

Legal dimensions of prisoner's right in the light of article 21 of the constitution of India

Mohd Aqib Aslam

Ph.D. Research Scholar, Department of Law, University of Jammu, Jammu City, Jammu Kashmir, India

Abstract

In India, a person being a prisoner, cannot be seized of all his rights by the authority, even though he is convicted as he is having fundamental rights guaranteed by the Article 21 of the Constitution and protected by the Supreme Court and High Courts. In this background, the rights of the prisoners gained importance and have become the study of this research work. This paper explains about existing Constitutional and Legal framework in India to safeguard the prisoner's rights and also elucidates the various executive and judicial guidelines issued from time to time concerning the needs and care of prisoners. This paper examines the role of the apex court for the protection of prisoner's rights and their basic fundamental rights remain enforceable. This paper examines available instruments and compares them with the laws prevailing in India for providing protections to maintain their human rights and legal rights.

Keywords: Legal rights, prisoners, constitution, judicial interpretation, dimension

Introduction

Prisonisation symbolizes a system of punishment and also a sort of institutional placement of undertrials and suspects during the period of trial. Since there cannot be a society without crime and criminals, the institution of prison is indispensable for every country^[1]. A prisoner is entitled to the expansive interpretation of the term "life" occurring in Article 21 to the extent of the contexts permit. Incarceration or conviction does not reduce the prisoner into a nonperson^[2]. Prisoners are persons and have some rights and do not lose their basic constitutional rights and are entitled to rights as a normal human being when they are behind the prison. These rights are provided under Article 21 of the Constitution of India Act 1950, the Prisons Act, 1894, etc. A prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. The Supreme Court has emphasized that a prisoner, whether a convict, under-trial, or detainee does not cease to be a human being and while lodged in jail, enjoys all fundamental rights guaranteed by the Constitution of India including the right to life i.e. Article 21 guaranteed by the Constitution. Even a person is convicted and deprived of his liberty following the procedure established by law, a prisoner still retains the residue of Constitutional Rights. Article 21 provides "No person shall be deprived of his life or personal liberty except according to the procedure established by law"^[3]. This Article reminds us of one of the famous clauses of the Magna Carta: "No man shall be taken or imprisoned, disseized, or outlawed, or exiled or in any way destroyed save...by the law of the land"^[4].

This right has been held to be the heart of the constitution,

the most organic and progressive provision in our living constitution, the foundation head of our laws^[5].

Statement of Problem.

This research is directed on deep understanding the Rights of Prisoners under Article 21 of the Constitution of India Act 1950, its judicial interpretation, perspective and developments, the role of the apex court in providing protection, and creating an environment of rule of law so that basic fundamental rights remain protected.

Objectives

The study is designed with the major objectives of examining the prisoner's rights in India. The following are the specific objectives of the study.

1. To study the Rights of Prisoners given under Article 21 of the Constitution of India.
2. To study why these Rights needs judicial interpretation.
3. To study the nature of protection measures adopted by the judiciary to protect prisoners and the role of the apex court for the protection of prisoners right.
4. To suggest measures to be adopted to improve prisoner's rights legislation in India.

Hypothesis

Prisoner's rights are enshrined in Article 21 of the constitution of India and the judiciary has through various judgments has widened the scope of Article 21 and gave a new dimension.

Research Methodology

Doctrinal research means research that has been carried out on a legal proposition or propositions by way of analyzing the existing statutory provisions and cases by applying the reasoning power^[6]. The given research is doctrinal research

¹ Prof. N. V. Paranjape, Criminology & Penology with Victimology, 417 (Central Law Publication Allahabad, 10th ed., Reprinted 2012).

² Rahmath Nisha v. The Additional Director General, On 28th May 2019 (India).

³ Prof. Narender Kumar, Constitutional Law of India, 305 (Allahabad Law Agency, 8th ed., Reprinted 2012).

⁴ Dr. Durga Das Basu, Introduction to the Constitution of India, 111 (LexisNexis Butterworths Wadhwa Nagpur, Haryana, 20th ed., Reprinted 2009).

⁵ I.R. Coelho v. State of T.N., A.I.R. 2007 S.C. 861 (India).

⁶ Dr. S.R. Myneni, Legal Research Methodology, 57 (Allahabad Law Agency, Haryana, 6th ed., 2017).

based on second-hand data collection. Various books and writings have been studied to develop a better understanding of the topic. Afterward, a conclusive viewpoint is formulated in the hope of encompassing the different methods of study.

The rights or protections recognized under the Constitution of India for the prisoners are;

(i) Right to Free Legal Aid (Right to Appeal)

Equal justice to all and free legal aid are hallmarks of Article 39-A^[7].

While holding that the right to first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, 1974, has been a component of fair procedure and basic to civilized jurisprudence, the Apex Court said that “every step that makes the right of appeal fruitful is held obligatory and every action or inaction which stultifies it, is unfair and unconstitutional.”^[8]

(ii) Right to Speedy Trial

The Right to a speedy trial is an extension of the right to liberty and right against arbitrary detention^[9]. The “right to a speedy trial”, though not specifically enumerated as a fundamental right the Court had interpreted it to be implicit in the broad sweep and content of Article 21^[10]. Article 21 requires that a person can be deprived of his liberty only following the procedure established by law which should be a just, fair, and reasonable procedure. A procedure cannot be reasonable, fair, or just unless it ensures a speedy trial for determination of the guilt of the person deprived of his liberty.

(iii) Right to a fair trial (Fair Investigation)

The free and fair trial has been said to be the *sine qua non* and investigation should not only be fair but should manifestly be seen to be fair^[11]. “If the criminal trial is not free and fair and not free from bias, the judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system and woe would be the rule of law.” So said, the Supreme Court in *K. Anbazhagan v. Supdt. of Police*,^[12] transferred, the trial of cases pending against the C.M. of Tamil Nadu, from the Court of Addl. Sessions Judge, Chennai to the State of Karnataka with the direction to the latter to appoint a special judge for the trial of the cases. The Apex Court in *Zahira Habibulla H. Sheikh v. the State of Gujarat*,^[13] commonly known as “Best Bakery Case”, said that a trial which is primarily aimed at ascertaining truth has to be fair to all concerned. Not only the accused be fairly dealt with, but also the victims or their family members and relatives. Denial of a fair trial is as much injustice to the accused as is to the victim and the society.

(iv) Right to Bail

Delay in the conclusion of the trial itself is a ground to grant bail to an accused because it is a valuable fundamental right

guaranteed under Article 21 of the Constitution of India^[14]. In *Babu Singh v. the State of U.P.*,^[15] the Supreme Court held that “refusal to grant bail” to an accused person without reasonable grounds would amount to a deprivation of his “personal liberty” under Article 21.

(v) No Right to Anticipatory Bail

Section 438 of the Criminal Procedure Code, 1973 empowers a Court of Session and the High Court to grant bail in cases of the anticipated accusation of non-bailable offenses. Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, excludes the application of Section 438 of the Cr. P.C. to offenses committed under this Act. In *State of M.P. v. Ram Kishan Balothia*,^[16] the Supreme Court upheld the impugned Section and held that it did not violate Article 21. The Court held that anticipatory bail was not an essential part of the right to life enshrined in Article 21.

(vi) Right against handcuffing

Handcuffing has been held to be prima facie inhuman and therefore unreasonable, over-harsh, and at the first flush, arbitrary. It has been held in *Prem Shanker v. Delhi Administration*,^[17] to be unwarranted and violative of Article 21. The Court directed the Union of India to issue appropriate guidelines in this regard. In the instant case, the Supreme Court, by the majority, struck down Para 26.22 of the Punjab Police Rules, 1934, as violative of Articles 14, 19, and 21.

(vii) Right against Bar Fetters

Right, in the ordinary sense of the term, means several things, but it is generally taken the mean “the standard of permitted action within a certain sphere”. As a legal term, it means the standard of permitted action by law”.^[18] In *Sunil Batra v. Delhi Administration*,^[19] the Supreme Court laid down that the treatment of a human being which offended human dignity, imposed avoidable torture, and reduced the man to the level of a beast, would certainly be arbitrary and could be questioned under Articles 21 and 14. Therefore, putting bar fetters for an unusually long period without due regard for the safety of the prisoner and the security of the prison would certainly be not justified.

(viii) No Right to Escape from Custody

Whatever be the nature and extent of the prisoner’s fundamental right to life and personal liberty under Article 21, but they do not have the fundamental freedom to escape from lawful custody. It has been ruled that the rights of under-trial prisoners are not absolute. The rights are circumscribed by Prison Manual and other relevant Statutes imposing reasonable restrictions thereon and they are bound to abide by them and to maintain discipline in jail, as mentioned in the *D.B.M. Patnaik case*^[20].

⁷ Bar Council of India v. Union Of India, On 3rd August 2012 (India).

⁸ M.H. Hoskot v. State of Maharashtra, A.I.R. 1978 S.C. 1548 (India).

⁹ Bir Singh & Ors. v. State Of NCT of Delhi, On 18th September 2017 (India).

¹⁰ Moses Wilson v. Karluriba, A.I.R. 2008 S.C. 379 (India).

¹¹ Deepali Aggarwal v. the State Of Gncet, On 14th July 2020 (India).

¹² A.I.R. 2004 S.C. 524 (India).

¹³ A.I.R. 2004 S.C. 3114 (India).

¹⁴ Paras Ram Vishnoi v. The Director, C.B.I., On 20th July, 2020 (India).

¹⁵ A.I.R. 1978 S.C. 527 (India).

¹⁶ A.I.R. 1995 S.C. 1198 (India).

¹⁷ A.I.R. 1980 S.C. 1535 (India).

¹⁸ Dr. B.N. Tripathi, Jurisprudence-Legal Theory, 271 (Allahabad Law Agency, Haryana, 18th ed., Reprinted 2010).

¹⁹ A.I.R. 1978 S.C. 1675 (India).

²⁰ D.B.M. Patnaik v. State of A.P, A.I.R. 1974 S.C. 2092 (India).

(ix) Right to Write a Book

The Apex Court guaranteed the right to write a book as a legal right, In *State of Maharashtra v. Prabhakar Pandurang*,^[21] the petitioner was detained under the Preventive Detention Act, 1950. While under detention in jail, he wrote a book on science and sought permission from the Government to send the manuscript of the book to his wife for publication. The Government refused permission. The Court held the refusal as an infringement of his liberty as the restriction was not authorized under the Preventive Detention Act, 1950. The Court laid down that the right to “personal liberty” under Article 21, included the right to write a book and get it published. When a detenu exercises this right, its denial without the authority of law, would violate Article 21 of the Constitution of India.

(x) Right against Solitary confinement (Right to Socialise)

The expression “personal liberty” occurring in Article 21 has been held to include the right to socialize with members of the family and friends subject of course, to any valid prison regulations and under Articles 14 and 21, such prison regulations must be reasonable and non-arbitrary. It also includes the right of the detenu to consult a legal adviser of his choice for any purpose not necessarily limited to defense in a criminal proceeding but also for securing release from detention or filing a writ petition or proceeding, civil or criminal^[22].

(xi) Right against Inhuman Treatment (Third Degree Methods)

Custodial violence has always been a matter of great concern for all civilized societies. Custodial violence could take the form of third-degree methods to extract information^[23].

The Supreme Court in several cases has taken a serious note of the inhuman treatment meted to the prisoners and has issued appropriate directions to the prison and police authorities for safeguarding the rights of the prisoners and persons in police lock-up, particularly of women and children. The incidents of torture, assault, injury, and deaths in police custody, have been said to be the worst form of human rights violation.

(xii) Right against Custodial Violence (Torture)

Torture in custody, it is held, flouts the basic rights of the citizens, and is an affront to human dignity. It tarnishes the image of any civilized Nation. Unless stern measures are taken, civilization would risk the consequences of leading towards total decay, resulting in anarchy and authoritarianism, reminiscent of barbarism^[24].

(xiii) Under-trials not to be kept with convicts

In *Sunil Batra (No. II) v. Delhi Administration*,^[25] it was brought to the notice of the Supreme Court that a substantial number of under-trial prisoners, presumably innocent until convicted, were kept in Tihar Jail with convicts. The Court

condemned this practice as a “custodial perversity” which offended the test of reasonableness in Article 19 and fairness in Article 21. It was held that these under-trial prisoners by contamination were being made criminals.

(xiv) Death by Hanging Not Violative of Article 21

In *Deena v. Union of India*,^[26] the constitutional validity of Section 354(5) of the Criminal Procedure Code, 1974, which prescribes the execution of death sentence by hanging by rope was challenged. It was contended by the petitioner that the execution of the death penalty by hanging was barbarous, inhuman, and degrading and therefore violative of Article 21. The Supreme Court rejected the contention and held the impugned Section constitutionally valid and said that it laid down a fair, just, and reasonable procedure within the meaning of Article 21 for the execution of the death sentence.

(xv) Right against Public Hanging

The Rajasthan High Court, by an order, directed the execution of the death sentence of an accused by public hanging at the Stadium Ground or Ramlila Ground of Jaipur. It was also directed that the execution should be done after giving widespread publicity through the media. On receipt of the certified copy of the above order, the Supreme Court in *Attorney General of India v. Lachma Devi*,^[27] held that the direction for the execution of the death sentence was unconstitutional and violative of Article 21. It was further made clear that death by public hanging would be a barbaric practice.

(xvi) Right against delayed execution

Prolonged detention to await the execution of a sentence of death has been held to be unjust, unfair, and unreasonable, violative of Article 21. In *Shivaji Jaising Babar v. the State of Maharashtra*,^[28] the Supreme Court, on the ground of delay for more than four years in the disposal of the mercy petition by the President under Article 72, held that justice demanded modification of the sentence of death and commuted it to imprisonment for life.

(xvii) Common-Law Duty of Taking Reasonable Care

It has been held to be a duty of the State “to create a climate where members of the society, belonging to different faiths, caste, and creed, live together” and “to protect their life, liberty, dignity, and worth of an individual which should not be jeopardized or endangered.” Therefore an act or omission of the State and its functionaries which takes away the life or otherwise impairs or injures, it amounts to a violation of such a person's fundamental right flowing from Article 21^[29].

(xviii) Right to Damages for Violation of Article 21

To provide teeth to a new dimension and the dynamic approach given to the fundamental right contained in Article 21, the Supreme Court has recognized the right of the aggrieved person, to claim monetary compensation for the violation of his right thereunder^[30].

²¹ A.I.R. 1966 S.C. 424 (India).

²² Francis Coralie v. Union Territory of India, A.I.R. 1981 S.C. 746 (India).

²³ Re-Inhuman Conditions In 1382...v. State Of Assam, On 15th September, 2017 (India).

²⁴ Smt. Shakila Abdul Gafar Khan v. V.R. Dhoble, JT 2003 (Supp. 2) S.C. 282 (India).

²⁵ A.I.R. 1980 S.C. 1579 (India).

²⁶ A.I.R. 1983 S.C. 1155 (India).

²⁷ A.I.R. 1986 S.C. 467 (India).

²⁸ A.I.R. 1991 S.C. 2147 (India).

²⁹ Mushtaq Ahmed v. State of J. & K., A.I.R. 2009 J. & K. 29 (India).

³⁰ Smt. A.V. Janaki Amma v. Union of India, A.I.R. 2004 NOC 82 (AP) (India).

In *Kewal Pati v. the State of U.P.*,^[31] the Supreme Court awarded compensation to the petitioner for the death of her husband by a co-accused while the deceased was serving his sentence under Section 302, I.P.C.

Conclusion

Article 21 of the Constitution is guaranteed to every person and not even the State has the authority to violate that Right. Just being in prison doesn't deprive them of their fundamental rights. Even when lodged in the jail, he continues to enjoy all his Fundamental Rights. On being convicted of the crime and deprived of their liberty following the procedure established by law, prisoners still retain the residue of constitutional rights. Supreme Court has gone a long way fighting for their rights. However, the fact remains that it is the police and the prison authorities who need to be trained and oriented so that they take prisoner's rights seriously. Thus we see that there is no doubt that it is the democratic legitimacy that characterizes our era. Liberty and freedom are the elements of a prisoner's human rights and democracy. In so far as developing countries are concerned it has to be observed that must believe in democracy and human rights of prisoners.

References

1. Tripathi BN. Jurisprudence-Legal Theory (Allahabad Law Agency, Haryana, 18th ed., Reprinted, 2010).
2. Durga Das Basu. Introduction to the Constitution of India (LexisNexis Butterworths Wadhwa Nagpur, Haryana, 20th ed., Reprinted, 2009).
3. Kapoor SK. Human Rights under International Law and Indian Law (Central Law Agency, 3rd ed, 2005).
4. Myneni SR. Legal Research Methodology (Allahabad Law Agency, Haryana, 6th ed, 2017).
5. Laxmikanth M. Indian Polity for Civil Services Examination (McGraw Hill Education (India) Private Limited, New Delhi, 4th ed, 2013).
6. Paranjape NV. Criminology & Penology with Victimology (Central Law Publication Allahabad, 10th ed., Reprinted, 2012).
7. Narender Kumar. Constitutional Law of India (Allahabad Law Agency, 8th ed., Reprinted, 2012).

³¹ (1995) 3 S.C.C. 600 (India).