

**Human Rights of Undertrial Prisoners with Special Reference to
Woman Undertrial Prisoners**

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Abstract

A human may be under conviction or prison still he /she possesses some basic human right for surviving a dignified life. In that article a constitutional right of prisoners was shown along with the interpretation of proper case studies for the justification of the law. And also specify about the importance of international mandate relating to women prisoners. Also the implication of 7th schedule of the Indian Constitution thereof.

INTRODUCTION

Law of the land was evolved through various sociological principles, digest and commentaries moreover precedent and legislation. A person who committed crime had to undergo the penance. He was also required to undergo punishment.

According to Manu, the danda alone governs all protected beings, alone protects them, watches over them while they sleep, the wise they declare it (to be identified with) the law. Kautilya uses the word for administration of justice and he uses the word danda; for science of Government. The human rights are said to be the natural and basic birth rights of all human beings without any discrimination.

All human beings are entitled to some basic rights by virtue of being as a member of natural family. Everyone is equally liable for all these basic and inalienable, natural or birth rights of human. Human rights are also available to person under detention including convicted or under trial prisoners. Prison systems are primarily designed and run by men for the incarceration of men. In every country of the world, women are a small minority of those incarcerated. As a result they find themselves held in facilities and under conditions that, at best, have been poorly adapted for the male model or at worst, are the same as those for men. Although women remain a small percentage of the total number in prison but their numbers are increasing day by day.

Other than basic human needs right to life also enables a person to avail the guarantees of protection in cases of criminal justice administration. The right to life also includes the right to justice which includes fair trial. The focus of interesting penology is the individual and the goal is salvaging him for society (Sirohi, 2004). This study relates to the rights related to the women convicts, under trials and offenders in the aspect of right to life.

CONSTITUTIONAL RIGHTS FOR THE PRISONERS IN INDIA

Part III and **Part IV** of the Indian Constitution enumerated various principles of human rights specified under International Bills of rights. **Article 14** of Indian Constitution provides equality before law and equal protection of laws, it states that; State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

Article 19 provides for protection of all freedoms like to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of territory of India, to practice any profession or to carry any occupation trade or business.

Article 20 provides for protection in respect of conviction for offences (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (2) No person shall be prosecuted and punished for the same offence more than once. (3) No person accused of any offence shall be compelled to be a witness against himself.

Article 21 protects right to life with personal liberty except according to procedure established by Article 22 provides (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be detained the right to consult and to be defended by a, legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for a journey from the place of

arrest to the court of the magistrate and no such person shall be detained in custody beyond said period without the authority of a magistrate.

Seventh schedule of Indian Constitution also states about **Article 246** and in second list i.e. State list Entry No 4 provides for law making power of State Government on the matter of prisons.

The Supreme Court carried the ratio of habeas corpus case (**ADM JABALPUR v. SRIKANT SUKLA**) that Article 21 is the sole repository of life and liberty and during the emergency when liberty is suspended, due to presidential proclamation suspending Article 21.

INTERNATIONAL MANDATE RELATING TO CUSTODIAL RIGHT OF WOMEN

Women prisoners are found to suffer from variety of health hazard in the custodial environment. A recent study on women prisoners in the UK reported that imprisonment impacted their health negatively. The initial shock of imprisonment, separation from families and serious mental problems affect their own mental health.

According to **Amnesty International on woman in prison** women are denied essential medical resources and treatments especially during pregnancy.

Article 46 Clause 3 says about institutional services, it states that, to secure foregoing ends personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women, employment benefits and condition of service shall be favorable in view of the nature of the work. (**THE UNITED NATIONS RULES FOR THE TREATMENT OF WOMAN PRISONERS**)

RIGHTS OF UNDERTRIAL PRISONERS IN INDIA

1. RIGHT TO SPEEDY TRIAL

In **Hussainara Khatoon (II) v. Home Secretary, State of Bihar**, the Court while dealing with the cases of under trials who had suffering from the long time held that a procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of Article 21.

2. No handcuffing

In the absence of justifying circumstances an arrested person or under trial prisoners should not be subjected to handcuffing. In **Perm Shankar Sukla v Delhi Administration**, held that when the accused are found to be educated, selflessly devoting their work to public good on bail able to offer offence there is no reason for handcuffing while taking them to the Court.

3. Right to legal Aid

In **Madhav Hayawadan Rao Hosket v. State of Maharashtra**, Three Judge Bench comprising of Justice V.R Krishna Ayer, Justice D.A Desai and Justice O.Chinnappa Reddy while reading Articles 21 and 39-A, Section 142 and Section 304 of IPC declared that the Government was under duty to provide legal services for the accused persons.

4. RIGHTS AGAINST INHUMAN TREATMENT OF PRISONERS

Article 21 provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. And human rights is a part and parcel of dignified life. So that the expression of personal life include guarantee against torture and assault by the State or its functionaries.

IN THE CASE OF A.K GOPALAN V. UNION OF INDIA¹

In that case the petitioner A.K Gopalan, a communist leader was detained under the Preventive Detention Act, 1950. He was challenged that the validity of his detention under the Act on the ground, that it was violative of his right to freedom of movement under Article 19(1)(d) which is the very essence of personal liberty guaranteed by Article 21 Of the Indian Constitution.

5. RIGHT TO BE INFORMED AND TO MEET FAMILY MEMBERS AND FRIENDS

IN THE CASE OF SUNIL BATRA (II) v. DELHI ADMINISTRATION

Where the Supreme Court recognized that the right of the prisoners to be visited by their friends and relatives. The Court favoured their visits but subject to search and discipline and other security criteria. Visit to prisoners by family and friends are solace in insolation, and only a dehumanized system can derive vicarious delight in depriving prison inmates of this humane amenity. These rights are inherent in Articles 21 and 22(1) of the Constitution and require be recognizing and protecting.

6. RIGHT TO BE INTERVIEWED WITH LAWYERS

IN THE CASE OF HUSSAINARA KHATOON v. HOME SECRETARY, BIHAR

Honourable Supreme Court states 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 and 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 contradict Article 21.

7. NARCO ANALYSIS OR BRAIN MAPPING

In the emerging development of science and technology Narco analysis, polygraph test and brain mapping found to be most wanted tools for investigating agencies. But unfortunately the process was termed as breach of right to privacy of a prudent man. Such test was previously conducted many a times in Arushi murder Case, Abu Salem case, Pragya Thakur case etc.

In the case of SELVI AND ORS v. STATE OF KARNATAKA³

Supreme Court judgment holding the use of narco analysis brain mapping and polygraph test on accused, suspects and witnesses without their consent, unconstitutional, and violation of the right to privacy.

Conclusion

Separate woman prisons are essential to keep the women prisoners². Women prisoners being womanseparate prison is required according to their necessities. The increasing number of under trial prisoners also must be reduced to decrease the burden of judiciary. Moreover the reformatory ideology must be implemented accordingly so that after releasing from the jail a person must not suffer from social negligence and successfully can exercise right to profession and run his or her family.

1. AIR 1950 SC 27

2. International Journal of law and Jurisprudence studies: ISSN:2348-8212 volume2 Issue3.

3. Criminal Appeal No 1267 of 2004.