

Role of the Judiciary in Enforcing Prisoners' Rights in India

Priyanka

Research Scholar

Nehru Memorial Law P.G. College, Hanumangarh Town (Raj.) 335513

Abstract

A prisoner is a person who is 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 present paper shows that Judiciary was much cognizant of prisoners' rights in India. Contribution of legislation was not substantial. It can be seen that the judiciary was influenced by the deliberations and recommendations made in the International Human Rights Conventions. Apart from the International Conventions, the recommendation made by various Prison Reforms Committees in India also influenced Indian Judiciary especially the Apex Court. This is clear from the judgments delivered by the Supreme Court in relation to prisons rights. The judiciary made many inroads to this arena of prisoner rights through a value oriented interpretation of the provisions contained in the Indian Constitution.

Keywords: Prisons, Constitutional Rights, Human Rights, Prisoner Rights, Custodial Torture, Prison Reform

Introduction

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. 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 perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The independent judicial system stems from the notion of the separation of powers where the executive, legislature and judiciary form three branches of the government. This separation and consequent independence is key to the judiciary's effective in upholding the rule of law and human rights.

Since every society has a judicial system for the protection of its law-abiding members, it has to make provisions of prisons for the law breakers. But it doesn't mean that the prisoners have no rights. The prisoners also have their rights. 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. In addition to this, the question of cruelty to prisoners is also dealt with, specifically by the Prison Act, 1894 and the Criminal Procedure Code. Any excess committed on a prisoner by the police authorities not only attracts the attention of the legislature but also of the judiciary. The Indian judiciary, particularly the Supreme Court, in the recent past, has been very vigilant against violations of the human rights of the prisoners. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. Prisoners' rights have become an important item in the agenda for prison reforms. The need for prison reforms has come into focus during the last three to four decades.

Prisoners and the Human Rights

The Supreme Court of India in the recent past has been very vigilant against encroachments upon the Human Rights of the prisoners. In this area an attempt is made to explain the some of the provisions of the rights of prisoners under the International and National arenas and also as interpreted by the Supreme Court of India by invoking the Fundamental Rights. 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 is the back bone of the Human Rights in India. Through its positive approach and Activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights. By giving a liberal and comprehensive meaning to "life and personal liberty," the courts have formulated and have established plethora of rights. The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21. In A.K. Gopalan's Case, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in Maneka Gandhi case and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that "the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation" and also opined that the procedures prescribed by law must be fair, just and reasonable.

In the following cases namely Maneka Gandhi, Sunil Batra (I), M.H. Hoskot and Hussainara Khatoon, the Supreme Court has taken the view that the provisions of part III should be given widest possible interpretation. Every activity which facilitates the exercise of the named Fundamental Right may be considered integrated part of the Article 21 of the Constitution. It has been held that 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 live with human dignity, right to livelihood, etc. though specifically not mentioned are Fundamental Rights under Article 21 of the Constitution. One of the most powerful dimensions that arose through Public Interest Litigation is the Human Rights of the prisoners.

The Supreme Court of India has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of the prisoners and for effecting prison reforms. The Supreme Court by its progressive interpretation made Article 21, which guarantees the Right to Life and personal liberty, the reservoir of prisoner's rights. Under the seventh schedule of the Constitution of the India, the prison administration, police and law and order are to be administered by the respective states. The states have generally given low priority to prison administration. In fact, some of the decisions of the Supreme Court on prison administration have served as eye-openers for the administrators and directed the states to modernize prison administration.

The Human Rights saviour Supreme Court has protected the prisoners from all types of torture. Judiciary has taken a lead to widen the ambit of Right to Life and personal liberty. The host of decisions of the Supreme Court on Article 21 of the Constitution after Maneka Gandhi's case, through Public Interest Litigation has unfolded the true nature and scope of Article 21. In this thesis, an attempt is made to analyze the new dimensions given by the Supreme Court to Article 21 through Public Interest Litigation to safeguard the fundamental freedom of the individuals who are indigent, illiterate and ignorant. Public Interest Litigation became a focal point to set the judicial process in motion for the protection of the residuary rights of the prisoners.

Judicial conscience recognized that Human Rights of the prisoners because of its reformistic approach and belief that convicts are also human beings and that the purpose of imprisonment is to reform them rather than to make them hardened criminals. Regarding the treatment of prisoners, Article 5 of the Universal Declaration of Human Rights, 1948 says "No one shall be subjected to torture or cruel treatment, in human or degrading treatment or punishment". While Article 6 of the Universal Declaration of Human Rights, 1948 contemplates that "everyone has the right to recognition everywhere as a person before law". Article 10(1) of the International Covenant on Civil and Political Rights lay down that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'

The Supreme Court of India has developed Human Rights jurisprudence for the preservation and protection of prisoner's Right to Human Dignity. The concern of the Apex judiciary is evident from the various cardinal judicial decisions. The decisions of the Supreme Court in Sunil Batra were a watershed in the development of prison jurisprudence in India.

Rights against Solitary Confinement and Bar Fetters

The courts have strong view against solitary confinement and held that imposition of solitary confinement is highly degrading and dehumanizing effect on the prisoners. The courts have taken the view that it could be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from the other prisoners. The Supreme Court in Sunil Batra (1) considered the validity of solitary confinement. The Constitutional validity of solitary confinement prescribed under section 30(2) of the Prisons Act, 1894 was considered. Section 30(2) of the Act provides the solitary confinement when prisoner is under sentence of death, while section 56 of the said Act permits the use of bar fetters for the safe custody of the prisoners.

The Supreme Court while approving section 30(2) of the Prisons Act, 1894 declared that the imposition of solitary confinement on Sunil Batra was illegal on the ground under sentence of death refers to a finally executable death sentence, which means that the sentence of death

has become final and conclusive, and cannot be annulled by any judicial or Constitutional authority. Sunil Batra was not considered as a prisoner under sentence of death, since his appeal against the death penalty was pending before the Supreme Court and in the event of its dismissal, he retained the right to appeal for presidential clemency. The court held that Batra was put in statutory confinement and not solitary confinement.

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.

On the question of the validity of the use of bar fetters, the court in Sunil Batra (I) observed that subjecting a prisoner to bar fetters for an unusually long period, without due regard to the safety of the prisoner and the security of the prisoner would violate basic Human Dignity and is hence impermissible under the Constitution of India. The court while approving section 56 of the Prisons Act and declared that bar fetters can be used subject to the following procedural safeguards:

- (i) It must be absolutely necessary to use fetters;
- (ii) The reasons for doing so must be recorded;
- (iii) The basic condition of dangerousness must be well-grounded;
- (iv) Principles of natural justice must be observed;
- (v) The fetters must be removed at the earliest opportunity;
- (vi) There must be a daily review of the absolute need for bar fetters;
- (vii) Continuance of bar fetters beyond a day is subject to the direction of a District Magistrate or Session's Judge

The Supreme Court in Sunil Batra (I) diluted the rigour of solitary confinement and bar fetters to a considerable extent by specifying the procedural norms to be followed when resorting to sections 30 (2) and 56 of the Prisons Act, 1894.

Rights against Hand-Cuffing

In PremShanker v. Delhi Administration, the Supreme Court added yet another projectile in its armoury to be used against the war for prison reform and prisoners rights. In the instant case the question raised was whether hand-cuffing is constitutionally valid or not? The Supreme Court discussed in depth the hand cuffing jurisprudence. It is the case placed before the court by way of Public Interest Litigation urging the court to pronounce upon the Constitutional validity of the 'hand cuffing culture' in the light of Article 21 of the Constitution. In the instant case, the court banned the routine hand cuffing of a prisoners as a Constitutional mandate and declared the distinction between classes of prisoner as obsolete. 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'.

While deciding the Constitutional validity of hand cuffing, the Supreme Court specifically referred to Article 5 of the Universal Declaration of Human Rights, 1948 and Article 10 of the International Covenant on Civil and Political Rights and held that hand cuffing is impermissible torture and is violate of Article 21. In the instant case justice Krishna Iyer rightly emphasized hand cuffs should not be used in routine and they were to be used in extreme circumstances only, when the prisoner is a security risk, desperate, rowdy or involved in non-bailable offences. But in even such circumstances, the escorting authority must record the

reasons for doing so. Otherwise, the court pointed out, under Article 21 of the Constitution the procedure will be unfair and bad in law.

In spite of such clear ruling of the Supreme Court against hand cuffing, the high handedness of the police personnel came to the light in Delhi Judicial Service Association case, wherein the Supreme Court held that an extraordinary and the unusual behaviour of police was not proper and the court laid down detailed guidelines which should be followed in case of arrest and detention of judicial officer. The Supreme Court took a serious note of whole incident and it amounts to interference with the administration of justice, lowering of its judicial authority and it amounts to criminal contempt.

It is submitted that wherever any police official acts contrary to the clear directions against hand cuffing as laid down by the Supreme Court and thus violates the basic Human Right to human dignity, he should be made personally liable to pay the compensation and this fact is clearly established in state of Maharashtra v. Ravikanth S. Patil. Apart from the above the Supreme Court had delivered many cases against hand cuffing and ruled that it is violative of Article 21 of the Constitution. In Citizen for Democracy v. State of Assam, the Supreme Court said that it lays down as a rule that hand cuffs or other fetters shall not be forced on prisoner, convicted or under trail, while lodged in a jail anywhere in the country or while transporting or in transit from jail to another or from jail to court and back. The police and jail authorities, on their own, shall have no authority to direct transport from one jail to another or from jail to court and back". The court declared that if it is absolutely necessary for the jail or police authorities to hand cuff, permission of Magistrate is to be obtained. The Magistrate may grant the permission to hand cuff the prisoner in rare cases. Violation of the directions given by the Supreme Court by the authorities shall be punishable under the Contempt of Court Act, 1971.

The Supreme Court directed the Union of India to frame rules or guidelines regarding the circumstances in which hand cuffing of the accused should be resorted to, in conformity with the judgment of the court in Prem Shankar case; and to circulate them among all the Government of the states and Union Territories for strict observance. It is important to mention that so as to put an end to hand-cuffing it is suggested that the parliament may make a suitable amendment to the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 where in, hand-cuffing should be made a cognizable offence so as to give effect to the ruling of the Apex Court of the land and also to preserve the right to live with human dignity, which is a important facet of personal liability of the individuals.

Rights against Inhuman Treatment of Prisoners

Human Rights are part and parcel of Human Dignity. The Supreme Court of India in various cases 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 Supreme Court read the right against torture into Articles 14 and 19 of the Constitution. The court observed that "the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14". In the Raghubir Singh v. State of Bihar, the Supreme Court expressed its anguish over police torture by upholding the life sentence awarded to a police officer responsible for the death of a suspect due to torture in a police lock-up.

In Kishore Singh v. State of Rajasthan, the Supreme Court held that the use of third degree method by police is violative of Article 21. The court also directed the Government to take

necessary steps to educate the police so as to inculcate a respect for the human person. In the instant case the Supreme Court brought home the deep concern for Human Rights by observing against police cruelty in the following words: “Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our Constitutional culture than a state official running berserk regardless of Human Rights.”

It is pertinent to mention that the custodial death is perhaps one of the worst crimes in civilized society governed by the rule of law. The court promptly ruled that the inhuman treatment meted to the accused in police custody is the gross and blatant violation of Human Rights. In the absence of any legislative or executive guidelines the court has undertaken an activist role and ruled in plethora of cases and one such case is D.K. Basu v. State of West Bengal.

The decision of the Supreme Court in the case of D.K. Basu is note worthy. 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. In the instant case the Supreme Court defined torture and analyzed its implications. The observations of the court on torture are valuable and worth quoting at length. With a view to curbing this menace, the Supreme Court laid down detailed guidelines as preventive measures as follows:

- (i) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- (ii) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- (iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock – up shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed as soon as practicable that he has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or relative of the arrestee.
- (iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through legal aid organizations in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (v) The person arrested must be aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained. f. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- (vi) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. “Inspection Memo” must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.

- (vii) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
- (viii) Copies of all the documents including the memo of arrest, referred to above should be sent to the area Magistrate for his/her record.
- (ix) The arrestee may be permitted to meet his lawyer during interrogation though not throughout the interrogation.
- (x) A police control room should be provided at all district and state head quarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

In the instant case, the Apex Court made it clear that, custodial violence, including torture and death in the police lock-up, strikes a blow at the rule of law, which demands that the powers of the executive should not only be deprived from the law but also that the same should be limited by the law. The court also made it clear that failure to comply with guidelines should, apart from rendering the official concerned liable for departmental action and also render him liable to contempt of court. The Supreme Court has made it clear beyond doubt that any form of torture of cruel, inhuman or degrading treatment is offensive to Human Dignity and is violative of Article 21 of the Constitution.

Right to have Interview with Friends, Relatives and Lawyers

The horizon of Human Rights is expanding. Prisoner's rights have been recognized not only to protect them from physical discomfort or torture in person, but also to save them from mental torture. The Right to Life and Personal Liberty enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to have interview with the members of one's family and friends is clearly part of the Personal Liberty embodied in Article 21. Article 22 (1) of the Constitution directs that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. This legal right is also available in the code of criminal procedure under section 304. The court has held that from the time of arrest, this right accrues to the arrested person and he has the right of choice of a lawyer. The accused may refuse to have a lawyer but the court has to provide an Amicus Curie to defend him. When an accused is undefended it is the duty of the court to appoint a counsel on Government expenses for his defence. In a series of cases the Supreme Court of India considered the scope of the right of the prisoners or detainees to have interviews with family members, friends and counsel. In *Dharmbir v. State of U.P.* 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.

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the petition under Article 32 of the Constitution raises a question in regard of the right of a detenu under conservation of Foreign Exchange and Prevention of Smuggling Activities Act, to have interview with a lawyer and the members of his family. In the instant case, the court considered the prisoners right to have interviews from the perspective of the Right to Life and Personal Liberty under Article 21. The court also observed that the Right to Life includes the right to live with Human Dignity and with this the right of a detenu to consult a legal advisor of his choice for any purpose not necessary limited to defence in criminal proceeding but also for securing release from

preventive detention or filing a writ petition or prosecuting any claim or of any civil and criminal proceeding. In this case, the court also opined that the right to have interviews is clearly part of Personal Liberty and that “Personal Liberty” would include the right to socialize with members of family and friends subject to any valid prison regulations. Therefore any prison regulation or procedure regulating the prisoner’s right to have interviews with members of family and friends must be reasonable and non-arbitrary. Otherwise it would be liable to be struck down as invalid, being violative of Articles 14 and 21. From the above analysis, it firmly leads to the conclusion that the rights of the prisoners to have interviews with friends and family members are an integral part of Article 21 of the Constitution.

In *HussainaraKhaton v. Home Secretary, Bihar*, the Supreme Court has held that it is the Constitutional right of every accused person who is unable to engage a lawyer and secure 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 *SheelaBarse v. State of Maharashtra* case, the petitioner, a Bombay based freelance journalist had sought permission to interview women prisoners in the Maharashtra jails and the letter of the petitioner was treated as writ petition under Article 32 of the Constitution. In the instant case the Supreme Court relying on *PrabhuDutts* case has held that the terms ‘life’ under Article 21 covers the living condition prevailing in jails. The court observed that the citizen does not have any right either under Article 19 (1) (a) or Article 21 to enter into the jails for collection of information, but in order that the guarantee of the Fundamental Right under Article 21 may be available to the citizens detained in jails, it becomes necessary to permit the pressmen as friends of the society and public spirited citizens access to information as also interviews with prisoners. Those citizens who are detained in prisons either as under trials or as convicts are also entitled to the benefit of the guarantee subject to reasonable restrictions.

In the instant case, the court held that interviews of the prisoners become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated. The pressmen are not entitled to uncontrolled interview. As and when factual information is collected as a result of interview, the same should usually be cross-checked with the authorities so that a wrong picture of the situation may not be published. Those who receive permission to have interviews will agree to abide by reasonable restrictions.

In *Jogindar Kumar v. State of U.P.*, the court opined that the horizon of Human Rights is expanding and at the same time, the crime rate is also increasing and the court has been receiving complaints about violation of Human Rights because of indiscriminate arrests. The court observed that there is the right to have someone informed. That right of the arrested person upon request, to have someone informed and to consult privately with a lawyer was recognized by Sec 56(1) of the Police and Criminal Evidence Act, 1984 in England. For effective enforcement of the Articles 21 and 22 (1) of the Constitution of India which require to be recognized and scrupulously protected, the court issue the following requirements.

- (i)** An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as practicable that he has been arrested and where is being detained.
- (ii)** The police officer shall inform the arrested person of his right when he is brought to the police station.

- (iii) An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly.

Right to Legal Aid

The main object of the Free Legal Aid scheme is to provide means by which the principle of equality before law on which the edifice of our legal system is based. It also means financial Aid provided to a person in matter of legal disputes. In the absence of Free Legal Aid to the poor and needy, Fundamental Rights and Human Freedoms guaranteed by the respective Constitution and International Human Rights covenants have no value.

Though, the Constitution of India does not expressly provide the Right to Legal Aid, but the judiciary has shown its favour towards poor prisoners because of their poverty and is not in a position to engage the lawyer of their own choice. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution. This is the most important and direct Article of the Constitution which speaks of Free Legal Aid. Though, this Article finds place in part-IV of the Constitution as one of the Directive Principle of State Policy and though this Article is not enforceable by courts, the principle laid down there in are fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making laws. While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it many a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The parliament has enacted Legal Services Authorities Act, 1987 under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39-A. Under the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases.

Maneka Gandhi v. Union of India case was a catalyst which laid down a foundation for interpreting Articles 39-A and 21, widely to cover the whole panorama of Free Legal Aid. In the instant case the Supreme Court held that procedure established by law in Article 21 means fair, just and reasonable procedure.

In MadhavHayawadanRaoHosket v. 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.PC together declared that the Government was under duty to provide legal services to the accused persons. Justice Krishna Iyer observed that Indian socio legal milieu makes free legal services, at trial and higher levels, an imperative procedural piece of criminal justice. The Supreme Court decided the point of Legal Aid in appeal cases as follows "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 Article 142 read with Articles 21 and 39 A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice". The court further added that legal Aid in such cases is state's duty and not Government's charity.

In the words of justice Krishna Iyer, "Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence of incommunicado situation, the court shall, if the circumstances of the case, the gravity of sentence and the ends of justice so require, assign

competent counsel for the prisoners defence, provided the party does not object to that lawyer. The state which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum of as the court may equitably fix”.

In *HussainaraKhattoon and others v. Home Secretary, State of Bihar*, the main observations of the Supreme Court are on speedy trial. Bhagwathi and Koshal, JJ observed that the speedy trial which means reasonably expeditious trial is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21. However the Apex Court declared the speedy trial as a constituent of Legal Aid and directed the Government to provide Free Legal Aid service in deserving cases. This case reinforces the principles laid down in *M.H Hoskot's case*.

Justice Bhagwati observed that Article 39-A of the Constitution also emphasizes that free legal service is an unalienable component of reasonable, fair and just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore clearly an essential ingredient of “reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in Article 21 of the Constitution. In the instant case justice Bhagwati emphasized upon the necessity of introducing by the central and state Governments, a dynamic and comprehensive legal services programme with a view to reaching justice to the common man. His lordship thought this cause as a mandate of equal justice implicit in Articles 14, 21 and also the compulsion of Constitutional directive embedded in Article 39-A. The concern of his lordship was that such programmes of legal Aid are intended to reach the justice to the common man.

In *Sunil Batra v. Delhi administration (II)*, Justice Krishna Iyer observed that the free legal services to the prison programmes shall be promoted by professional organization recognized by the court. His lordship further added that the District Bar Association should keep a cell for prisoner relief.

In *Khatri (I) v. State of Bihar*, a division bench of the Supreme Court held that the state is under Constitutional mandate to provide Free Legal Aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state.

In *KedraPahadiya and others v. State of Bihar*, the Supreme Court once again reiterated the principles laid down in *HussainaraKhattoons* and *Sunil Batra (I)* cases, and observed that the court directed that the petitioners must provided legal representation by a fairly competent lawyer at the cost of the state, since legal aid in a criminal case is a Fundamental Right implicit in Article 21, and the Fundamental Right has merely remained a paper promise and has been grossly violated. In the instant case, the Supreme Court directed the state Government to file a list of undertrial prisoners who have been in jail, for a period of more than 18 months without their trial having commenced before the Courts of Magistrates.

It is submitted that while making the above observations, the Supreme Court was more concerned with Article 39-A and least bothered to Article 21. Right to Free Legal Aid was raised to the status of a Fundamental Right in *Hoskot's case* as a part of fair just and reasonable procedure under Article 21 and this premise was reinforced in cases of *Hussaniara*, *Khatra (I)*. Right of Free Legal Aid was included in under the protective umbrella of Article 21, which is a Fundamental Right under the Constitution. Though Article 39-A a non-enforceable and non-justiciabledirective principlebecame an enforceable Fundamental Right. Hence Free Legal Aid is

a Fundamental Right which can be enforced against the state as defined in Article 12 of the Constitution, if Free Legal Aid is denied for whatever reasons.

Right to Speedy Trial

The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent. Everyone is presumed to be innocent until the guilty is proved. So, the quality or innocence of the accused has to be determined as quickly as possible. It is therefore, incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed. It is pertinent to mention that “delay in trial by itself constitute denial of justice” which is said to be “justice delayed is justice denied”. It is absolutely necessary that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is absolutely necessary.

The right to speedy trial has become a universally recognized human right. In United States of America, the speedy trial is one of the constitutionally guaranteed rights. In India, the right to speedy trial is not specifically enumerated as one of the Fundamental Rights in the Constitution since 1978; there have been see-saw changes in the judicial interpretation of the Constitutional provisions. In *Maneka Gandhi v. Union of India*, the Supreme Court has widened the concept of life and Personal Liberty under Article 21 of the Constitution. In this case, the court established that the law and procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Articles 14 and 19. It also establishes that the procedure established by law within the meaning of Article 21 must be right, just and fair but not arbitrary, fanciful or oppressive.

Taking the principle of fairness and reasonableness evolved in *Maneka Gandhi's* cases, the Supreme Court in *Hussainara Khatoon (I) v. Home secretary* case held that “Obviously procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair, or just unless that procedure ensures a speedy trial for determination of the guilty of such person. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21. There can be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21. Thus, the right to speedy trial is implicit in broad sweep and content of Article 21 of the Constitution. Hence any accused who is denied this right of speedy trial is entitled to approach the Supreme Court for the purpose of enforcing such right

However, the main procedure for investigation and trial of an offence with regard to speedy trial is contained in the code of criminal procedure. The right to speedy trial is contained under section 309 of Cr.PC. If the provisions of Cr.PC are followed in their letter and spirit, then there would be no question of any grievance. But, these provisions are not properly implemented in their spirit. It is necessary that the Constitutional guarantee of speedy trial emanating from Article 21 should be properly reflected in the provisions of the code. For this purpose in *A.R. Antulay v. R.S. Nayak*, the Supreme Court has laid down following propositions which will go a long way to protect the Human Rights of the prisoners. The concerns underlying the right to speedy trial from the point of view of the accused are:

- (i) The period of remand and pre-conviction detention should be as short as possible. In other words, the accused shall not be subjected to unnecessary or unduly long detention point of his conviction.
- (ii) The worry, anxiety, expense and disturbance to his vocation and peace resulting from an unduly prolonged investigation, in query or trial shall be minimal; and.
- (iii) Undue delay may result in impairment of the ability of the accused to defend himself whether on account of death, disappearance or non-availability of witnesses or otherwise.

In the instant case the Apex 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. The court said that the accused cannot be denied the right to speedy trial merely on the ground that he had failed to demand a speedy trial.

From the above cases and principles of the Supreme Court, it can be concluded that the right to speedy trial is implicit under Article 21 of the Constitution. In the words of Justice Bhagwati that it is the Constitutional obligation of the state to provide a procedure which would ensure speedy trial to the accused. The state cannot be permitted to deny the Constitutional rights of speedy trial to the accused on the ground that the state has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speed trial.

A close examination of the judicial action reveals that the Supreme Court has devised new strategies and tools to ensure the protection of Human Rights to the people. The courts are innovating new methods for the purpose of providing access to justice to large masses of people who were denied their basic Human Rights. The Supreme Court has enlarged the ambit and scope of the Right to Life and Personal Liberty in Article 21 in very wide and comprehensive terms. The crucial right in Article 21 is greatly enlarged in magnitude and dimension to include the rights of prisoners.

Narco Analysis/Polygraph/Brain Mapping

In *Selvi v. State of Karnataka*, the Supreme Court has declared Narcoanalysis, Polygraph test and Brain Mapping unconstitutional and violative of human rights. This decision is quite unfavourable to various investigation authorities as it will be a hindrance to furtherance of investigation and many alleged criminals will escape conviction with this new position. But 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. With advancement in technology coupled with neurology, Narcoanalysis, Polygraph test and Brain mapping emerged as favourite tools of investigation agencies around the world for eliciting truth from the accused. But eventually voices of dissent were heard from human rights organizations and people subjected to such tests. They were labeled as atrocity to human mind and breach of right to privacy of an individual. 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, Pragma Thakur (Bomb blast Case) etc. being ones which generated lot of public interest.

Conclusion

To conclude, a review of the 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. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature. 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. It has, through judicial activism forged new tools and devised new remedies for the purpose of vindicating the most precious of the precious Human Right to Life and Personal Liberty.

Reference:

- (1980) I SCC 81
- (1981) 1 SCC 608
- (1981) 3 SCC 671
- (1987) 4 SCC 373
- (1991) 2 SCC 373
- (2010) 7 SCC 263
- 1995 (3) SCC 743
- A.K. Gopalan v. State of Madras A.I.R 1950 SC P.27
- AIR 1978 SC 1548
- AIR 1978 SC 597
- AIR 1978 SC 597
- AIR 1979 SC 1360
- AIR 1979 SC 1377
- AIR 1979 SC 1595
- AIR 1980 SC 1579
- AIR 1981 SC 928
- AIR 1992 SC 1701
- AIR 1994 SC 1349
- AIR 1997 SC 610
- Article 10 of the International Covenant on Civil and Political Rights stipulates that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'
- Article 5 of the Universal Declaration of Human Rights, 1948 provides that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'.
- ChintanChandrachud, 'The Supreme Courts Practice of Referring cases to longer Benches: A need for Review', 1 SCC (J) 37-48 (2010).
- Delhi Judicial Service Association v. State of Gujarath (1991) 4 SCC 406
- Furqan Ahmad, 'Protective Judiciary in Aid of Human Rights in India', 43(2) *Indian Journal of International Law* 349-359 (2003)
- HussainaraKhatoons (I) v. Home Secretary, State of Bihar AIR 1979 SC 1360
- Lalwani, D.P., 'Foundations of Human Rights and Role of Government', 9(1) *Journal of the Institute of Human Rights* 40-57 (2006)
- M.H.Hoskot v. State of Maharashtra AIR 1978 SC 1548
- MadhaviGoradiaDiwan, 'Judicial Review: Supremacy of the Courts or of the Constitution', 10 SCC (Journal) 23-48(2009)

- Maneka Gandhi v. Union of India A.I.R 1978 SC P.597
- Maneka Gandhi v. Union of India AIR 1978 SC P.597
- Nidhi Beniwal, Role of Judiciary in Protecting the Rights of Prisoners, *available at*: <http://www.legalservicesindia.com/article/article/role-of-judiciary-in-protecting-the-rights-of-prisoners-1616-1.html> (Retrieved on March, 2015)
- Pachauri S.K., *Prisoners and Human Rights* (A.P.H Publishing Corporations, New Delhi, 1999)
- PrubhuDatt v. Union of India (1982) 1 SCC
- Ramana Murthy v. State of Karnataka AIR 1997 SC 1739; Munna v. State of U.P AIR 1982 SC 806; Rakesh v. Suptd. Central Prison, New Delhi, AIR 1981 SC 760; D.K.Basu v. State of West Bengal (1997) 1 SCC 416; SheelaBarse v. State of Maharashtra AIR 1983 SC 378; KhedatMazdoorChetnaSangtham v. State of M.P. AIR 1995 SC 31
- Sec 304 (1) of Criminal Procedure Code, 1973 stipulates that where, in a trial before the court of session, the accused is not represented by a pleader and where it appears to the court that the accused has not sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expense of the state.
- Sunil Batra (I) v. Delhi Administration AIR 1978 SC 1675
- Sunil Gupta v. State of M.P. 1990 (3) SCC 119; Citizen for Democracy v. State of Assam, 1995 (3) SCC 743