



**FACULTY OF JURIDICAL SCIENCES**

**COURSE: BALLB**

**Semester-X**

**SUBJECT: PENOLOGY AND VICTIMLOGY**

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**NAME OF FACULTY- DR. SHIV KUMAR TRIPATHI**

## Lecture-23



## FUNCTIONS-

The socio-legal system of India is always based on non-violence, mutual respect for each other and treating other humans with dignity. The major lesson that Indian laws seek to implement that just because a person commits a crime, that does not mean that the person stops existing being a human or can be deprived from personal liberty. The prisoners are also entitled to have human rights, because prison torture is a confession to the failure of the justice system.

This has been established through Article 21 of the Constitution of India that guarantees personal liberty and hence prohibits all kinds of inhuman, cruel and degrading treatment towards any person whether an Indian National or an alien. Any violation of this article would attract Article 14 of the Indian Constitution that encapsulates the right to equality and equal protection under the law. Further, the rights of a prisoner is also dealt with under Prison Act, 1894. Any excess treatment that is committed to a prisoner by the Police would attract the wrath of the legislature and the judiciary. Therefore, the Indian Judiciary especially the Supreme Court has been increasingly efficient and vigilant against possible encroachments on the rights of the prisoners.

Prisons have the function of upholding the rights of the prisoners as enlisted below-

- Right to Legal Aid- Human rights and personal liberty would see no use if a person isn't provided with appropriate legal aid to enable that they have access to justice in case of any gross violation of their rights. Legal Aid has become something that is no longer a matter of charity but is something that constitutes a legal right. The basic notion that Legal Aid underlines is that justice should be administered properly and that it should be easily available and accessible. It should be made sure that it is within the reach of everyone who wishes to enforce their legal rights. Legal Aid seeks to offer an opportunity to the Indian society for the redressal of grievances of the poor and the needy and thereby establish the foundation of Rule of Law.

Judiciary has played a very vital role in the development of the concept of legal aid and thereby leading to the expansion of its scope.

In the case of *M.H. Wadanrao Hoskot v. State of Maharashtra*, the Court has held that the right to legal aid is one of the basic necessities of fair trial.

- Right to Speedy Trial- This is one of the most important fundamental rights of a prisoner that is implied through Article 21 of the Indian Constitution. This aspect covers social interest as well as public interest.

In the case of *Hussainara Khatoon v. State of Bihar*, it was seen that a large number of men, women and juveniles are still in prison awaiting trial. Therefore, this case laid down the foundation for ensuring speedy justice.

In the case of *Mathew Areeparmtil and other. v. State of Bihar*, it was seen that a large number of people who have committed offences were still awaiting trial for trivial offences. In this case, directions were passed to release such persons.

Further, in this case it was ordered that the cases in which there were tribals involved in offences undergoing imprisonment for a period more than 7 years, they should be released on an bail via a personal bond. In the cases where there has been no trial or proceedings that have been taken for or against the accused within a period of three years, from the time the FIR was lodged, the accused in such case must be released under Section 169 of the Code of Criminal Procedure. There are a few cases wherein the charge-sheet has been submitted and the investigation has been completed within the last three years, the accused should be subject to reinvestigation and must be released. Fresh facts should be considered and he shouldn't be arrested without the explicit permission of the Magistrate.

In the case of *Raj Deo Sharma v. State of Bihar*, the major issue that was addressed was whether based on the facts and the circumstances of the cases, the prosecution that is against the petitioner can be quashed on the reason that there was a delay in the conduction of trial. The petitioner has applied for the bail. The application for bail was allowed and the Supreme Court issued the following directions-

1. If the trial for the offence committed is punishable with an imprisonment for a period that exceeds 7 years, it does not matter if the accused is in jail or not, the court would close the prosecution evidence within a period of two years from the date of the record of the plea.
  2. If the accused has been in jail for a half of the period of punishment as mentioned in the offence, the trial court has been vested with the power of releasing the accused on bail on certain conditions.
  3. If the offence has been under trial that is punishable with an imprisonment for a period that exceeds 7 years, it does not matter if the accused is in jail or not, the prosecution must close the evidence when three years end from the date of recording of the plea.
- Right against solitary confinement and Protection from torture- Separate or solitary confinement of the prisoner, or the complete isolation of the prisoner from the entire human society is prohibited. Torture is something that is considered normal by an investigating agency for the extraction of confession. This morally shows the imposition of the stronger over the weaker.

In the case of *Prem Shankar Shukla v. Delhi Administration*, the appellant happened to be an under-trial prisoner in the Tihar Jail. He was supposed to be taken from the jail to the magistrate and back to the prison periodically with regards to certain cases that were pending against him. In such cases handcuffs should not be practiced unless there is a warrant. The Supreme Court held that handcuffs must be used only as a last resort.

In the case of *D.K. Basu v. State of West Bengal*, the court held that torture during custody is a gross violation of human dignity and is degrading to the individual. The right to life and liberty is an expression of human right and therefore, the court declared that no person who is arrested can

be detained in custody without being informed of the grounds of arrest and he would not be denied the right to a legal practitioner.

#### CONCLUSION-

The criminal administration system does inevitably include prison administration as well. It is true when it is said that man is not a born criminal but the social and economic conditions that he is born into makes him what he is. Proper food , shelter and health care treatment must be given by the prison authorities in order to really reform the prisoners after their period of incarceration.