



Judicial Endeavour in protecting the Human rights of the prisoner

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Abstract:-

A human being is born with various rights by giving the dimension of article 21 the Supreme Court has declared that the right to life is guaranteed under article 21 of the Indian constitution which incorporate right to life with personal dignity, which means more than just a physical subsistence. Indian legislature has made laws in regard to the protection of the prisoners who are exploited because the vital way to keep human rights safe is the prevailing role of judiciary. It is a common belief that the judiciary is to enforce the rights and safeguard our Indian constitution.

The paper is an attempt to analyze the role of the judiciary and to highlight the issue of laying down certain guidelines to protect the rights of prisoners with the various decided case laws. The main study is to analyze the guidelines given by the Supreme Court and to give some remedies to the prisoners through research

Keywords: Human Rights, Prisoners, Detention centre, callous

Introduction:-

Judiciary in every country has the right and the duty to protect the right of every individual in the country which also includes the rights of prisoners even. Since our judicial system has given protection of the law for the abiding citizens and for law breakers, the act on the other hand it has also given various protection laws to them which are made by the superior courts that are enacted by the government for the protection of the prisoners. The Supreme Court of India has made human rights for the protection and preservation of the prisoners.

Prison is a place where prisoners are deprived to some liberty so it is a place where they are convicted as they don't get accommodations, bedding facilities, insufficient medical facilities, torture by the police, unhygienic conditions but as a prisoner they have right against such things. The judiciary has played a very significant role in protecting the Human right of the prisoners by giving recognitions to the convicts. The convict person can move directly to the Supreme Court and High court if there is any violation of their fundamental rights as it is their constitutional mandate. The rules of locus standi which is right to move to the court is given to the

prisoners in which aggrieved person can approach to the court for redress of their grievances. If a person is unable to invoke the jurisdiction of the court due to poverty or economic disability the court permits them to file public interest litigation for the enforcement of their rights.

The judiciary in every country has a constitutional role to protect the human rights of the citizens. The Judiciary must therefore adopt a creative approach in interpretation of Directive Principle of state policy and to protect and interpret our fundamental rights which are embodied in our Indian constitution. The protections of Human rights depend upon the strong and independent judiciary. The rights of the prisoners were not recognized in India at the time of freedom fighters and the British rulers they have seen the worst form of prisoners but after independence the Constitution of India has conferred certain rights on the prisoners. The prisoners also have human rights even if they become a prisoner any violation of the law attracts the provision of article 14 of the constitution which talks about the right to equality and about the equal protection of the law. The prisoner act and the criminal judicial system are responsible if any cruelty is done to the prisoners. In the recent past the Indian judiciary has viewed the third degree methods and the custodial death in police custody and the violation of human rights and torture done by the police officers. Various laws has been made like article 5 of UDHR which says no one should be treated with torture or cruelty, right to equality in article 14, article 19(a) freedom of speech and expression, article 21 right to life with life and personal dignity. The judiciary has played an essential part in security of human rights the most obnoxious infringement of human rights are like sati, child marriage, slavery, honor killing in which the special measures were taken by the judiciary.

Judiciary in every country can protect Human Rights of the citizens because it is their constitutional and obligation role to protect them. When it comes to the matter of protection of Human Rights the Supreme Court is one of the active courts because it has a great reputation and credibility to protect them. The independence and the separation is the key of the judiciary in upholding the rule of human right and law. The Indian judiciary has become vigilant against violations of the human right of the prisoners from recent past. The prison reform has become an important agenda for the prisoners right thus the need of the prison reforms has come to focus from the last three four decades.

Protection by giving various rights to the prisoners:

The Human Right of the prisoners has been very vigilant against encroachment by the Supreme Court so in area an attempt is made to explain some of the provisions of the right of the prisoners. The Indian Constitution states that 'No person shall be deprived of his life and personal liberty except according to the provisions established by the law'. The Indian judiciary has served an institution for providing remedies to the prisoners against the violations by giving a comprehensive meaning to life and liberty. In **A.K Gopalan**¹ case the court held that each article dealt with separate rights and there was no relation with each other. In case of **Manekha Gandhi**² court held that the procedure must be established by law because our Indian Constitution is wide and comprehensive it includes substantive rights to personal liberty must be fair and reasonable. In the following case of **Sunil batra v Delhi administration**³ in this case court held that it must be realized that a prisoner is a natural person as well as the human being if a person is convicted for any offence his rights cannot be snatched away.

Right to free legal Aid: A Fundamental right given to all citizens of the country and the persons who are poor and weaker in sections the right is given to those for hiring lawyers as it is said in the constitution of India

¹ AIR 1950 SC 27

² 1978 SCR 92)621

³ 1980 SCR(2)557

that no person shall be deprived with personal life and dignity hence ensuring legal aid given to all persons is necessary to promote justice on the basic of equal protection.

Provisions of legal aid means:

- Representing advocate in legal proceedings.
- Drafting of legal documents and special leave petition. under article 136 of the constitution of India.
- Giving advice in the legal matters.
- Rendering any services in any courts or tribunals.
- Giving advice to the person need of it to access benefits. under the welfare statutes and schemes framed by the Central government of India.

A Hon'ble Supreme Court in the case of **M.H Hoskot v. State Of Maharashtra**⁴ held that the free legal services should be given to those persons who cannot afford it.

In case of **Hussainara Khatoun v state of Bihar**⁵ it was held in this case that the state has given the right to the citizen who cannot access courts due to disability or poverty if the accused is not able to afford legal services due to poverty

Right to Speedy trial: “Law should not sit limply, while those who defy it to go free and those who need protection lose hope” was held in the case of **Jennison V baker**⁶. The main of the judiciary is to make the judiciary system simpler faster and inexpensive for the common man of India so the constitution of India gives various rights to its citizen including speedy trials. Right to speedy trial means to dispose of the case as soon as possible. The main aim of right is to give justice. The Constitution of India imposes heavy duty on the judicial system to dispose of the case on time. The role of judiciary here is by giving certain right to the prisoners the judicial system tries to set free the accused because there are also few peoples who are involved unnecessarily and are arrested and detain in the prison and are affected mentally. The main aim of this is to safeguard the innocent from undue punishments.

In the Hon'ble case of **Common Cause, a registered Society v Union of India**⁷ the court held that the appropriate directions to be given to release the prisoners on bail or the discharge of the accused persons for closure of the case. In **Anil Rai v state of Bihar**⁸ the S.C held that the delay in proceedings due to unexplained infringed the right of article 21 of the Constitution.

Right to Fair trial: A trial primarily aim is ascertaining the truth of an accused has to be fair and reasonable. An accused has the right to defend him as the rights are given by our judicial system. Fair trial gives an opportunity to an accused to prove him innocence and denying the right means deny right to fair trial. A fair procedure helps the accused from bias.

Assurance of the fair trial is the dispensation of justice so in the case of **Maneka Sanjay Gandhi v Rani jethmalani**⁹ the court held that criminal courts are not obliged to terminate the case due to the lapse of time the court further held that such termination is not judiciary permissible by the courts. In case of **Samaj**

⁴ 1978 AIR 1548 SCR(1)192

⁵ 1979 SCR (3) 532

⁶ (1972)

⁷ AIR 2018 SC1665

⁸ 2001 INSC 367

⁹ 1979 SCR(2) 378.

Parivartan Samudaya v state of Karnataka¹⁰ in this case the court observed that the fair trial encompasses two imperatives firstly the investigation must be honest fair and reasonable and unbiased and secondly the main aim is to bring out the truth of the case to the court.

Right to Bail: Bail is a right given to an accused person to release him from the custody the bail is the right which is given to an accused. The court releases an accused by furnishing him on some security and conditions that accused has to be present before the court when called. There is various type of bails given to an accused on the basis of the offences they have committed. In case of **Babu Singh v State of U.P**¹¹ in this case court held that it is the right to get bail and a person cannot be rejected on the grounds of not getting bail it will be deprivation of his personal liberty ground. In case of **Kashmira Singh v state of Punjab**¹² the court in this case held that it will include injustice if an accused is detained for more than six years unnecessarily and is not granted bail.

Right against Inhuman treatment: The prisoners are given various rights to be protected from the bar fetters and any type of inhuman treatment and cruelty done by the officers. The Supreme Court has directed some authorities to check that the prisoners are treated with harsh treatments. The judiciary by giving the right to prisoners has prohibited the use of handcuffs, iron, and chain in punishing the prisoners.

Right against custodial violence: Torture in custody affront to human dignity. The term custodial violence includes every type of physical and mental torture inflicted by the police officer in custody. A person will confess everything if he will be tortured

in case of **D.k Basu v the state of West Bengal**¹³ the court in this case held that custodial violence has been calculated as a assault on the human dignity perhaps one of the worst crimes.

Right against Solitary confinement: It is said that if a person is convicted of an offence it does not make him a prisoner he is still entitled to get rights as his conviction does not make him a non person whose rights are restricted in whims of the prison administration. Solitary confinement means that the person is kept far away from the outside world and is separated with a human conduct. It is a confinement through discipline. It is said that the punishment should be such which makes the offender realizes his mistake so that he does not commit it in future and it should be imposed in such a way that the person should be wrong again. This confinement is made so that the prisoner is able to find out his psychological issues.

Protection of prisoner against arrest and detention:

There are few right which are given to the accused when arrested is that in case of **D.K Basu v State of West Bengal**¹⁴ in the case the court held that there must be few guidelines which should be made while arresting and detaining a person in the custody. In criminal procedure code under section 50A it is said that when an accused person is detain in the custody such person has the right to inform his friends relatives and all the nominated person so that the information about his arrest can be given to them.

It is thus a duty of the police officer or any officer who is in charge to tell the grounds of being arrested immediately if the person so authorized fail to give the reasons for the arrest of an accused person such an arrest would be illegal.

¹⁰ 2013

¹¹ 1978 SCR (2)77

¹³ AIR 1997 SC 610.

¹⁴ Ibid.

Same just like section 50A article 21 of the Constitution of India gives right to an accused person to know the reason for the ground of his arrest In case of *Joginder Kumar v The state of U.P*¹⁵ in this case court held that the detained person should know the reason for the ground of his arrest and any person being his relative friend or nominated should know that he is arrested.

Article 22(1) also states that an accused person has the right to choose the advocate of his own choice the judiciary has given the right to choose an advocate of his own choice and thus right is expanded from the moment when that person is arrested.

Article 22(2) ensures and gives right to the accused to be produced before the magistrate when a person is arrested it is the duty of the police officer to present that accused before the magistrate or judicial officer without any further delay. No accused shall be detained in the custody for more than 24 hours unless and until he is presented by the police officer before the magistrate and the judicial officer. The mentioned 24 hours exclude the time of travel from where the accused was arrest till he presented before the magistrate.

Protection in serving sentence:

In criminal judicial system prison is the almost the important part. It the responsibility of the judiciary system to rehabilitate the convicted persons by sending them to the rehabilitation centre by doing this the offender realizes his mistake and it helps them to be the better citizen of the society. If an accused is sentenced and is treated in ill mattered it will reduce them to be the beast and therefore he will commit more crimes. The apex court has given various protections and directions to the authority in safeguarding the accused persons. The idea of rehabilitating an accused person is to make him capable of returning back in the society. The rehabilitation programs have been made by the state to prevent the future crime by altering the accused person behavior the programs of rehabilitation includes educational programs by giving them the facility to read books, through counseling and through centre placement accused behavior can be altered.

Legal protection given to them under the Constitution of India:

The Constitution of India is the basic fundamental rights which are granted to all citizens of the country and all laws must be consistent with the provisions of the Constitution. The Criminal law as well as the Constitution of India gives the protection to the convicted prisoners. It is the responsibility of the state to give protection to the accused persons by giving them the fair and fair trial.

In *Kishore Singh Ravinder Dev v state of Rajasthan*¹⁶ in this case the court held that it is the duty of the state to protect the human right of the prisoners during the trial and to protect the dignity by providing and giving those benefits of just fair reasonable and impartial trial court of law.

Protection against EX-Post – Facto Laws:

This protection is given to an accused person under article 20 (1) of the constitution of India in simple terms it means that an accused person will not be held liable for the offence which he he has not committed the court can make the person convicted if he has done no offence and if court do so the court has to write the reasonable grounds for arresting that person. The Universal Declaration of Human rights 1948 provides the freedom from ex post facto laws but is only given after the trial when an accused person is convicted a sentenced for a criminal offence.

¹⁵ 1944 scc (4) 260

¹⁶ 1981 scr (1) 995

Protection against Double jeopardy:

The concept of the double jeopardy is based on the maxim of “Nemo debet bis puniri pro uno delicto” which simply means that no person can be arrested twice for committing the same offence. According to this principle if an accused is convicted or acquitted for the same offence it will be considered as double jeopardy and would be violative of article 20(2) of the Constitution of India.

Challenges :-

The various challenges in protecting the Human Rights are:

- The procedure on civil and criminal matters the limited guidance is given to them for writing judgments respectively.
- The inadequate legal aid system of the court as every member is related to that and the violation of the prisoner can only overcome through by the way of justice.
- The infrastructure of lower courts are poor and there is no such good facility of library and there are no space that needs the qualitative justice
- Delay in dispositions is because most of the cases are pending in courts and it takes years for the final disposal of such case
- The grounds are unreasonable for the adjournment granted by the courts.
- Investigation process gets delayed many a times agencies took a lot of time in filing up the charge sheet in the court.

Conclusion:

The judiciary has played a role in protecting the rights of the prisoners The supreme court has come forward to take directions and measures in the protecting the rights of the prisoners. The judiciary is playing a crucial role in protecting the rights by expanding the scope of rights for them and by recognizing the new rights with the need of time for the enjoyment of right to life with dignity for the prisoners. Courts have protected and given rights by giving compensation to the accused person, providing them with safety at workplaces and by giving compensation to the victim. A review on the decision of the courts for protection of the human rights means that judiciary is playing a great role in the savior of protecting the rights. The judiciary by implementing various tools and new solution has protected the human rights of the prisoners. Supreme court has also provided effective remedy against the violation of human rights. It is recognized that human beings are also persons and they should also be given some rights just like the human beings.