CHAPTER – 3
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PRISONERS’ RIGHTS AND PUBLIC INTEREST LITIGATION

In recent times, prisoners have attracted the attention of jurists, sociologist and protagonists of human rights all over the world. The truth is that the philosophy of prisoners’ rights appears to have stemmed directly from considerations of human dignity and citizenship. Basic rights cannot be abrogated by the mere fact of imprisonment. There was time when prisoners were considered to be persons devoid of any rights and even their basic rights were deemed to be confiscated the moment they were arrested and imprisoned. However, prisoners’ rights gained importance with the passage of time. Now the prisoner is entitled to as many rights as a free man and no more a rightless slave of the State. The Constitution has recognized their dignity and rights as persons and citizens of India. Today courts in India uphold the human rights of the prisoners.

Art.38 (1) of the Indian Constitution says that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic, and political shall inform all the institutions of the national life. So the prison administration is bound to suitable welfare services for the integral services of the prisoners and to create a just and humane atmosphere in the jail as in a hospital meant for the treatment of the patients.

Art.10 of the International Covenant of Civil and Political Rights, 1966 proclaims that the persons deprived of their liberty shall be treated with dignity and respect for the inherent dignity of human person. The prisoner is not supposed to have left all his rights at the prison gate. Undoubtedly, there has
been a shift in emphasis from retribution to reformation. The reformative strategies and rehabilitative techniques are the mainstay in modern judicial system. The European Convention on Human Rights is one of the major documents, which added fire to the human rights movement. It provides for the humane treatment of prisoners and prescribes some important safeguards against the arbitrary and fanciful acts of the State. Similarly, in 1967, the Human Rights Committee established an adhoc-working group of experts to investigate the charges of ill treatment of persons and detenus in South Africa and to recommend action. In 1968, the Commission on Human Rights directed the above-mentioned committee to investigate the conditions of prisoners in Portuguese territories in Africa, Namibia and South Rhodesia also. The General Assembly of the United Nations on December 9, 1975 adopted Declaration on the Protection of All Persons from Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It condemned such torture etc., as an offence against human dignity and violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.¹

3.1 Constitutional Rights of Prisoners

The issue of prisoners and their rights in India was kept in abeyance till the realization of the new dimension of personal liberty that covers them under our Constitution. This aspect was realized very late in India as compared to the western countries. The credit for bringing to light this aspect certainly goes to the judiciary, which is solely responsible to protect the rights of the prisoners under Article 21 of the Constitution. Further, human dignity has been recognized in the Constitution as a component of fundamental rights.
The Constitution of India does not mention any sort of fundamental rights to the prisoners specifically. The judicial offices, however, through the process of judicial activism have expanded the scope of the various freedoms enshrined in Part III of the Constitution. The courts have recognized the right to counsel, right to speedy trial, right to physical protection, right to expression, right to meet family members, and right against cruel, unusual or oppressive jail practice. Article 14 mandates the State not to deny any person Equality before the Law and Equal Protection of Laws. This includes prison inmates also. Article 19 enumerates various fundamental freedoms to the citizens of India and even the prisoners behind the bars can enjoy these freedoms.

The Constitutional rights in the context of criminal jurisprudence are contained in Articles 20, 21 and 22 of the Constitution. Article 20 (1) protects the persons from ex post facto laws. This clause protects a prisoner from being subjected to any punishment or punishment conditions, which were not being authorised by law at the time when he committed the alleged act, and for which he was convicted and sentenced after the trial than provided under the law.

The domestic laws govern the establishment of and administration of prisons as well as the rights of the inmates. Although prisoners do not have full Constitutional rights, they are protected by the Constitution’s prohibition of cruel and unusual punishment. This protection requires that the prisoners be afforded a minimum standard of living. Prisoners retain some other Constitutional rights including due process in their rights to administrative appeals. Prisoners are therefore protected against unequal treatment on the basis of race, sex, and creed. Prisoners have also limited rights to speech and religion.
1. Solitary Confinement, Handcuffing, Bar Fetters, and Torture

According to Black's Law Dictionary, "Solitary confinement, in a general sense, means the separate confinement of a prisoner, with only occasional access to any other person, it means the complete isolation of a prisoner from all human society and his confinement in a cell so arranged that he has no direct intercourse with or sight of any human being or no employment or instruction."

The Apex Court in Sunil Batra (I) held that solitary confinement could be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from other prisoners. The dehumanizing effect of solitary confinement was picturised by the court as follows:

To see a fellow being is a solace to the soul. Communication with one's own kind is a balm to the aching spirit. Denial of both with complete segregation superimposed is the journey to insanity.

The court also held that solitary confinement could be imposed in "rarest of rare cases" and with strict adherence to the procedural safeguards in the decisions contained relating to the punishment of prisoners. Keeping in view the human right, the Supreme Court forbade putting any prisoner in bar fetters. The Court observed:

A large number of prisoners—a few hundred at times—minors and undertrials too—are shackled day and night for days and months on and by bar fetters—too shocking to contemplate with cultural equanimity. Add these, prima-facie shows up the class character of jail injustice for an incisive sociologist.
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The court rightly emphasized that continuously keeping a prisoner in fetters day and night reduced the prisoner from a human being to an animal and that the treatment was so cruel and unusual that the use of bar fetters was anathema to the spirit of the Constitution. The Supreme Court, highly conscious of human rights, took the matters of bar fetters to a logical extent in *Prem Shankar Shukla V. Delhi Administration*. In this case, despite the decision in *Batra (I)*, the petitioner, who was an undertrial, was handcuffed. Justice Krishna Iyer emphasized that handcuffs should not be used in routine and they were to be used only when the person was “desperate”, “rowdy” or the one who was involved in non-bailable offence. Justice Krishna Iyer rightly observed:

Handcuffing is *prima facie* inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absence of fair procedure and objective monitoring, to inflict ‘irons’ is to resort to zoological strategies repugnant to Article 21.

It was also observed that it being “sadistic, capricious, despotic and demoralising” was violative of Article 14 and that the minimal freedom of movement which even a detainee was entitled under Article 19 could not be cut down with cruelty through the hand cuffs.

2. Right to Meet Friends and Consult Lawyers

The horizon of human rights is expanding. Prisoners’ rights have been recognized not only to protect them from physical discomfort or torture in the prison but also to save them from mental torture. Therefore the Supreme Court in *Sunil Batra (II)* recognized the right of the prisoners to be visited by their friends and relatives. The court permitted their visits but subject to “search and discipline and other security criteria”. It was observed:
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Visits to prisoners by family and friends are a solace in isolation, and only a dehumanized system can take vicarious delight in depriving prison inmates of this humane amenity.\(^\text{17}\)

*In Francis Coraline Mullin,*\(^\text{18}\) case the Supreme Court again stressed upon the need of permitting the prisoners to meet their friends and relatives. *In Prabha Dutt V. Union of India,*\(^\text{19}\) the Supreme Court went to the extent of allowing the prisoners who were under death sentence to give interview to the press.

3. Right to Bail

Bail means the procedure by which the judge or magistrate sets at liberty, one who has been arrested and imprisoned in connection with a legal matter, criminal or civil, upon receipt of security, to ensure the released prisoner’s later appearance in court for further proceedings in the matter. *In Babu Singh V. State of U.P.,*\(^\text{20}\) the Apex Court, recognizing the right to bail as a part of “personal liberty” under Article 21, held:

Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognized under Article 21 that the crucial power to negate it is a great trust exercisable not casually, but judicially with lively concern for the court to the individual and the community.

The Court found that a man on bail has a better chance to prepare or present his case than one remanded in custody. This was a demand of public justice. From the persual of above case it is evident that the approach of the judiciary is human rights oriented and, it has rightly recognised the prisoners right to bail.
4. Right to Reasonable Wages in Prison

Whenever the prisoners are made to work during imprisonment, they must be paid wages at reasonable rate. The wage rate should not be trivial or below minimum wages. In *Mohammad Giasuddin V. State of A.P.*, the Court directed the State to take into account this factor, while finalising the rules for payment of wages to prisoners, as well as to give retrospective effect to wage policy. In the matter of *wages of prisoners*, the Court held that work taken from prisoners, which was not properly remunerated was *forced labour* and hence violative of Article 23 of the Constitution. Thus, the Court took a consistent view to uphold the human rights of prisoners inside the prisons as well.

5. Right to Speedy Trial

Right to speedy trial is a fundamental right of a prisoner implicit in Article 21 of the Constitution. It ensures “just, fair and reasonable” procedure. The fact that a speedy trial is also in public interest or that it serves the societal 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. The shocking and dismaying picture of administration of justice was depicted by *Hussainara Khatoon*, case in which the writ petition filed before the Supreme Court disclosed that a large number of men and women, including children, were behind prisons for years awaiting trial in courts of law. The highest judiciary was shocked that while it was climbing the steps of activism, such anguishing state of affairs still existed. The Supreme Court, being the protector of human rights gave a timely warning:

> The time has come when the legal and judicial system has to be revamped and restructured so that such injustices do not occur and disfigure the fair and otherwise luminous face of our nascent democracy.
In Hussainara Khatoon (III) v. State of Bihar the Court directed to release the undertrials as continuance of their detention was violative of their fundamental rights under Article 21. In another significant judgement the Supreme Court recently held that a litigant could approach the High Court chief justice and get his case referred to another bench for fresh hearing if a judgement was not delivered within six months after the hearing. It further observed that a litigant could file an application in the High Court seeking early disposal of a case if a judgement was not delivered three months after it was reserved.

6. Right to Legal Aid

In India, the Judiciary has played an important role in developing the concept of legal aid and expanding its scope so as to enable the people to have access to courts in case of any violation of their human rights. The talk of human rights would become meaningless unless a person is provided with legal aid to enable him to have access to justice in case of violation of his human rights. Legal aid is no longer a matter of charity or benevolence but is one of Constitutional right. The basic philosophy of legal aid envisages that the machinery of administration of justice should be easily accessible and should not be out of the reach of those who have to resort to it for the enforcement of their legal right.

In fact, legal aid offers a challenging opportunity to a society to redress grievances of the poor and thereby lay foundation of “Rule of Law”. To begin, with Article 22 (1) of the Constitution provided a right to every arrested person to consult a legal practitioner of his choice. In 1976 a new Article 39-A dealing with “equal justice and free legal aid” was added in the Constitution of India.
Maneka Gandhi V. Union of India\textsuperscript{29} made the “procedure established by law” in Article 21 of the Constitution as “just, fair, and reasonable”. In M.H. Hoskot V. State of Maharashtra\textsuperscript{30} the Supreme Court held that the right to legal aid is one of the ingredients of fair procedure. The benefit of Article 39 is available in those cases where public justice suffers.

3.2 Rights of Prisoners Under Article 21

The concept of human rights is the genus of which ‘Right to life’ is species. The ‘right to life’ has been broadened by different judgments of the Supreme Court of India while dealing with the provision of Article 21 of the Constitution. In this context it is proposed to confine to some elements of the right to life. These are as follows:

- Handcuffing; illegal detention; compensation for custodial death; right of a prisoner in a prison; compensatory costs for illegal detention; death in police custody; right of prisoners in prison under capital sentence.

1. Protection of life and Personal Liberty: Scope

Article 21, if read literally, is a colourless article and would be satisfied, the moment it is established by the State that there is a law which provides a procedure which has been followed by the impugned action. But the expression ‘procedure established by law’ in Art.21 has been judicially constructed as meaning a procedure which is reasonable, fair and just. Read with Art.39-A, it would further imply legal aid being made available to the indigent accused and a prisoner. The concept of ‘fairness’, so evolved, has been imported into Art.22 (3) also, so that a prison regulation, which arbitrarily deprives a
detenu of opportunity to interview his relatives or friends or a lawyer, is invalid. See the under mentioned cases as to the scope of Art. 21 on above points:

*Maneka Gandhi V. Union of India, AIR 1978 SC 597.*


2. Legal Aid

An accused person at least where the charge is of an offence punishable with imprisonment – is entitled to be offered legal aid, if he is too poor to afford counsel. Further, the accused must be given sufficient time and facility for preparing the defence. Breach of these safeguards of fair trial would invalidate the trial and conviction, even if the accused did not ask for legal aid. See the under mentioned cases:

*Hussainara V. State of Bihar, AIR 1979 SC 1369, 1377.*

*Khatri V. State of Bihar, AIR 1981 SC 928.*

3. Permission to Interview Prisoners

A citizen has no right under Article 19 and 21 to enter jails and collect information. But in order to ensure the right to life and liberty of the prisoners, it becomes necessary to permit journalists “as friends of society and public spirited citizens,” to interview prisoners. Interviews cannot be forced on unwilling prisoners. Tape recording may be allowed, but it should be subject to special permission. The interview must agree under the reasonable restrictions contained in jail manuals.


*Sheela Barse V. State of Maharashtra, AIR 1983 SC 378.*
4. Wrongful Detention

A prisoner already in jail for eight years (who would have served out the maximum punishment for the offence) cannot be detained on the basis of a ‘production warrant’ issued with the application of mind.

*Rana Dass Ram V. State of Bihar, AIR 1987 SC 1333.*

5. Prison Restrictions

Prison restrictions amounting to torture, pressure or infliction, beyond that awarded by the court must pass the best of scrutiny with reference to Article 21.

*Sheela Barse V. State of Maharashtra, AIR 1983 SC 378.*

*Javeid V. State of Maharashtra, AIR 1985 SC 231.*

6. Classification

Classification of prisoners (under prison rules) on the basis of ordinary or dangerous prisoners and prisoners under sentence of death is valid. They must be classified according to age, sex, criminal record and specific attitude.

*Charles Sobhraj V. Superintendent, Tihar Jail, AIR 1978 SC 1675.*

7. Handcuffing

Handcuffing or forcing irons on prison inmates are illegal. The reckless act of handcuffing and chaining in public degrades, put to shame finer sensibilities and constitutes a slur on Indian culture. Therefore handcuffing is permitted only in extraordinary circumstances.

8. Prisons Torture

An undertrial or a convicted prisoner cannot be subjected to a physical or mental restraint, which is not warranted by the punishment amended by the court, or which is in excess of the requirements of prisoners discipline, or which constitutes human degradation. See the under mentioned cases:

_Sunil Batra V. Delhi Adm. AIR 1978 SC 1675_

_Sher Singh V. State of Punjab, AIR 1983 SC 465_

9. Speedy Trial

The right to speedy trial is not specifically mentioned in the Constitution like many other Fundamental Rights. Yet speedy trial is a component of personal liberty and procedural law is void if it does not provide for speedy trial.

_Sher Singh V. State of Punjab, AIR 1983 SC 465.s_

_Hussainara V. Home Secretary, Bihar AIR 1979 SC 1360, 1369, 1377_

10. Undertrial Prisoners

An undertrial prisoner kept in jail for a period exceeding the maximum prison term amendable on conviction must be released.

_Hussainara V. State of Bihar, AIR 1979 SC 1369, 1819, 1377_

Persons kept in jail without trial or without charge must be released.

_Mathew V. State of Bihar, AIR 1984 SC 1854._
Non-Production of the accused under trial after obtaining judicial remand is improper.


11. *Delay in Bringing to Trial*

Inordinate delay by the State in bringing an accused to trial or in preferring an appeal against his acquittal violates Article 21, if there is no fault by the accused.

*State of Rajasthan V. Sukhpal, AIR 1984 SC 207.*


3.3 Judicial Approach to Prisoners’ Rights

In the initial stages of it’s working, the judiciary did not show much concern for prisoners’ rights. Thus in *A.K. Gopalan V. State of Madras*³¹, the Supreme Court in a majority ruling held that when a person is totally deprived of his personal liberty under a procedure established by law, the fundamental rights are not available. The Court even refused to hold that the procedure established by law must meet standards of “reasonableness” under Article 19 of the Constitution. However, prisoner rights gained importance with the passage of time. Now the prisoner is entitled to as many rights as a free man and is not a rightless slave of the State. Justice V.R.Krishna Iyer observed: “Basic Constitutional Rights cannot be halted at the prison gates and can be enforced within the prison campus”³². The Indian judiciary has, through progressive and humanistic interpretation, enlarged the rights of the suspect and the accused with a view to protect the interests of the innocent, and preventing abuse and misuse
of police powers. A survey of judicial efforts reveals that courts are not any more silent spectators, rather the judiciary has been showing a deep concern to protect and safeguard the prisoners’ rights with a view to provide justice to them irrespective of the fact that they are somehow the violators of the laws. A study of notable cases of the Apex Court speaks of the fact that Indian Judiciary has echoed strong sentiments in favour of prison rights.

The right of the prisoners to ask for enforcement of human rights has been recognised by the Supreme Court in *Charles Sobhraj V. Superintendent, Central Jail, Tihar*[^33^], *Sunil Batra V. Delhi Administration*[^34^], and *Sunil Batra V. Delhi Administration*[^35^]. In *State of Maharashtra V. Prabhakar*[^36^] fruits of Article 21 were made available to the prisoners while dealing with the question of their right to reading and writing books in jail. In *Prem Shankar V. Delhi Administration*[^37^] and *Kadra Pahadiya V. State of Bihar*[^38^] the Supreme Court issued direction prohibiting the putting of under-trial prisoners in leg-irons. In *Common Cause V. Union of India*[^39^] the Court issued directions to the authorities of Tihar Jail to release the undertrials on bail depending upon the type of offences they are involved on completion of a period mentioned in the judgement. In *Madhav Hywadanya Hoskot V. State of Maharashtra*[^40^] the Apex Court held that the Jail Manual must be up-dated to include the mandate of Article 21 of the Constitution for the reason that all the obligations are necessarily implied as Article 21 guarantees and provides for commitment of procedural fairness. In *Sunil Batra V. Delhi Administration*[^41^], the Court held that even a life convict does not reduce the person into a non-person whose rights are subject to the whim of the prison administration and he is also entitled for observance of the procedural safeguards. In *Citizens for Democracy V. State of*
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Assam[^42], the Court held that handcuffing of prisoners should be in exceptional circumstances as it is against human dignity and violative of Article 21.

_In Charles Sobhraj Case_ the Apex Court Observed:[^43]

Imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, courts will refuse to recognize the full panoply of part III enjoyed by a free citizen …… Article 21, read with Article 19 (1) (d) and (5), is capable of wider application than the imperial mischief which gave it birth and must draw its meaning from the evolving standards of decency and dignity that mark the progress of a mature society.[^44]

_In Sunil Batra V. Delhi Admn._[^45] the Supreme Court stated:

In our constitutional order it is axiomatic that the prison laws do not swallow up the fundamental rights of the legally unfree and as sentinels on the _qui-vive_, courts will guard freedom behind bars, tempered, of course by environmental realism but intolerant of torture by executive echelons. The policy of the law is beyond purchase by authorities glibly invoking ‘dangerness’ of inmates and peace in prisons.[^46]

The court further held:

Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner’s shrunk fundamental rights, if flouted, frowned upon or frozen by the prison authority.[^47]

Thus it is evident that the Supreme Court has taken the view that every fundamental right of the prisoner cannot be infringed. The procedure for restriction should have been found in Article 21, its reasonableness should be
tested under Article 19 (5) and if the “authority” were used arbitrarily, it would be an “anathema” by virtue of Article 14.

1. Plight of Women Prisoners in Jails

In recent years public interest litigation in India has helped in protecting the rights of women prisoners. The courts have played the role of a catalyst in ensuring that the women prisoners are protected in an effective manner in view of their vulnerability. PIL procedures have enabled enlightened citizens and non-political organizations to activate the judiciary and use the law to get specific relief to women prisoners. There are an estimated 10,800 women prisoners but no effort has been made to address their special needs, to take into account that a woman is the pivot of the family and that when she is punished the whole family is punished, especially the children. Through PIL various issues affecting the interests and rights of women prisoners are highlighted – custodial rape and torture; ill-treatment of women suspects; neglect of health and hygiene; delay in trial; violence; assault in police lockups. In the case of Sheela Barse V. State of Maharashtra, the Supreme Court directed to set up a few lock-ups specially for women in reasonably good localities; woman constables to guard them; interrogation of women should be done only in the presence of female police officers; whenever a women is taken to police lock-up the nearest legal aid committee should be informed; and a sessions judge should make periodic surprise visits to the lock-ups to meet the prisoners. In Upendra Baxi V. State of U.P. (Protective homes – Improvement of conditions – Immoral traffic in women) the Supreme Court issued directions to provide sufficient number of bathrooms and latrines, draw up a scheme for vocational training and rehabilitation. Minor girls not to be kept in the company of hardened prostitutes who have been rescued from brothels and also women suffering from diseases. A
panel of doctors to visit the home and check the state of health of the women lodged there. In Vikram Deo Singh V. State of Bihar, 51 (In human conditions – females inmates – Patna – Right to Life, Article 21 - Constitution of India) the Supreme Court issued directions that the government has a duty to provide suitable homes for the destitute women and children be kept in care homes or protective homes in conditions consistent with human dignity. The Constitution lays special emphasis on protection of the right to live with human dignity under Art.21. To abide by the constitutional standards recognized by well-accepted principle, it is incumbent upon the State when assigning women and children to these establishments, euphemistically described as “Care Homes”, to provide at least the minimum conditions ensuring human dignity.

2. Custodial Violence

D.K. Basu V. State of West Bengal: 52 Concerned over the repeated instances of deaths in police custody in Calcutta in July and August, 1986, D.K. Basu, the chairman of the Legal Aid Services, West Bengal, addressed a letter to the Chief Justice of India and the letter was treated as PIL. After a decade, the Supreme Court gave extensive directions as to the procedure to be followed by the police upon the arrest of a person and the minimum facilities to be afforded to such person consistent with the imperative need for the enforcement and protection of the fundamental right to life and liberty. Strongly disapproving of custodial deaths and the use of torture to extract confessions the court said 53:

Police is, no doubt, under a legal duty and has a legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but the law does not permit use of third degree methods or torture of the accused in custody during interrogation and investigation with a
view to solve the crime. End cannot justify the means ..... 
No society can permit it.

Among the mandatory procedural requirements to be followed during arrest and detention are: that the police personnel carrying out an arrest should bear visible and clear identification and name tags with their designations; notification of the relative of the arrestee within eight to ten hours of the arrest; arrestee being permitted to meet his lawyer during interrogation though not throughout the interrogation. Failure to comply with the requirements would be punishable for contempt of court. The Supreme Court also reiterated that:

Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved.

There are few instances of custodial violence, where the only way to protect human rights has been to grant compensation. The compensation jurisprudence was most clearly articulated by the Supreme Court in 1993 in \textit{Nilabati Behera V. State of Orissa} in response to a PIL alleging death of a boy of 22 years in police custody. The court evolved the principle of public law doctrine of compensation for violation of human rights. According to this doctrine, liability of the State for the violation of human rights is absolute and admits of no exceptions, such as sovereign immunity. In this case the court awarded Rs.1,50,000 to the mother of the boy as a compensation for custodial death. \textit{Parmanand Khatra V. Union of India} in a landmark judgement, the Supreme Court ruled that every injured person has a fundamental right to get immediate medical treatment and that a hospital cannot refuse to treat a medic-
legal case. Five women prisoners in Bombay City jail were subjected to custodial violence. The Supreme Court issued guidelines applicable to the whole of Maharashtra, requiring that only policewomen be used to guard or interrogate women suspects or prisoners. In Murti Devi V. State of Delhi, Watchdogs International, an NGO, in its PIL informed the Court that Munshi Kedis, who were convicts in Tihar Jail authorised by the prison administration to supervise the movements of prisoners had severely assaulted one Raj Kumar inside the jail and caused his death. The magistrates who conducted an inquiry under section 176 Cr PC confirmed the cause of death and recommended that the system of Munshi Kedis must be reviewed. The court asked the Inspector General of prisons to explain under what authority these Munshi Kedis were working and what steps had been taken to prevent the misuse of the authority given to them.

In a related petition the court ordered compensation of Rs.2,50,000 to be paid by the State to the widow of the deceased prisoners. In D.K. Basu V. State of West Bengal, with Ashok K. Johri V. State of U.P, it has been held by the Division Bench comprising Justice Kuldip Singh and Justice A.S.Anand that the custodial violence, including torture and death in the police lockups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of police stations or lockups, the victim being totally helpless. In these cases the petitioners raised important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the fundamental rights guaranteed by Articles 21 and 22 of the Constitution. The
Latin maxim *Salus populi suprema lex* (the safety of the people is the supreme law) and *salus republicae suprema lex* (safety of the State is the supreme law) co-exist and are not only important and relevant but fire at the heart of the doctrine that welfare of an individual must yield to that of the community.

Concerned by over 1000 custodial deaths across the country in the year 2000 the Supreme Court issued directions to the Centre and the States asking them to show cause why the court should not issue directions for adopting measures to prevent them. A division bench comprising of Chief Justice A.S.Anand and Justice R.S.Lahoti issued the notices on an application moved by *amicus curiae* A.M.Singhvi pointing out the necessity of directions to be issued to strengthen the implementation of earlier court decisions. In an application in the year 1999-2000, it was pointed out that there were 916 deaths in judicial custody while 177 deaths in police custody. Bihar topped the list with 155 deaths in judicial custody and 7 deaths in police custody. For Maharashtra the figures were 126 and 30 and for Uttar Pradesh it was 141 and 18 respectively.

In another landmark, NHRC has awarded Rs.3 lakhs as interim relief to the next of kin of Mohammed Irshad Khan, an owner of a shoe-manufacturing unit, who was allegedly beaten to death by two policemen in East Delhi on October 12,2000. The Commission observed that *prima facie a case existed justifying the award of immediate interim relief under section 18(3) of the Protection of Human Rights Act.*

3. Handcuffing

Under Article 21 of the Constitutions police atrocities like torture and handcuffing of members of association fighting for rights of undertrials is unfair. In *Sunil Batra (II),* the Supreme Court deprecated the practice of handcuffing prisoners in a routine manner and held that it violates Article 21 of
the Constitution. *In Prem Sankar Shukla V. Delhi Administration*65 which came before the Court by way of PIL, a prisoner sent a telegram to one of the judges of the Court complaining of forced handcuffs on him and other prisoners during transit between prison house and the court room. In this case the Court banned the routine handcuffing of prisoners as a violation of the constitutional mandate and declared the distinction among classes of prisoners as absolute.66 It was opined by the judges of the Supreme Court that handcuffing is *prima facie* inhuman, unreasonable, over harsh and arbitrary. It is generally repugnant to Article 21 of the Constitution and fouls the soul of our constitutional culture. The undertrial prisoners, until convicted, cannot be deemed as criminal, so needless to say that the police authorities should not be harsh to such persons. The right to life includes human dignity. The same principles are reiterated in *Sunil Gupta V. State of M.P.*67. *In Citizens for Democracy V. State of Assam*68, it had been held that handcuffing is inhuman and in utter violation of human rights guaranteed under International Law and Law of the Land and held that any violation of its directions would be held to be contempt of court and also incur penal consequences.

4. Undertrials–Release on Personal Bond

The Supreme Court has admitted letter petitions as well as converted newspaper reports into petitions where the rights of prisoners as undertrials have been violated. The statistics are staggering but what is even more astounding is the callous attitude of the bureaucracy and the judiciary to the conditions of our jails and the jailed, especially the undertrials. From all accounts there are an estimated 3.2 lakh prisoners housed in 1,219 jails, and of them 1.6 lakhs are undertrials, caught in the web of the law; most are poor, illiterate and uncertain of the charges against them. Certainly, they are not aware of their statutory
rights, of their right to life and personal liberty, and right to free legal service, which is an essential ingredient of the reasonable, fair and just procedure emphasized by Art.21 for a person accused of an offence. So they are left to languish for days, months, and years.

In 1996 the Supreme Court ordered the release on bail of those who had been in Tihar jail for more than one year, for kidnapping, theft, cheating, and rioting, against personal bonds. Some had spent up to 11 years in jail, because though the Criminal Procedure Code requires an arrested person to be produced before a magistrate within 24 hours, the police avoid doing so by not recording the arrest. *Khatri V. State of Bihar,* popularly known as the Bhagalpur blinding case depicted a very sad picture of undertrials. In this case at Bhagalpur, a number of suspected criminals were allegedly blinded while they were in prison. The story of blinding was carried by a national daily on October 11, 1980. Further investigation into the story was taken up by *Sunday* and *Ravivar.* Subsequently *The Indian Express* splashed the report on the front page. The police blinded these prisoners in a very crude and barbaric manner. The modus operandi was to puncture the eyeballs of the prisoners with bicycle spokes and then administer acid into their eyes, till the sockets remained. The learned counsel for the blinded prisoners, Mrs. Hingorani argued that the State should be rendered liable for the blinding of the undertrials.

The history of PIL cases decided by the apex court during the last few years have multiplied on a very large scale and has provided a base to the court to secure the release of undertrials languished behind the bars for years together for no fault of theirs. In this case, the Court brought into light certain irregularities. In a few cases, the accused persons were not produced before the nearest magistrate within 24 hours of their arrest as required by Article 22. In
some cases, the accused persons were not produced before the judicial magistrates subsequent to their first production and they continued to be in jail without any remand orders being passed by the judicial magistrate. According to the Court, the provision inhibiting detention without remand was a very healthy provision, which enabled the magistrates to keep check over the police investigation and that it was necessary that the magistrates should try to enforce this requirement carefully. The Court also expressed its unhappiness at the lack of concern by the judicial magistrate in not enquiring from the blinded prisoners when they were first produced before him and thereafter from time to time for the purpose of remand as to how they had received injuries in the eyes. This gave rise to two inferences; either the prisoners were not physically produced before the magistrates or the magistrates mechanically signed the remand orders.

The court also regretted that the district and sessions judges carried out no inspection of the Central Jail, Bhagalpur, at any time during the year 1980. The court emphasized that the State was bound to provide free legal services to an indigent accused person and could not plead financial and administrative inability. The State might have its financial constraints and its priorities in expenditure but the State could not escape this liability. In extreme cases compensation has also been awarded in PIL cases. For instance in *Rudul Shah V. State of Bihar*\(^7\), it was held that compensation for illegal detention can be granted under Art.32 without affecting the prisoner’s right to sue for damages. Rudul Shah was acquitted by the sessions court on June 3, 1969 but was released on October 16,1982, after a period of more than 14 years. Rudul Shah filed a petition in the Supreme Court and *inter alia*, he claimed compensation for his illegal detention in jail. Taking into consideration the great harm done to the petitioner by the State government to pay to the petitioner a further sum of
Rs.30,000 as an interim measure in addition to the sum of Rs.5,000 already paid in the nature of a palliative and it did not preclude the petitioner from bringing the suit to recover appropriate damages from the State and its erring officials.

_In Veena Sethi Case_ the Supreme Court took note of a letter addressed by the Free Legal Aid Committee, Hazaribagh dated January 15, 1982 to Justice Bhagwati. This letter drew the attention of the Court to the illegal detention of certain prisoners in the Hazaribagh Central Jail for almost two or three decades without any justification whatsoever. The letter was treated as a writ petition; the court ordered the release of a number of prisoners, in the Hazaribagh Central Jail. The Court observed that the rule of law does not exist merely for those who have the means to fight for their rights, but it exists also for the poor and the down-trodden, the ignorant and the illiterate who constitute the large bulk of humanity in this country. The Court emphasized that it is the solemn duty of the court to protect and uphold the basic human rights of the weaker sections of the society, and it is this duty the court is trying to discharge in entertaining Public Interest Litigation.

_In Hussainara Khatoon V. State of Bihar_, where hundreds of thousands of undertrials who had been languishing in the jails of Bihar without any trial for periods longer than they would have served if convicted were directed to be released. In another case of _Hussainara Khatoon_ the Court held that when an undertrial prisoner was produced before a magistrate and had been in detention for 90 days or 60 days, as the case may be, the magistrate must, before making an order of further remand to judicial custody, point out to the undertrial prisoner that he was entitled to be released on bail. It was also held that the State government must also provide at its own cost a lawyer to the undertrial prisoner with a view to enable him to apply for bail. _In Hussainara Khatoon_
(III) V. State of Bihar\textsuperscript{79} the Court found that continued detention of the undertrial prisoners could not be justified as they had already been in jail for a period longer than what they would have been sentenced to suffer, it was observed:

This discloses a shocking state of affairs and betrays complete lack of concern for human values. It exposes the callousness of our legal and judicial system, which can remain unmoved by such enormous misery and suffering resulting from totally unjustified deprivation of personal liberty.\textsuperscript{80}

In Hussainara Khatoon \textit{(V) V. state of Bihar}\textsuperscript{81} the Court held that the undertrial prisoners, who were accused of multiple offences and who had already been in jail for the maximum term for which they could be sentenced on conviction, even if the sentences awarded to them were consecutive and not concurrent, should be released because the continuance of detention would be clearly violative not only of human dignity but also of their fundamental right under Article 21 of the Constitution\textsuperscript{82}.

The judicial decisions in Hussainara cases proved to be a \textit{Magna Carta} to the 1,20,000 undertrial prisoners languishing in jails for years without trial.

5. Speedy Trial

In India, Article 21 of the Constitution guarantees the speedy trial and protection of prisoner from cruel and unusual punishment. One should remember that speedy trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. It is a basic human right. In Hussainara Khatoon Case\textsuperscript{83} the Supreme Court emphasized the right of an undertrial
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prisoner and examined these rights in the light of the provisions of the International Covenant. The petitioner was an undertrial and there was inordinate delay in conducting the trial. The Court, favouring the petitioner, held that the rights of an undertrial for a speedy trial as a basic right which is a part of Article 21 of the Constitution. The Supreme Court, while delivering its Constitutional Bench judgement in the case of Abdul Rehman Antulay V. R.S. Nayak declared that the right to speedy trial is implicit in Article 21 of the constitution and, thus, constituted a fundamental right of every person accused of a crime. In Hussanara Khatoon (I) V. Home Secretary, State of Bihar, a Habeas Corpus petition was filed under Article 32 of the Constitution by an advocate on the basis of news reports in The Indian Express on 8-9 February 1979 describing how some undertrial prisoners had already been imprisoned for longer than the maximum sentence that could be imposed upon conviction. In some cases investigations and trials had not begun, in others there had been a lapse of several years.

In an order Justice Bhagwati held that as a speedy trial is the essence of Criminal Justice, delay in a trial constitutes a denial of justice. The bail system was described as oppressive and discriminatory against the poor, so the Court held that the background of the accused should be examined and the lower courts should not necessarily insist on bail with sureties. All of the prisoners mentioned in newspaper articles were directed to be released on “personal recognizance bond”.

The Supreme Court Observed:

Now obviously procedure prescribed by law for depriving a person of his liberty cannot be ‘reasonable, fair or just’ unless that procedure ensures a speedy trial for
determination of the guilt of such person. No procedure, which does not ensure a reasonably quick trial, can be regarded as reasonable, ‘fair or just’ and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Art 21.

6. Right to Legal Aid

It is the Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation to have free legal services provided to him by the State and the State is under a Constitutional mandate to provide a lawyer to such accused person, if the needs of justice so require.

In Hussainara Khatoon V. State of Bihar the Supreme Court declared that the right to legal aid was a fundamental right implicit in the guarantee of personal liberty under Article 21 of the Constitution. In M.H.Hoskot V. State of Maharashtra the Supreme Court held that the right to legal aid is one of the ingredients of fair procedure. The benefit of Article 39-A is available in those cases where public justice suffers. In Khatri V. State of Bihar, the Court held that the right to free legal services was clearly an essential ingredient of reasonable, fair and just procedure of a person accused of an offence and it was implicit in the guarantee of Article 21.


7. Inhuman Prison Conditions

Sunil Batra V. Delhi Administration: In this case the petitioner was sentenced to death on charges of gruesome murder and robbery and was kept in
solitary confinement. The Court pointed out that it would be violative of the fundamental rights to impose solitary confinement on a prisoner under sentence of death, not as a consequence of violation of prison discipline, but on the sole ground that he is a prisoner under sentence of death. In 1980, the Supreme Court decided the second Sunil Batra Case. This case arose out of a letter written by Sunil Batra to one of the judges of the Supreme Court alleging that a warden of Tihar Jail, New Delhi, has caused bleeding injury to convict named Prem Chand by inserting stick into his anus. The Apex Court treated the letter as a writ petition and observed that “whenever the rights of a prisoner either under the Constitution or under any other law violated, the writ power of the Court can and should run to his rescue”. Justice Krishna Iyer protected the prisoner from prison vices with the shield of Article 21 stating that “prisons are built with the stones of law”, and so, it behoves the Court to insist that in the eye of law, prisoners are persons, not animals and to punish the deviant ‘guardians’ of the prison system where they go berserk and defile the dignity of the human inmate.

8. Unsatisfactory Conditions in Lock-up

In T.N. Mathur V. State of U.P. It was directed to the State of U. P. that whenever detentions are resorted to, the persons detained must be housed in a lock-up which will provide at least 40 sq. ft per person with minimal facilities of some furniture, such as cot for each of the detained persons and supply of potable water. Having regard to the climatic conditions of the place, the lock-up should be provide with electric fan.

References:

1. See Article 2 of the Declaration.
7. Sunil Batra (I) v. Delhi Administration, AIR 1978, SC 1675.
9. Supra note 6 at 1693.
10. Ibid. at 1704.
11. Supra note 6 at 1712.
12. Ibid. at 1735.
14. Ibid. at 1541.
15. Ibid.
16. Ibid. at 1542.
23. AIR 1979 SC 1360.
24. Ibid. at 1361.
25. AIR 1979 SC 1369, See also AIR 1979 SC 1377.

26. Ibid. at 1373.

27. The Times of India, Delhi, 3 June 2002.

28. Initially the courts had taken the view that there was no duty imposed upon the State to provide an indigent accused with counsel. See Janardhan Reddy v. State of Hyderabad, AIR 1951 SC 217 and Tara Singh v. State, AIR 1951 SC 491.

29. AIR 1978 SC 597.

30. AIR 1978 SC 1548 at 1551.

31. AIR 1950 SC 27.


33. AIR 1978 SC 1541.

34. AIR 1978 SC 1575.

35. AIR 1980 SC 1579.


37. AIR 1980 SC 1535.


40. AIR 1978 SC 1548.

41. Supra, note 34.

42. AIR 1996 SC 2193.

43. AIR 1978 SC 1514.

44. Ibid. at 1516.
45. Supra note 6.
46. Ibid. at 1682.
47. Ibid. at 1690.
49. (1983) 2 SCC.
53. Ibid. at 309. For a PIL over a custodial death in Assam ending in punishment of the delinquent police officer see, Secretary, Haila Kandi Beg Association v. State of Assam, (1996) 4 SCALE 290.
54. Ibid. at 314.
61. The Times of India, Delhi, Feb 10, 2001.
64. Sunil Batra (II) v. Delhi Administration AIR 1980 SC 1579.
65. AIR 1980 SC 1535.
69. AIR 1981 SC 928.
70. The Indian Express, Delhi, October 11, 1980.
71. See Sunday and Ravivar, November 22, 1980.
72. The Indian Express, Delhi, November 22, 1980.
73. AIR 1983 SC 1086.
75. Ibid, at 340.
76. AIR 1979 SC 1360.
77. AIR 1979 SC 1377, See also Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1819.
78. Ibid, at 1379.
79. AIR 1979 SC 1369. See also AIR 1979 SC 1377.
80. Ibid, at 1372-73.
81. AIR 1979 SC 1819.
82. Ibid.
86. AIR 1979 SC 1360.
87. AIR 1978 SC 1548 at 1551.
88. AIR 1981 SC 928.
89. AIR 1978 SC 1675.
90. Sunil Batra (III) v. Delhi Administration, AIR 1980 SC 1579.