesaid. As in *Sheela Barse v. Secretary Children's aid Society*,⁵⁴ which dealt with the working of an observation home that was maintained by the Children's Aid Society, Bombay it was said, "Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens, depends the future of the country.

⁵² Dr. Gurbax Singh, *Law relating to protection of Human Rights and Human Values*, 1st Edition, Vinod Publications Pvt. Ltd., Delhi, 2008, Pg. 121.

⁵³ 2006 SC 1946.

⁵⁴ (1987) 3 SCC 50.

JAIL COMMITTEE ON PRISONERS' RIGHTS

REFORMS IN PRISONS AND PRISONERS BY COMMISSION

Of late, human right has taken a top agenda in the International Law as well as in the Municipal Laws. The scope of Human Rights has been enlarged to every angle of a human being whether he is free or under custody. A human being continues to have his dignity, self-respect and human rights even while under custody, any form of detention or imprisonment. He has a right not to be subjected to torture, cruel or degrading treatment or punishment.⁵⁵ Many committees have gone into the need for reforms in the conditions of the prison and prisoners. Notable amongst them are-

- All India Jail Manual Committee, 1957-1959.
- Justice Mulla, All India Committee on Jail Reforms, 1980-1983.
- National Expert Committee on Women Prisoners under the chairmanship of Justice V.R. Krishna Iyer, 1987.
- Report of R.K. Kapoor Committee on Prison Administration, 1987.

It is shocking that the prisons are still governed by the Indian Prisons Act of 1894—an Act 100 years' old. At present National Human Rights Commission is devoting a substantial time and attention to the reform in prisons and about the conditions of the prisoners.

The jail Reforms Committee 1980-1983 has made recommendations regarding prisoners' rights and the Committee appears to have been inspired and influenced by judicial pronouncements on various issues. The Committee has recommended the incorporation of the following rights in the proposed scheme of "National Prison Legislation":

- Right to human dignity
- Right to minimum needs
- Right to communication
- Right to access to law
- Right against arbitrary prison punishments
- Right of meaningful and gainful employment
- Right to be released on due date

The literature on prison justice and prison reform shows that there are nine major problems which afflict the system and which need immediate attention. These are, overcrowding, delay in trial, torture and ill-treatment, neglect of health and

⁵⁵ Dr. Awasthi & Kataria, *Law relating to protection of Human Rights*, 2nd Edition, Orient Publishing Company, Allahabad, 2011. Pg. 933.

hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication, streamlining of jail visits and management of open air prisons.⁵⁶ Also, the Third Report of the National Police Commission in India expressed a deep concern with custodial violence and lock-up deaths.

All the rights are more or less contained in the Constitution, jail manuals and judicial pronouncements but the challenge is that how far these rights are implemented.

CONCLUSION

The biggest impact of *Maneka Gandhi case* has been in the jail reform and in the recognition of rights of prisoners. The creative interpretation of the Supreme Court, Article 21 has been used as a vehicle to introduce ideas meant to ameliorate the lot of prisoners and to improve the conditions in jail. Since the conditions of many other public institutions where people are kept involuntary were similarly miserable judicial initiative to set the prison administration right was followed by similar initiative in relation to other institution as well.⁵⁷ A prisoner, just

because of his status, does not cease to be a human being and does not by any means get deprived of his rights, whether fundamental or otherwise. The four walls of the prison do not deny a prisoner of his basic rights guaranteed by the Indian Constitution in Part III. If he will be subjected to cruelty and would be denied basic amenities to survive inside the jail then the after effect of his release, especially when released unconvicted, would be adverse. He will not be able to adopt the outer atmosphere and cannot be subject to a better future. A prisoner, only via order of the court is set to undergo imprisonment; hence, nobody has got a right to inflict greater punishment than what has been already imposed by the Court of law and making his life even far more dejected.

The Rights of the Prisoners hence plays an important role so as to maintain the due administration of justice and a fair play of justice system. India being the world's largest democracy has to establish trust in the society regarding the humane treatment of the prisoners. The irony of Indian legal system is that the rules and regulations are kept in pen and papers and are never observed at large. The Supreme Court over the years has disapproved, degrading human treatment to an arrested person in

⁵⁶ *Rama Murthy v. State of Karnataka*, AIR 1997 SC 1739 at 1744.

⁵⁷ Udai Raj Rai, *Fundamental frights and their enforcement*, PHI Learning Pvt. Ltd, New Delhi, 2011., Pg. 394.

many of its judgment to safeguard human right.⁵⁸ Prisons are built with stones of law, it behaves the court to insist that in the eye of law, prisoners are persons, not animals and punish the deviant guardians of the prison system where they go berserk and defile the sancity of the human inmates.⁵⁹

As the Father of the Nation has rightly said:

“Hate the Crime, not the Criminal”

Amicus
your intellectual friend...

⁵⁸ Pravin H. Parekh, *Human Rights Year Book*, Universal Law Publication, Delhi, 2006, Pg. 160.

⁵⁹ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.