

HUMAN RIGHTS OF PRISONERS IN INDIA

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Abstract

The Constitution of India guarantees equality, provides right to freedom of speech and expression, peaceful assembly, freedom from arbitrary arrest, protection of life and liberty right against exploitation, freedom of conscience and free profession, practice and propagation of religion and educational and cultural rights. It also provides teeth to those rights by making them enforceable by direct access to the Supreme Court of India. In the comprehension of the Supreme Court the right to life and liberty includes, right to human dignity, right to privacy, right to speedy trial, right to free legal aid, right to be prisoner to be treated with dignity and humanity, right to bail, right to compensate for custodial death, right of workers to fair wage and human conditions of work, right to security, right to education and right to health environment. The Supreme Court of India interpreted Art 21 of the Constitution and shows much interest on prison reforms. The Supreme Court all the time balanced the reformatory theory and retributive theory of punishment, i.e., the Apex Court maintaining the severity of punishment wherever necessary and considering the gravity of crime and circumstances when in it is committed. The penological approach of the Indian Judiciary itself inhumane. Prison jurisprudence since the late „60s recognizes that prisoners do not lose all their rights because of imprisonment. But loss of rights within custodial institutions continued.

Keywords

Human Rights, Offenders, Prisoners, Violence

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I. INTRODUCTION

The freedom fighters even before India became an independent Nation came into being have expressed their willingness to join attempts towards establishing peace and harmony all over the world ensuring basic Human Rights to all human society¹. The constitution of India instituted equality, provides right to freedom of speech and expression, peaceful assembly, freedom from arbitrary arrest, protection of life and liberty right against exploitation, freedom of conscience and free profession, practice and propagation of religion and educational and cultural rights. It also provided teeth to those rights by making them enforceable by direct access to the Supreme Court of India². In the comprehension of the Supreme Court the right to life and liberty includes, right to human dignity, right to privacy, right to speedy trial, right to free legal aid, right to be prisoner to be treated with dignity and humanity, right to bail, right to compensate for custodial death, right of workers to fair wage and human conditions of work, right to security, right to education and right to health environment³. The Supreme Court of India interpreted Art 21 of the Constitution and shows much interest on prison reforms. The Supreme Court all the time balanced the reformatory theory and retributive theory of punishment, i.e., the Apex

¹ A.P.Singh, Human Rights: The Indian Context, AIR 2000(Journal Section 8)

² C.R.Parthasaradhi, Civil Liberties and Human Rights: A Challenging Issue,28 (1999)

³ Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publications (p). Ltd.,2008

Court maintaining the severity of punishment wherever necessary and considering the gravity of crime and circumstances in which it is committed. The penological approach of the Indian Judiciary itself inhumane.

II. CONSTITUTIONAL AND JUDICIAL APPROACH

Gradually when the judiciary interfered change came where in prisoners were also treated as human beings⁴. The origin of the prisoner rights in India, the embryo one can find in the celebrated decision of **A.K. Gopalan v. State of Madras**⁵. One of the main contentions raised by the petitioner was that the phrase procedure established by law as contained in Article 21 of the Constitution includes a fair and reasonable procedure and not a mere semblance of procedure prescribed by the State for the deprivation of life or personal liberty of individuals. The majority view in Gopalan's was that a person is totally deprived of his personal liberty under a procedure established by law, the fundamental rights including the right to freedom of movement are not available. In **D.B.M. Patnaik v. State of Andhra Pradesh**⁶, the Supreme Court said, A convict has no right, more than anyone else, to dictate, where guard to be posted to prevent the escape of prisoners. The installation of live wire mechanism does not offend their right. It is a preventive measure intended to act as a deterrent and

⁴ A.Sirajudeen, Law and practice of Rights of Prisoners, Associated Book Company, 2008, p. 857

⁵ A.I.R. 1950 S.C. 27.

⁶ A.I.R. 1974 , S.C. 2093

cause death only a prisoner causes death by scaling the wall while attempting to escape from lawful custody. The installation of live wire does not by itself cause the death of the prisoner⁷. The Supreme Court held that taking preventive measures like installation of live wire, for the protection of prisoners under Art 21 of the Constitution, deals with life and personal liberty is not violative of their rights. The Court had to consider the relationship of Articles 19 and 21 with the prisoner rights in *Karak Singh v. State of U.P.*⁸; the petitioner challenged the constitutional validity of regulation 236 of the U.P. Police Regulations. According to *Subba Rao, J.* who dissented in *Karak Singh*, it is not correct to say that the expression personal liberty in Article 21 excludes the attributes of freedom specified in Article 19 of the Constitution. According to *Justice N. Raja Gopala Ayyangar* held that, (1). Secret picketing of house does not violate Art 21. (2) The meaning life and personal liberty as lay down by the majority of the Supreme Court judges in *A.K.Gopalan* case and (3). The right to privacy was not guaranteed under article 21 of the constitution⁹. However, they found that domiciliary visits to the houses of suspects violate article 21 in as much as adversely

affect the personal liberty of the persons concerned¹⁰.

The Supreme Court in *Charles Shobraj v. Superintendent, Central Jail, Tihar*¹¹ analyzed in detail the extent of judicial interference. The Supreme Court not only reiterated the power of courts to issue writs but also highlighted their duty and authority to see that the judicial warrant was not misused. The prisoners should get the protection of the fundamental rights guaranteed to the citizens under the Indian Constitution against any arbitrary and discriminatory treatment by the prison authorities. In *Charles Shobraj case*, the Supreme Court held that the prison authorities are justified in classifying between dangerous prisoners and ordinary' prisoners. While dismissing the petition the court held that in the present case the petitioner is not under solitary confinement. A distinction between under trial and convict is reasonable and the petitioner is now a convict. The lazy relaxation on security is a profession risk inside the prison. The Supreme Court discussed the relation between Art 19 and 21 of the constitution. The court condemned the inhuman treatment of prisoners in prisons and the constitutional provisions and municipal laws should be interpreted for the protection of prisoner rights.

⁷ Dr. Gurbax Singh, Law Relating to Protection of Human Rights and Human values, Vinod Publications (P).Ltd, Delhi

⁸ A.I.R, 1963 S.C. 1295.

⁹ *Karak Singh Vs State of U.P* AIR 1963 SC 1295

¹⁰ Dr.G.B.Reddy, Judicial Activism in India., Gogia Law Agency, 2nd Edition, 2013, P.158

¹¹ A.I.R. 1978 S.C. 1594. For a critical comment of this case see G.Sadasivan Nair; "Prison Justice and the Court", [1978] CULR 336

In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*¹², The right to Life protected under Article 21 is not confined merely to the right of physical existence but it also includes within its broad matrix the right to the use of every faculty or limb through life is enjoyed as also the right to live with basic human dignity. The supreme court held that the detent's right to have interview with his lawyer and family members is part of his personal liberty guaranteed by Art 21 of the constitution and cannot be interfered with expect in accordance with reasonable, fair and just procedure established by law¹³. This case is regarding the validity of provisions of COFEPOSA to meet prisoner's lawyer and family members, the Supreme Court said that, the consulting a lawyer and family members comes under personal liberty of Art 21 of the constitution. The about prisoner rights was created among the people by a number of decisions. But no substantial reform has been made by the Central Government or the State Governments except the appointment of some Prison Reforms Committees¹⁴. In spite of this the Supreme Court had taken initiative in order to humanize jail administration to some extent. The *two Sunil Batra's cases* are significant decisions in

¹² A.I.R., 1981 SC 746,

¹³ Dr. Gurbax Singh, Law Relating to Protection of Human Rights and Human values, Vinod Publications (P).Ltd, Delhi, p. 113

¹⁴ In 1980 the Government of India appointed Mulla Committee cni Jail Reforms. Justice A.N.MulLa was the Chairman of the Committee. Ismail Committee was appointed in Tamil Nadu.

this direction¹⁵. The Supreme Court has directed that the treatment of prisoners must be commensurate with his sentence and satisfy the tests of Articles 14, 19 and 21 of the Constitution. It expanded the scope of the writ of habeas corpus by recognizing the right of a prisoner to invoke the writ against prison excesses inflicted on him or on a co-prisoner. Further, the court gave many directions to improve the prison administration. The Supreme Court has ruled that lawyers nominated by the district Magistrates, session's judges, High Courts and the supreme courts will be given all facilities for interviews. The jail visits and confidential communications with prisoners, subject to discipline and other security considerations¹⁶. In the Supreme Court recognized treatment of prisoners and relate to the provisions of the constitution under Art 14, 19 and 21. The court has given directions to the prison authorities to treat the prisoners with human dignity and judiciary was interfered with the prison administration for the protection of prisoner rights.

The important question in *M.H.Hosket v. State of Maharashtra*¹⁷ was whether the right of appeal is an integral part of the fair procedure as envisaged in Article 21 of the Constitution. In Hoskot a Reader in the Saurashtra University was convicted for offences of attempting to issue counterfeit

¹⁵ Sunji_Batra (I) Vs Delhi Administration, A.I.R. 1978 S.C. 1617

¹⁶ Sunil Batra Vs Delhi Administration, A.I.R. 1980 SC 1579

¹⁷ A.I.R. 1978 S.C. 1548.

University degrees. The session's court sentenced the person till rising of the court. High Court found fine sentence too lenient and awarded 3 years rigorous imprisonment. Against this heavy sentence the accused approached the Supreme Court by special leave. The High Court judgment was pronounced in 1973 and the special leave petition was filed only after four years. The petitioner has undergone his full term of imprisonment during this period. A thorough probe by the Supreme Court has revealed that a free copy of the judgment has been sent promptly by the High Court, meant for the applicant, that the Superintendent, Yervada Central Prison, Pune¹⁸. The petitioner contented that he did not get the copy. There was nothing on record bears his signature in taken of receipt of the High Court's judgment. The Court did not allow the special leave petition. The Supreme Court indiscriminately criticized the Sessions Court judgment awarding a nominal punishment to the prisoner under the corrective aspect of the punishment¹⁹. The Court held that the state having responsibility to provide free legal aid and to issue of judgment to the prisoners as the rights are guaranteed under Art. 39A and Art. 21 of the Constitution.

¹⁸ Criminal Procedure Code 1973, Section 363 provides for furnishing a free copy of the judgment to the accused.

¹⁹ A.I.R. 1978 S.C. 1548 per Krishna Iyer, J. at p. 1552.

*In Hussainara Khatoon v. Home. Secretary, State of Bihar*²⁰, the court has observed that even under our constitution, though speedy trial is not specifically enumerated fundamental right, it is implicit in the broad sweep and content of Article of 21 as interpreted by the supreme court in Maneka Gandhi's²¹ case. It is an integral and essential part of the fundamental right to life and personal liberty. Every prisoner is having a right to attend the case in trial. The speedy trial is an integral part of prisoner right to life and personal liberty guaranteed by the Constitution for them. The decision of *Rudal Shah v. State of Bihar*²², was important in two respects. Firstly, it held that violation of a constitutional right can give rise to a civil liability enforceable in a civil court and secondly, it formulates the bases for a theory of liability under a violation of the right to personal liberty can give rise to a civil liability. The decision focused on extreme concern to protect and preserve the fundamental right of a citizen. It also calls for compensatory jurisprudence for illegal detention in prison in India which is considered to be the new trend in the present-day context.

III. ROLE OF APEX COURT IN PROTECTION OF HUMAN RIGHTS OF PRISONERS IN INDIA

After conviction, a convict is put into the jail, he may be deprived of fundamental freedoms

²⁰ A.I.R. 1979 S.C. 1360

²¹ 1978 I SCC 248

²² A.I.R. 1983 S.C. 1086

like the right to move freely throughout the territory of India or the right to practice a profession. But the Constitution guarantees to them other freedom like the right to acquire, hold and dispose of property for the existence of detention can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 and he shall not be deprived of his life or personal liberty except according Rights of accused, under trials and prisoners to procedure established by law. The so called Human Rights saviour the 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 have unfolded the true nature and scope of Article 21. In this work, 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.²³

(i) Right against hand-cuffing

In India, it has become a common practice for the police to handcuff under trails and arrestees, irrespective of the nature of the

²³ Dr. N. Maheshwara Swamy, Criminology and Criminal Justice System, Asia Law House, Hyderabad, 2014.

offence committed by them and the responsibility of any escape²⁴. In *Prem Shanker v. Delhi Administration*²⁵, the Supreme Court added 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 Constitution 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".

(ii) Right against inhuman treatment of prisoners

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

²⁴ Dr. Ashuthosh, Rights of Accused, 2nd Edition, Universal Law Publishing (P) Ltd, New Delhi.p.216

²⁵ A.I.R. 1980 S.C. 1535.

prisoners and persons in police lockup²⁶. In the *Raghubir Singh v. State of Bihar*²⁷, 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*²⁸, 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 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 that a state official running berserk regardless of Human Rights.”²⁹ 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*³⁰. 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, 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 court³¹.

(iii) Right against solitary confinement and bar-fetters

The Supreme Court in *Sunil Batra (I)*³², case 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 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. *Sunil Batra's* was sentenced to death having been found guilty of a gruesome murder compounded with robbery. He challenged his solitary confinement invoking articles 14, 19 and 21 of the Constitution. The Supreme Court upheld the contention of the petitioner and declared part III of the

²⁶ Ramana Murthy V. State of Karnataka A.I.R. 1997 S.C. 1739

²⁷ (1986) 4 SCC 481

²⁸ AIR 1981 SC 625

²⁹ Kishore Singh VS. State of Rajasthan, A.I.R. 1981 S.C. 625

³⁰ A.I.R. 1997 S.C. 610

³¹ proceedings under the contempt of courts Act, 1971 can be started in any high court

³² Sunil Batra (I) vs. Delhi administration AIR 1978 SC 1675

Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, flouted, frowned upon or frozen by the prison authority. Is a person under death sentence or under-trial unilaterally dubbed dangerous liable to suffer extra torment too deep for tears? Emphatically no. the convict is not sentenced to imprisonment. He is not sentenced to solitary confinement. He is a guest in custody, in the safe keeping of the host jailor until the terminal hour of terrestrial farewell whisks him away to the halter. The trusteeship in the hands of the superintendent not imprisonment in the true sense³³. In *Kishore Singh v. State of Rajasthan*³⁴, it was stated by *Justice V.R.Krishna Iyer* that solitary confinement has to be resorted to only in the rarest of rare cases for security reasons to make it in consonance with article 21 of the constitution. The Supreme Court stated that the solitary confinement is violation of life and personal liberty of prisoners under Art 21 of the constitution, the sections containing prisons act, 1894 of sec.30(2) and 56 of Prisons Act 1894 is violation of prisoners rights guaranteed by the constitution.

(iv) Right to have interview with friends, relatives and lawyers

In *Prabha Dutt v. Union of India*³⁵, the Supreme Court held that it would be a part of fundamental freedom of the press to interview

prisoners sentenced to death. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*³⁶, the Supreme Court considered the prisoners right to have interviews from the perspective of the Right to Life and Personal Liberty under Article 21. The court held that the provisions of COFEPOSA permitted only one interview in a month to detune with her family members were violative of Art 14 and 21 and unconstitutional and void³⁷. The Supreme Court held that, right to consult legal advisor is basic right to the prisoners for and under Art 14 and 21 of the Constitution also guaranteed this right. The provisions of COFEPOSA are not valid those provisions are unconstitutional and violative of Art 14 and 21 of the constitution.

(v) Right to free legal aid

The Supreme Court is guaranteed the Article 39-A and Article 21 of the Constitution. The Right to Free Legal Aid to comes under fundamental rights protected by Art.21 of the constitution. Art.39A is comes under Directive Principles of State Policy, Part IV, but cannot enforceable rights even though the Supreme Court included the right to free legal aid under Art 21 right to life and personal liberty. In number of cases, the Supreme Court stated that providing free legal aid, those who are in needy and poorer, the state responsibility not

³³ A.I.R. 1978 S.C. 1675

³⁴ A.I.R. 1981 S.C. 625

³⁵ A.I.R. 1982 S.C. 6

³⁶ (1981) 1 SCC 608

³⁷ Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publications (p). Ltd.,2008, p.113

charity. In *Khatri (I) v. State of Bihar*³⁸, 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.

(vi) Right to speedy trial

The concept of speedy trial is read into article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our constitution. the right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted³⁹.

In *Abdul Rehman Antulay v. R.S. Nayak*⁴⁰, The court held that the right to a speedy trial was a part of fair, just and reasonable procedure implicit in Article 21 of the constitution. The Supreme Court was observed that each case has to be decided on its own facts. The court further observed that it was not advisable and feasible to fix an outer time limit for conclusion of the criminal

proceedings⁴¹. The Supreme Court gave propositions meant to serve as guidelines. The Court held that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. The Supreme Court further observed as under:

“Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view”.

(vii) Children of Women Prisoners

The famous case is related the child's of imprisoned mothers. In *R.D. Upadhaya v. State of A.P*⁴², the children are residing with their mothers, even though they are not prisoners. They are forced to live in jails by circumstances. For this, The Supreme Court

³⁸ A.I.R. 1981 S.C. 928

³⁹ Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publications (p). Ltd.,2008, p.117

⁴⁰ 1992 1 SCC 225

⁴¹ Dr.Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publications (p). Ltd.,2008, p.115

⁴² A.I.R. 2006 S.C. 1946.

issued certain guidelines to the prison authorities for the safeguards to the children's. The Central Government and State Governments are having responsibility for the protection of children in prison who are residing with their mothers. The Supreme Court issued guidelines to the central and state governments. The governments are also taking serious steps to provide certain rights regarding diet, shelter, medical aid, clothing, schooling facility to them and recreational facility are considered to be the basic human rights of childrens.

IV. RECENT TRENDS

The Supreme Court in its endeavour to ensure distributive justice in prisons has upheld the fundamental rights of detenues and prisoners in prison settings. The judicial mandates dealing with some of these aspects. The prison administrators have no power to add additional punishment to the punishment imposed by the Court; even though it could have been solidly imposed by that court itself, but has in fact, not been so imposed. A prisoner sentenced to capital punishment might be kept in separate cell only after the sentence becomes executable". But even in the separate cell, unless there are special circumstances, he must be kept within the sight and sound of other prisoners and be able to take food in their company⁴³. Prisoners 'under sentence of death' shall not be denied amenities of games, newspapers, moving around and meeting

⁴³ Sunil Batra-I. 1978 Cri. LJ 1741 at 1795 SC (per Desai, J.).

prisoners and visitors subject to reasonable regulation of prison management. Solitary confinement cannot be inflicted except in extreme cases of necessity specifically made out by the jail authorities. A prisoner under the sentence of death can be inflicted and imposed solitary confinement only in view of the safety of the prisoner and the security of the prison.

If a prisoner desires loneliness for reflection and remorse, for prayers and making peace with his maker, or opportunities for meeting family or friends such facilities should be liberally granted. Under-trials should be accorded more relaxed conditions than convicts. They are not under sentence of imprisonment, but only under custody. An under-trial prisoner, when transported from the prison to the court should not be handcuffed. In extreme cases, where the hand-cuffs have to be put on the prisoner the escorting authority must record reasons for doing so⁴⁴. The hard labour has to receive a humane meaning. The punishment of rigorous imprisonment obliges the inmates to do hard labour, but not harsh labour. The prisoner cannot demand soft jobs, but may reasonably be assigned congenial jobs⁴⁵.

The right to the society of fellow men, parents and other family members cannot be denied in the light of Article 19. However, it is subject to search, discipline and other security reasons. A detenue is entitled to have interview with his legal adviser after taking appointment from

⁴⁴ Prem Shanker v. Delhi Administration, A.I.R. 1980 S.C. 1535.

⁴⁵ Sunil Batra-II, 1980 Cri. LJ 1099 at 1114.

the superintendent of the jail. In case of COFEPOSA detainees a custom or jail official may watch the interview, but he should not be within the hearing distance of the detainee and the legal adviser⁴⁶.

V. CONCLUSION

Life is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that Right. A prisoner, be a convict or under-trial or a detainee, does not cease to be a human being. Those also have all the rights which a free man has but under some restrictions. Just being in prison doesn't deprive them from their fundamental rights. Even when lodged in the jail, the prisoner enjoys all his Fundamental Rights continuously. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights. The importance of affirmed rights of every human being needs no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. The Supreme Court has gone a long way fighting for their rights. Freedom behind bars is part of our constitutional trust and index of our collective consciousness. Transformation of consciousness is the surest security measure against the atrocities that are committed on the

prisoners. The Prison Manual is no Bible and the prisoner is not a non-person and so also the jailor is not an absolute monarch⁴⁷. A prisoner is not a temporary slave of the State and is entitled to the fair process of law. Prison power must bow before judge power if fundamental freedoms are in jeopardy.

It is high time and a voice should be raised against such injustice.

“It is submitted that it is high time to review the entire legislation and judicial pronouncements with respect to human rights of prisoner. It is hoped that the suggestions outlined above would go a long way in widening the concept of human rights of prisoner in Indian Perspective

⁴⁶ Francis Coralie Mullin, 1981 Cri. LJ 306 at 313-14 (SC).

⁴⁷ Dr. S.K.Kapoor, Human Rights Under International Law and Indian Law, 3rd Edition, 2005, Central Law Agency.