

## EXPANDING HORIZONS OF HUMAN RIGHTS OF PRISONERS IN INDIA THROUGH ARTICLE 21 OF THE CONSTITUTION

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### ABSTRACT

*Maneka* case has paved the way for expanding the horizons of human rights in India by evolving new dimensions of personal freedom like right to speedy trial, right to human treatment inside prison against torture, and right to live with basic human dignity. The Supreme Court has considerably widened the scope of the right to life and personal liberty (Article 21) and has held that its protection will be available for safeguarding the fundamental rights of prisoners and for effecting prison reforms.

### 1. INTRODUCTION

The Human Rights may be regarded as those fundamental and inalienable rights which are essential for life as human being. Human rights are the rights which are possessed by every human being, irrespective of his or her nationality, race, religion, sex, etc., simply because he or she is a human being. Human rights are thus those rights which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our physical, spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection. As fundamental or basic rights they are the rights which cannot, rather must not, be taken away by any legislature or any act of the government and which are often set out in a Constitution. As natural rights they are seen as belonging to men and women by their very nature.<sup>1</sup>

The Universal Declaration of Human Rights (UDHR) was adopted on 10<sup>th</sup> December, 1948. It covers two sets of rights the traditional; Civil and Political rights and the new Economic, Social and Cultural Rights. It contains 30 Articles. The Declaration includes personal freedoms from Article 1 to 20, Political Right in Article 21 and Economic, Social and Cultural Rights are included in Articles 22 to 28. The traditional

civil and political rights were enshrined as fundamental rights under our Constitution, while the economic and social rights were set forth as directive principles.

The International Covenant on Civil and Political Rights consists of 53 Articles and provides for Optional Protocol. The Articles have been divided into six parts. In part I, II and III various rights and freedoms are enumerated, the other three parts - IV, V and VI have been devoted to implementation procedures for effective realisation of those rights among with the final clauses. Many rights enshrined in the Covenant on Civil and Political Rights have been recognised specially in the Indian Constitution as 'fundamental rights' However, a number of rights which, though are not specified in Part III of the Constitution by name as fundamental rights have been regarded as fundamental by the Supreme Court by enlarging the meaning and scope of the named fundamental rights.

In *Maneka Gandhi v. Union of India* ,<sup>2</sup> it was held by Bhagwati, J. that what is necessary to be seen is, and what is the test which must be applied, whether the right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right. The expression 'personal liberty' occurring in Article 21 was given a broad and liberal interpretation in the case, and it was held that the expression 'personal liberty' used in that Article is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and it also includes rights which have been raised to the status of distinct fundamental rights and given additional protection under Article 19. *Maneka* has paved the way for development of human rights jurisprudence in India by evolving new dimensions of personal freedom like right to speedy trial, right to human treatment inside prison against torture, and right to live with basic human dignity.

In view of the global development in the sphere of human rights these judicial decisions have considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of prisoners and for effecting prison reforms. So, it has been held that the punishment, hand-cuffing, harsh labour, degrading jobs and punishments in jail without judicial approval violate the mandate of Article 21 of the Constitution.

### **HUMAN RIGHTS OF PRISONERS – LEGAL FRAMEWORK**

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". 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 provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person

## **2. HUMAN RIGHTS OF PRISONERS - ENABLING PROVISIONS**

The right to enforce the Human Rights provided in the Constitution of India is protected through enabling provisions. Article 226 of the Constitution empowers High Courts to issue directions, orders or writs in the nature of Habeas Corpus, Quo Warranto, Mandamus, Certiorari, Prohibition for the enforcement of fundamental rights as well as any other legal rights. Article 32, itself a Fundamental Right, invests the Supreme Court with the power of Judicial Review for the enforcement of fundamental rights with the power to issue directions, orders and writs as well.

It is worth mentioning that Dr. Ambedkar who in course of his speech referred to draft Article 25 corresponding to the present Article 32, in the Constituent Assembly said: <sup>3</sup>

“If I was asked to name any particular Article in the Constitution as the most important-an Article without which this Constitution would be nullity – I would not refer to any other Article except this one. It is the very soul of the Constitution and very heart of it and I am glad that the House has realized the importance”.

## **3. HUMAN RIGHTS OF PRISONERS – EXPANDING HORIZONS THROUGH ARTICLE 21 OF THE CONSTITUTION**

This right has not been expressly enumerated in the Indian Constitution but the judiciary has recognised this right in different aspects. Prisoners may be classified as detenus, undertrial prisoners and convicts. The question whether prisoners are entitled to the fundamental right to life and personal liberty came up for consideration in *State of Maharashtra v. Pandurang Sangzgiri*.<sup>4</sup> While in detention under the Defence of India Rules, the State Govt. of Maharashtra refused to send the manuscript out of the jail for publication. On rejection of his request, he filed a Writ Petition which was allowed by the Bombay High Court. The Govt. preferred an appeal contending that the Bombay Conditions of Detention Order, 1951 conferred only certain privileges on the detenu; publication of book was not one of them. Therefore, the detenu had no right to publish the book. The Supreme Court rejected the contention and held that the conditions are restrictions on the personal liberty of a detenu; not privileges conferred on him. Subject to the conditions contained in the Order, the liberty remains unaffected. There was no condition in the 1951 order

prohibiting a detenu from writing a book or sending it for publication. The State of Maharashtra infringed the personal liberty of the detenu. The Court observed that if the argument of the State Govt. were to be accepted, it would mean that the detenu could be starved to death if there was no condition of providing food to the detenu.

The case of *D. Bhauvan Mohan Patnaik v. State of A.P.*<sup>5</sup> raised a lively issue. The petitioners were naxalite prisoners undergoing sentences in the Central Jail at Visakhapatnam. Live wire mechanism was installed on the top of the compound wall of the jail in order to prevent any attempt on the part of the prisoners to escape by scaling the walls. The live wire was fixed at a height of 14' from ground level. It had no direct contact with the wall and no possibility of leakage of current through the wall. The prison walls themselves were situated at a distance of 20 feet from the cells where the prisoners were lodged. All prisoners were warned of the existence of the live wire. In a petition filed in the Supreme Court they contended that under Section 224 IPC if a prisoner escaped, the maximum sentence of imprisonment that could be awarded was two years whereas a prisoner lodged in the jail who attempted to escape by scaling the wall is subjected to the penalty of instantaneous death without any trial and without observing any procedure established by law. After giving serious thought to the contention, the Court held that whatever be the nature and extent of the prisoners' fundamental right to life and personal liberty, they have no fundamental freedom to escape from lawful custody. Therefore, they cannot complain of the installation of a live wire mechanism. Incidentally, the Court declared that convicts are not by mere reason of conviction, deprived of all the fundamental rights which they otherwise possessed including protection of life and liberty guaranteed by Article 21. After the *Maneka's decision* wherein it was held that the personal liberty of a person cannot be curtailed except according to just, fair and reasonable procedure. Many decisions of the Apex Court have led to the evolution of the various human rights of the prisoners which are being discussed below.

#### **(a) Right to free Legal Aid**

The Indian Constitution does not expressly provide the Right to Legal Aid. But the judiciary has shown its favour towards poor prisoners those who are not in a position to engage the lawyers of their own choice because of their poverty. It was held by the Supreme Court in *M.H. Hoskot v. State of Maharashtra*,<sup>6</sup> that the right to free legal service is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and is implicit in Article 21 of the Constitution. The Court held that where an accused person is unable to engage a lawyer and secure

legal services on account of reasons such as indigence or incommunicado situation is free legal assistance should be made available to him, provided the accused does not object to the provision of such lawyer. The Court took note of Articles 39-A and considered it as an interpretive tool for Article 21. A three Judges Bench comprising V.R.Krishna Iyer, J D.A.Desai, J and O. Chinnappa Reddy, J of the Apex Court reading Articles 21 and 39-A, along with Article 142 and Section 304 of Cr.PC together declared that the Government is under duty to provide legal services to the accused persons.

However the Constitution 42nd Amendment Act, 1976 has inserted Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution. This is the most important provision which speaks of Free Legal Aid. Though, this Article finds place in Part-IV of the Constitution as one of the Directive Principles and though this Article is not enforceable by courts, the principle laid down therein is 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 may 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 39A. 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.

### **(b) Right to Speedy Trial**

The right to speedy trial has become a universally recognized human right. Article 9 (3) of the Covenant on Civil and Political Rights provides that anyone arrested or detained on a criminal charge shall be brought promptly before a judge ...and shall be entitled to trial within a reasonable time or to release. The main procedure for investigation and trial of an offence with regard to speedy trial is contained in Section 309 of the Code of Criminal Procedure. If such provision is followed in its letter and spirit, then there would be no question of any grievance. But it is not properly implemented in its spirit.

In *Husainara Khatoon (No.1) v. Home Secretary, State of Bihar*,<sup>7</sup> the Apex Court took a serious note of the situation and observed that it was a crying scheme on the judicial system which incarceration of men and women for such long periods of time without

trial. These persons were denied human rights and were languishing in jails for year offences, which perhaps they might ultimately be, found not to have committed. The court observed, “ 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.” *In A.R.Antulay v. R.S.Nayak*,<sup>8</sup> the Supreme Court has laid down following propositions which will go a long way to protect the Human Rights of the prisoners. 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. Further in *Anil Rai v. State of Bihar*<sup>9</sup> Supreme Court took a serious note of delay in delivery of judgements. The court observed that any inordinate, unexplained and negligent delay in pronouncing the judgement by the high court infringed the right under Article 21 of the Constitution.

### **(c) Right against Bar – Fetters**

In *Sunil Batra (I) v. Delhi Administration*,<sup>10</sup> a Constitution bench of the Supreme Court was called upon to decide whether it was constitutionally permissible to put a prisoner in bar-fetters. In this case one Charles Sobhraj had been put in such fetters since July 1976 to February 1978. A prisoner in whose case, it is considered advisable to apply such fetters, was kept in cellular confinement. Its sole purpose was to disable the prisoner, while he was in such fetters, from walking as freely as others could and thus making it impossible for him to run away from the prison. This, the Court found, considerably curtailed the locomotion of the prisoner and thus his personal liberty.

The Court held that S. 56 was constitutionally valid, but after interpreting it in the manner that it can no more be possible to use it recklessly and in a brutal manner. The Court held that even though our Constitution did not have any express provision prohibiting cruel and unusual punishment, still it did not have any express provision prohibiting cruel and unusual punishment, still it did not permit treatment of a human being in a manner that offended human dignity, imposed avoidable torture on him and reduced him to the level of a beast. Such treatment could also be called arbitrary under Article 14. The Court held that putting a prisoner in bar-fetters day and night for an unusually long period without due regard to his health and safety was not permissible under S.56 and that too when he was confined to secure cells from where the escape was somewhat inconceivable. In the opinion of the Court when a prisoner was put in bar-fetters his case had to be reviewed at regular and frequent intervals to ascertain whether the fetters could be removed consistently with requirement of safety.

In *Harbans Singh v. State of U.P.*,<sup>11</sup> a three judge bench of the Supreme Court directed that bar fetters be removed from certain under trial prisoners in central jail, Bareilly. As far as security problem was concerned, the Court suggested that the same could be met by posting armed guards. But if they are taken out of jail for any purpose, it was open to jail authorities to take extra security precaution if they thought it necessary. In *Kishore Singh v. State of Rajasthan*,<sup>12</sup> the Court speaking through Krishna Iyer J., frowned upon the jail authorities and expressed its displeasure and disappointment that contrary to what has been held in *Sunil Batra case* cross-bar fetters had been put on the prisoner for as many as 30 days. The Court directed that fettering of the prisoners could be resorted to only in extreme cases either for security of other prisoners or with a view to prevent escape. It was stated that human dignity is a dear value of our constitution not be bartered away for mere apprehensions entertained by jail officials.

#### **(d) Right against Handcuffing**

In *Sunil Batra case* the Apex Court had laboured very hard to bring to limelight the Constitution framework within which iron fetters can be put on a prisoner. Much of what has been stated in this case was put in to service in *Prem Shankar Shukla v. Delhi Administration*,<sup>13</sup> wherein the court was seized with the grim scenario triggered off by a telegram from one Shukla, a prisoner lodged in Tihar Jail, complaining about handcuffs being forced on him in spite of the order and direction in *Sunil Batra's case*. Though the case dealt with handcuffing of the prisoners, much of what has been stated is of relevance also to handcuffing of the accused outside the jail or of under trial prisoner while being taken to court, Krishna Iyer J., speaking for the bench observed, "Handcuffing 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."

The Court thereafter applied its mind as to when handcuffing of prisoners or under-trials can be allowed. The obvious justification for the practice has been the apprehension that otherwise the prisoner would try to escape. The Court could not ignore this consideration as totally, flimsy; but the demands of security had to be compromised with the prisoner's claim to the protection of his person and dignity from barbarity and unnecessary insult and humiliation. This was necessary because the handcuff law must stand the test of Articles 14, 19 and 21. The result was that the interest of security must be compelling. In other words, there must be clear and present danger of escape and there must not be available any alternative mode of achieving the same result. In special case, the application of 'iron' was not ruled out



but for that, the escorting authority must record reasons and the same has to be scrutinised by the Judge to whom the prisoner was being taken.

In *Aettemish Rein v. Union of India*,<sup>14</sup> it was brought to the notice of the Supreme Court that an advocate was handcuffed in Delhi contrary to what has been decided in *Prem Shankar Shukla case*. The Attorney General conceded that the Government of India has defaulted in as much as it has failed to issue necessary instructions to the State Government. and Union Territories on the lines envisaged in the Supreme Court decision. The Court directed that the Govt. must do it within a period of three months.

In *Sunil Gupta v. State of M.P.*,<sup>15</sup> the Supreme Court was again confronted with a case where the police have handcuffed prisoners who were social workers and had voluntarily surrendered themselves because they were fighting for a public cause. As such there was no question of their escape from custody, the Court directed the state Government. of Madhya Pradesh to take necessary action against the erring escort party. However, the Court did not award any compensation and instead advised them to go to an ordinary Court if they so felt.

In *State of Maharashtra v. Ravi Kant S. Patil*,<sup>16</sup> the facts were that the respondent was paraded in handcuff and the Bombay High Court had ordered the erring Inspector of Police to pay Rs.10,000 to the respondent as compensation and had directed the state Government. to make an adverse entry in his service record. On appeal to the Supreme Court the order was modified to the extent that the payment was to be made by the state Government. of Maharashtra and not the Inspector personally.

In *Citizen for Democracy v. State of Assam*,<sup>17</sup> the Supreme Court received a letter from Mr. Kuldip Nayar, an eminent journalist and President of Citizens for Democracy, stating that he found to his horror in the Government Hospital, Guwahati, seven TADA detenus put in one room, handcuffed to their bed despite the fact that the room in which they were locked had bars and was locked. Outside a posse of policemen stood with guns on their shoulders. He was told by the detenus that they had to pay for their medicine from their own pockets. He approached the Court to intervene in the matter. The court treated the letter as Writ Petition on behalf of the detenus and called upon the State of Assam to reply. The State pleaded that the detenus were hardcore ULFA activists and earlier as many as fifty one detenus had escaped from the custody including eleven terrorists from different hospitals and seven of them had escaped from Guwahati Medical College Hospital.



Relying on the law declared in *Prem Shanker Shukjla* the Court held that the detenus cannot be in a worse condition while in hospital under treatment as patients as compared to the jail, because while in Jail, they were not handcuffed. The handcuffing and in addition tying the patients-prisoners with ropes when lodged in the hospital is inhuman and in utter violation of the human rights guaranteed under the International law and the law of the land. The Court observed that in order to safeguard against any attempt to escape extra armed guards can be deployed around the ward of the hospital where the detenus are lodged. The Court issued a general direction that such handcuffing should be resorted to only with the permission of the Magistrate concerned granted after being satisfied that a particular prisoner is likely to jump jail or break out of the custody.

### **(e) Solitary Confinement**

In *Sunil Batra (I) v. Delhi Administration*,<sup>18</sup> the question raised before the Supreme Court was whether the 'Solitary confinement' imposed upon the prisoners was violative of Articles 14,19 and 21 of the Constitution. The petitioner had been sentenced to death by the District and Sessions Judge and his sentence was subject to the confirmation by the High Court and to a possible appeal to the Supreme Court. Since his conviction by the sessions judge, the jailer had put the petitioner in a separate segregated cell, acting under S. 30(2)<sup>19</sup> of the Prisons Act.

The complaint of the petitioner was that he had been put under virtual solitary confinement and that if the same was the result of S. 30(2) it must be declared unconstitutional for violation of Art. 14, 19 and 21. The stress was on the dehumanising nature and effect of solitary confinement. On the other hand, the respondents argued that petitioner had been only segregated from the other prisoners for security reasons and S. 30 (2) be upheld.

The Court upheld the validity of S. 30(2) by holding that it did not contemplate solitary confinement. The Court adverted to Ss. 73 and 74 of the Indian Penal Code to define the scope of S. 30(2) of the Prisons Act. It observed that S.30 (2) did not empower prison authorities to impose the punishment of solitary confinement because under Ss. 73 and 74 of I.P.C., it is a substantive punishment, which can only be imposed by a Court of law. S. 30(2) provided only for some kind of segregation. The person under sentence of death may be kept separately under day and night watch but he should not be completely segregated from rest of the prisoners. He should not be away from their sound and sight and should be allowed to have his meals with them.

The question of solitary confinement came up again for the consideration of the Supreme Court in *Kishore Singh v. State of Rajasthan*,<sup>20</sup> in which it was complained that the superintendent of prison had put certain prisoners in solitary confinement under the guise of keeping them in separate cells. However, on the assurance of the counsel for the respondent state that such infractions of law of land as interpreted in *Sunil Batra* would not be repeated, the Court left the matter there with the warning that violation of Article 21, if repeated, would be visited with more serious consequences.

#### **(f) Right against Custodial violence**

In *Sheela Barse v. State of Maharashtra*,<sup>21</sup> the Supreme Court took a serious note of violence committed on women prisoners confined in the police lockup in the city of Bombay. The court emphasized on the importance of legal assistance to a poor or indigent accused who was arrested and put in jeopardy of his life or personal liberty.

Highlighting the need for setting up a machinery for providing legal assistance to prisoners in jails, the court directed the inspector general of Prisons, Maharashtra to issue a circular to all superintendents of police in the state requiring them to provide facilities and information to the legal aid committees, so as to render legal assistance to the under-trial prisoners.

In *Jogindar Kumar v. State of U.P.*<sup>22</sup> the Supreme Court has laid down guidelines governing arrest of a person during investigation. This has been done with a view to strike a balance between the needs of Police on the one hand and the protection of human rights of citizens from oppression and injustice at the hands of law enforcing agencies.

The court laid down the following guidelines:

- (1) 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 have an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.
- (2) Police officer shall inform the arrested person when he is brought to the police station of this right.
- (3) An entry shall be required to be made in the diary as to who was informed of the arrest.

In a landmark judgment in *D.K Basu v. State of W.B.*,<sup>23</sup> the Supreme Court has laid down detailed guidelines to be followed by the Central and State investigating and

security agencies in all cases of arrest and detention. The matter was brought before the Court by Dr. D.K Basu, Executive Chairman of the Legal Aid Services, a non-political organization, West Bengal through a public interest litigation. He addressed a letter to the Chief Justice drawing his attention to certain news items published in *Statesman* and *Indian Express* regarding deaths in police lock ups and custody. This letter was treated as a writ petition by the Court

The Court Observed that Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of Law. Dr. Justice Anand who delivered the said Judgment on behalf of the Court held that, any form of torture or cruel, inhuman or degrading treatment; would fall within the inhibitions of Article 21 of the Constitution whether it occurs during investigation, interrogation or otherwise.

The Court held that the precious right guaranteed under Art. 21 of the Constitution could not be denied to convicts, under trials, determinings and other prisoners in custody, except according to the procedure established by law. Following guidelines have been laid down by the Court to be followed in all cases of arrest or detention till legislative measures are taken.

- (1) The police personnel carrying out the arrest and handling to interrogation of the arrest should bear accurate, visible and clear identification and name-tags with their designation. The particulars of all such police personnel who handle the interrogation of the arrestee must be recorded in a register.
- (2) The police officer carrying out arrest of a person shall prepare a memo of arrest at the time of arrest and such memo must be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made.
- (3) A person who has been arrested or detained shall be entitled to have one friend or relative or other person known to him or having interest in his welfare informed as early as possible.
- (4) 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 the legal aid organization in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (5) 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.

- (6) 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 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.
- (7) 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 or her body, must be recorded at that time. The “inspection memo” must be signed both by the arrestee and the police officer arresting the arrest and its copy provided to the arrestee.
- (8) The persons should be subjected to medical examination by a trained doctor within 48 hours during his detention or by a doctor on panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. The Director, Health Services, shall prepare such a panel for all *tehsils* and districts as well.
- (9) Copies of all the documents including the memo of arrest should be sent to the area Magistrate for his record.
- (10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- (11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and it should be displayed conspicuously on the notice-board of the police control room.

The Court made it clear that failure to comply with the guidelines should, apart from rendering the official concerned liable for departmental action, also render him liable to contempt of the Court and the proceedings for contempt may be instituted in any High Court of the country, having territorial jurisdiction over the matter. The requirements referred to above flow from Arts. 21 and 22 (1) of the Constitution and need to be strictly followed.

In *Dilip K. Basu v. State of West Bengal*,<sup>24</sup> the Supreme Court issued directions calling upon the D.G.P. and the Home Secretary of every state, to report to the court compliance of the said requirements issued in the earlier D.K. Basu case, and the

steps taken by the All India Radio and the National Network of Doordarshan for broadcasting the requirements.

In *Afzal v. State of Haryana*,<sup>25</sup> the Supreme Court condemned the illegal detention and confinement in police custody of innocent children belonging to the family of the accused on condition that they would be released only on surrender of the accused. The court held this needless harassment of the innocent people for detecting the crimes as violative of Article 21.

### **(g) Right against Public hanging**

In *Attorney General of India v. Lachma Devi and others* <sup>26</sup>, the court declared that the execution of death sentence by public hanging would be a barbaric practice, clearly violative of Article 21 of the Constitution. Very rarely the Attorney General moves the court suo motu challenging the judgment of a High Court. In this case the Rajasthan High Court has directed execution of death sentence by public hanging at the stadium ground of Ramleela ground of Jaipur after giving widespread publicity through the media of the date, time and place of such execution. However, by subsequent order the court directed that the execution of the death sentence should be carried out in terms of the procedure provided in the rules mentioned in the jail manual only, unless by that time any amendment was made in the rules. The Jail Manual did not contain any provision permitting public hanging.

### **(h) 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 *T.V. Vatheeswaran v. State of Tamil Nadu*,<sup>27</sup> the appellant was sentenced to death, but his death sentence was not executed for eight years. He contended that to take away his life after keeping him in jail for ten years, eight of which in illegal solitary confinement, would be gross violation of the fundamental right guaranteed by Article 21. The Supreme Court accepted the contention of the appellant and held that the only way to undo the wrong done to him would be to quash the sentence of death. The rule laid down in *Vatheeswaran*, case was approved by the three judge bench of this Court in *Sher Singh v. State of Punjab*.<sup>28</sup> However, it was held that the Court would examine the delay caused and circumstances ensured after the sentence was finally confirmed.

Again, in *Triveni Ben v. State of Gujarat*,<sup>29</sup> the question was considered by a Constitution Bench of the Supreme Court. The Court held that undue long delay in

execution of the sentence of death would entitle the condemned person to approach the Supreme Court under Article 32 but the Court would only examine the nature of delay caused and circumstances ensued after the sentence was finally confirmed by the judicial process. The Court laid down that the delay which could be considered, could only be from the date on which the judgment was pronounced i.e. when the judicial process had come to an end. The only delay, which would be material for consideration, therefore, would be the delay in disposal of the mercy petitions or delay occurring at the instance of the Executive.

The Supreme Court has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of prisoners and for effecting prison reforms. Convicts are also human beings and until they are hanged they are entitled to live in jail as human beings and not as slave. Inhuman and barbarous treatment with prisoners is a constitutional prohibition. Thus the right to life and personal liberty (Article 21) came to comprehend, right to human dignity, right to livelihood, right to speedy trial, right to bail, right to human treatment in prison, right to compensation for torture in custody, and right to legal aid etc.<sup>30</sup>

### **CONCLUDING REMARKS**

In our discussion, we have found that the Supreme Court has expanded the horizons of prisoner's liberty by evolving the concept of prison jurisprudence. It has been held that the punishment, hand-cuffing, harsh labour, degrading jobs and punishments in jail without judicial approval violate the mandate of Article 21 of the Constitution. India still runs with century old legislation for prison administration. Prisons Act is only concerned about the classification and segregation of prisoners by their nature and status of imprisonment. It failed to incorporate many of the principles laid down by the judiciary into its premises as well as recommended by the human rights law. Prisons Act also attempt to cast the responsibility of prison administration over the state. The judiciary has began its crusade for the development of prison jurisprudence in India. The survey of judicial pronouncements reveals that courts are not silent spectators, rather the judiciary has been showing a deep concern to protect and safeguard the prisoner's rights despite the deficiencies in the existing enactments, with a view to provide justice to them.

### **NOTES AND REFERENCES**

1. Fawcett J.E.S, *The Law of Nations* (1966) 151.

2. AIR 1978 SC 597.
  3. Constituent Assembly Debates , Vol 7, p 952.
  4. AIR 1966 SC 424.
  - 5 AIR 1974 SC 2092.
  6. AIR 1978 SC 1548.
  7. AIR 1976 SC 1360.
  8. AIR 1992 SC 1701.
  9. JT 2001 (6) SC 515.
  10. AIR 1978 SC 1675.
  11. AIR 1991 SC 531.
  12. AIR 1981 SC 625.
  13. AIR 1980 SC 1535.
  14. AIR 1988 SC 1768.
  15. (1990) 3 SCC 1119.
  16. (1991) 2 SCC 373.
  17. AIR 1996 SC 2193
  18. AIR 1978 SC 1675.
  19. S.30 reads :(1) Every prisoners under sentence of death shall immediately on his arrival in the prison after sentence, be searched by or by order of, the and all articles shall be taken from him which, the jailer deems it dangerous or inexpedient to leave in his possession.  
(2) Every such prisoner shall be confined in a cell apart from all other prisoners and shall be placed by day and night under the charge of a guard.
  20. AIR 1981 SC 625.
  21. AIR 1983 SC 378.
  22. AIR 1994 SC 1349.
  23. AIR 1997 SC 610.
  24. AIR 1997 SC 3017.
  25. AIR 1996 SC 2326.
  26. AIR 1986 SC 467.
  27. AIR 1983 SC 361.
  28. AIR 1983 SC 465.
  29. AIR 1989 SC 1335.
  30. See N.R. Madhav Menon, "The Dawn of Human Rights Jurisprudence", 1 SSC (J) 9 (1987).
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