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Lecture-4



Prisoners Rights

- Constitutional Provisions

The rights of all human beings are safeguarded by our constitution. Ironically, the prisoners are treated differently; not par with non- prisoners and their rights are denied and neglected.

This is a major concern which needs to be addressed to protect the edifice of the constitutional provision. The Supreme Court in its various judgments has declared prisoners as a natural as well as a legal person. It is the responsibility of the Courts to protect these détentés from torture, harassment and provide them with justice.

(a) Right to life and personal liberty

Right to life is much more than mere physical existence. Furthermore, the Supreme Court has widened its horizon while interpreting Article 21 of the Constitution by the inclusion of right to life with human dignity. Mere animal existence is not the criteria. The Supreme Court held that right to life is one of the basic human rights, guaranteed to every person by Article 21 and not even the State has authority to violate it.

(b) Right to health and medical treatment

The Supreme Court in various cases has declared the right to medical care comes under the ambit of Article 21 of the Constitution.

It imposes an obligation on the state to preserve life. This right is a basic human right. But we still find instances where the prisoners' health is neglected, and no proper healthcare facilities are accorded. This can be clearly termed as a violation of one's fundamental rights by the state. The state has a moral duty cast upon it to preserve and protect the life of the ailing convicts.

(c) Right to a speedy trial

The Supreme Court has considered the right to a speedy trial as one of the essential ingredients of Article 21 of the Constitution. Delay in the disposal of cases is a denial of justice, so the Court is expected to adopt necessary steps for expeditious trial and quick disposal of cases. The Supreme Court has stated guidelines for affecting the right to a speedy trial but unfortunately, it has ignored the time frame for the trial of these offences. The right to a speedy trial can be demanded by the accused at any time during proceeding i.e. investigation, inquiry, and appeal and so on. The time limit for the offence changes with various circumstances. The Court comes to conclusion in the interest of natural justice that when the right to speedy trial of an accused has been infringed the charges of the conviction shall be quashed.^[1]

The unreasonable detention of the prisoners is clearly violative of Article of 21. The constitutional guarantee of speedy trial is an important safeguard to prevent undue and oppressive incarceration prior to trial; to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delays will impair the ability of an accused to defend him.

(d) Right to free legal aid

Right to free legal aid is one of the facets of Article 21 of the constitution which casts a duty upon a state to provide legal recourse. The State is under a constitutional mandate to provide legal redressal to the ones who are unable to afford it. The state cannot sway away from its liability on the ground of unavailability of funds and deformities in administration.

The only pre-condition for providing free legal aid is that the accused who is charged with an offence, the conviction of that being imprisonment, and the social need requires that he been given free legal aid. But there may be some cases such as economic offences, prostitution, where social justice requires that the accused must not be given free legal aid. The prisoners should also have access to legal justice without any interference from the prison authority. Any arbitrary procedure to regulate the interviews between the prisoners and the legal advisor is completely unjustified. Regarding the right of free legal aid, *Justice Krishna Iyer* declared that “this is the State’s duty and not Government’s charity”. If a prisoner is unable to exercise his constitutional and statutory right of appeal including Special Leave to Appeal for want of legal assistance, the Court will grant such right to him under Article 142, read with Articles 21 and 39A of the Constitution.

(e) Right to reasonable wages for work

The notion behind the payment of reasonable wages to the prisoners for the work is that it will create a healing effect on the minds of the prisoners. It is not only the legal right of a workman to have wages for the work, but it is a social imperative and an ethical compulsion.

The wages should be equitable to fulfil the objective of rehabilitation of the prisoner and the compensation to be paid to the victim. Fair and equitable wages if not paid would result in bonded labour and further would violate the fundamental right enumerated in Article 23 of the Constitution. In order to decide the quantum of wages to be paid to the prisoners, the state should constitute a wage fixation body and allow suggestions and recommendations from that body.

(f) Directive Principles of State Policy

Article 39A of the Constitution of India deals with the obligation of the State to provide free Legal Aid to such accused prisoners both in the prison and outside, as are unable to engage a lawyer due to lack of means to defend themselves in the Court for the criminal charges brought against them.

- Other Rights
- Right to Bail

The bail ought to be allowed to the persons when there is no sensible worry with respect to the accused that he will flee and will evade the appearance under the steady gaze of the Court. Bail can be an extremely helpful apparatus for mingling a detainee. In addition, the bail candidate should have the capacity to set up his protection more productively than one who stays in jail custody. This advances the social and open equity as well as maintains a strategic distance from the extensive open costs in keeping the under trial in custody, where no threat or unsettling influence or vanishing on the substance of the record.

- Right to basic amenities

Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served and accommodation of suitable nature.

- Right against Arbitrary prison punishment

In the Right against Arbitrary prison punishment, the prisoner has a right to entitlement in case of disciplinary violation to have precise information as to the nature of violation of prisons Act and Rules, to be heard in defense, to communication of the decision of disciplinary proceedings and to appeal to the Inspector General of Prisons as provided in the rules under the Act.

- Right to leave and special leave (Furlough and Parole)

Right to leave is matter of right of the prisoners granted only after a condition prescribed in various manuals, acts etc. Ironically there is no national framework which prescribes the number of days for which the parole or furlough is to be granted. The grant of parole is discretionary in nature and depends on the facts and circumstances of each case.

Special Treatment

The law extends its protection to the most vulnerable section of the society, i.e. the youth and women offenders who are in actual need of security, safety.

- Females

The element of security and safety in the lockups, prisons have to be given it due accord while considering the female suspects.

Further, the Court directed that the concerned prison authorities should take into consideration before sending the prisoner to jail that all reasonable facilities of ensuring pre- natal and post-natal care for the mother and the child are provided.

The children of the women prisoners should be provided with facilities of health care, education and recreation. Facilities such as crèches, foster homes can add to the better care and custody of the child.

- Youth Offenders

The youth offenders if kept with the adult offenders will impact the mindset of these youth.

It is very important to keep in mind, is that the younger the offender the greater the care he needs and the more tactful and sympathetic has to be his handlings. The young offenders should be sent to borstal school where the young offenders are endowed with opportunities of educational and vocational training to reform them. These schools can be precisely described as “Reformative schools”. The facility of foster care also has to be given an impetus to enhance the reformation in the youth offender.

Approaches

- Socialistic Approach

The prisoners are human beings like us. The society still looks down upon them. They are socially outcast from every sphere of society. It is not only the prisoners’ reformation which is required but most importantly it is the mindset of the society which needs reformation. If the society neglects it then it fails to accord equal status to human being irrespective of various terms. Society, as an important institution, endeavours the development of an individual. The aftercare programmes will give an impetus to the growth and development of an offender.

Community basis participation will help the offender to interact with the community and to pace his degree of rehabilitation and reformation.

- Educational Approach

The mechanism for achieving this revolution in approach to prisons is to confer responsibility for education and freedom to design their own curriculum. Education will be a key part of prison life. The educational approach will not only help the illiterate ones but also the literate ones. Incarceration should not act as a hindrance in the overall development of the personality of the offender. The prisoners should be provided with ample opportunities to pursue his education and furthermore if any training or special teaching is required for pursuing; the same should be made available. The Universities should collaborate with prison authorities and can start ahead with distance learning programs, degree courses, etc. so that the prisoners do not feel differentiated from being a citizen who has right to education.

- Reformative and Therapeutic Approach

India still holds and believes in its spirit, the reformative theory of punishment. The reformative approach is a holistic one and focuses on reforming the individual through various channels. This approach has been devised to reform the individuals to repent for a crime committed and it works as a device of self- realization of one's mistake. Furthermore, the therapeutic approach deals with the offender being under the continuous supervision and care of the counsellor or the psychoanalyst. In this way, the prisoner will share his grievances and his behaviour will be understood in a clear manner. The alternative of meditation can help achieve mental peace to the prisoners, it can be sought to construe as a channel of relief for them. This approach merely revolves around the concept of mental study of the human mind. The concept of psychological analysis is briefly discussed as under

Psychoanalysis is a school of psychology founded by Sigmund Freud. This school of thought emphasized the influence of the unconscious mind on behaviour.

Freud believed that the human mind was composed of three elements:

- The id – The id consists of primal urges
- The ego – The ego is the component of personality charged with dealing with reality.
- The superego – The superego is the part of personality that holds all the ideals and values we internalize from our parents and culture.

Freud believed that the interaction of these three elements was what led to all the complex human behaviors. Freud's school of thought was enormously influential, but also generated considerable debate. This controversy existed not only in his time but also in modern discussions of Freud's theories.

- Recreational Approach

Recreational activities should be given equal impetus. These activities include outdoor activities like sports, cultural programs, handling prison industries. The prisoners who are interested in developing a career through these activities should be supported. These activities not only would develop prisoners' physique but would refresh his mental state and would serve as a break from the tiresome work and would imbibe in him a spirit of sportsmanship. The inclination towards the literature should be given due consideration by making available various books on self-help, motivation, novels, etc. The library should be available 24*7 to the prisoners. The most

innovative is the idea of setting up souvenir shops and handling the prison business; this would not only serve as an activity but would also generate income for the prison.