

# Role of Judiciary in Protection of Human Rights of Prisoners

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**Abstract:** Judiciary is the firm and strong supportive cornerstone of Human rights culture. It can play a role of 'Vanguard' of human rights. It can perform this function mainly by innovative interpretation and assumption of its jurisdiction because courts are not the silent spectators of violation of human rights. Judges do not sit in ivory towers nor can they recuse to seclusion and refuse to act in not taking into account ground realities of the sufferings of the citizens.

**Keywords:** Judiciary, Protection, Human Rights, Prisoners

## I. INTRODUCTION

Judicial activism is the dominating topic among the conscious citizens and law knowing people of India. It signifies the movement of judiciary to probe into the inner functioning of the Executive in matters of public interest. Growing frontiers of human rights in National and International spheres have also continued to the scope and frequency of judicial activism.<sup>1</sup> Judicial Activism is the moving spirit of Justice. In fact, the judge without judicial activism can perhaps be described as a flower without colour and fragrance or vehicle without fuel and wheels which is unavoidably must for any court to be known as the court of justice.<sup>2</sup> In case of India, the Supreme Court has declared that it has a special responsibility to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence.<sup>3</sup>

The need for prison reforms has come into focus during the last three to four decades. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. Prisoners' rights have become an important item in the agenda for prison reforms. The Indian Supreme Court has been active in responding to human right violations in Indian jails and has, in the process, recognised a number of rights of prisoners by interpreting Articles 21, 19, 22, 32, 37 and 39A of the Constitution in a positive and humane way. Given the Supreme Courts' overarching authority, these newly recognised rights are also binding on the State under Article 141 of the Constitution of India which provides that the Law declared by the Supreme Court shall be binding on all courts within the territory of India. Following are the

reasons cited in various case laws for which prisoner's rights were recognised and upheld by the Indian judiciary.

- a) Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess - Justice V.R. Krishna Iyer.<sup>4</sup>
- b) "Like you and me, prisoners are also human beings. Hence, all such rights those that are taken away in the legitimate process of incarceration still remain with the prisoner. These include rights that are related to the protection of basic human dignity as well as those for the development of the prisoner into a better human being."<sup>5</sup>
- c) If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitutes human dignity.
- d) It is increasingly being recognized that a citizen does not cease to be a citizen just because he/she has become a prisoner.
- e) The convicted persons go to prisons as punishment and not for punishment. Prison sentence has to be carried out as per the court's orders and no additional punishment can be inflicted by the prison authorities without sanction.<sup>6</sup>
- f) Prisoners depend on prison authorities for almost all of their day to day needs, and the state possesses control over their life and liberty, the mechanism of rights springs up to prevent the authorities from abusing their power. Prison authorities have to be, therefore, accountable for the manner in which they exercise their custody over

<sup>1</sup> AIR 1997 Journal Section 17 at 20

<sup>2</sup> *Awashi Dr. S.K. & Kataria R.P. Law relating to protection of human Rights, (2005)*

<sup>3</sup> *M.C. Mehta V. Union of India*, AIR 1987 SC 1086

<sup>4</sup> *Sunil Batra vs. Delhi Administration*, AIR 1978 SC 104.

<sup>5</sup> *Charles Shobraj vs. Superintendent*, AIR 1980 SC 536

<sup>6</sup> *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1280

- persons in their care especially as regards their wide discretionary powers.
- g) Imprisonment as punishment is now rethought of as “rehabilitative punishment.” This involves a philosophy that individuals are incarcerated so that they have an opportunity to learn alternative behaviors to curb their deviant lifestyles. Correction, therefore, is a system designed to correct those traits that result in criminal behaviour. The rehabilitative model argues that the purpose of incarceration is to reform inmates through educational, training, and counseling programmes. This development and growth requires certain human rights without which no reformation takes place.
  - h) Disturbing conditions of the prison and violation of the basic human rights such as custodial deaths, physical violence/torture, police excess, degrading treatment, custodial rape, poor quality of food, lack of water supply, poor health system support, not producing the prisoners to the court, unjustified prolonged incarceration, forced labour and other problems observed by the apex court have led to judicial activism (NHRC, 1993).
  - i) Overcrowded prisons, prolonged detention of under trial prisoners, unsatisfactory living condition and allegations of indifferent and even inhuman behaviour by prison staff has repeatedly attracted the attention of critics over the years. Unfortunately, little has changed. There have been no worthwhile reforms affecting the basic issues of relevance to prison administration in India (Justice A. N. Mulla Committee, 1980-83) Rights of the prisoners have been expressed under the Indian Constitution as well as Indian laws governing prisons. The Supreme Court and High Court rulings have played a crucial role in enumerating the rights of prisoners. A land mark judgment by Justice V.R. Krishna Iyer enumerated basic human rights of the prisoners. Mr. Sunil Batra had written a letter from Tihar Jail, Delhi to the Supreme Court providing information about the torture and inhuman conditions of the Rison. This case has become a landmark case in prison reforms.<sup>7</sup> This case recognized the various rights of prisoners in the most comprehensive manner. The judgment held that, “No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of the court. All other freedoms belong to him to read and write, to exercise and recreation, to meditation and chant, to comforts like protection from extreme cold and heat, to freedom from indignities such as compulsory

nudity, forced sodomy and other such unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self-expression, to acquire skills and techniques. A corollary of this ruling is the Right to Basic Minimum Needs necessary for the healthy maintenance of the body and development of the human mind. This umbrella of rights would include: Right to proper Accommodation, Hygienic living conditions, Wholesome diet, Clothing, Bedding, timely Medical Services, Rehabilitative and Treatment programmes.

Another land mark judgment pronounce by the judiciary is the right to compensation in cases of illegal deprivation of personal liberty. The Rudal Shah case<sup>8</sup> is an instance of breakthrough in Human Rights Jurisprudence. The petitioner Rudal Shah was detained illegally in prison for more than fourteen years. He filed Habeas Corpus before the court for his immediate release and interlaid, prayed for his rehabilitation cost, medical charges and compensation for illegal detention. After his release, the question before the court was "whether in exercise of jurisdiction under Article 32, could the court pass an order for payment of money? Was such an order in the nature of compensation consequential upon the deprivation of fundamental right? There is no expressed provision in the Constitution of India for grant of compensation for violation of a fundamental right to life and personal liberty. But the judiciary has evolved a right to compensation in cases of illegal deprivation of personal liberty. The Court granted monetary compensation of Rs.35,000 against the Bihar Government for keeping the person in illegal detention for 14 years even after his acquittal.

## II. CONCLUSION

The Court departed from the traditional approach, ignored the technicalities while granting compensation. The decision of Rudal Shah was important in two respects<sup>9</sup>. 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 which 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, the courts have acknowledged and several judgments recognize a wide array of fundamental and other rights of prisoners.

<sup>7</sup> *Sunil Batra Vs Delhi Administration*, 1980 SC

<sup>8</sup> *Rudal Shah v. State of Bihar*, 1983 SC 629.

<sup>9</sup> *Rudal Shah v. State of Bihar*, 1983 SC 629.

*Balwant Singh v. Commissioner of Police and others*,<sup>10</sup>. In this case protection of rights to peaceful life was challenge. High Court held that the state government had already taken all requisite action within its power to ensure that peace and quiet of petition leaving in his residential house in proximity to Vidhan Sabha duly disturbed.

*Punjab Cops Betup women in Public and Police Lathi Charge protesting contractual Teachers in Patna v. Supreme Court of India*<sup>11</sup>. In this case Supreme Court held that Cognizance was taken with respect to gross violation of human rights as well as constitutional rights of people of India.

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<sup>10</sup> AIR 2013 Rajasthan High Court

<sup>11</sup> AIR 2013 SC 525