

THE RIGHTS OF UNDER-TRIAL PRISONERS

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INTRODUCTION

“Freedom means supremacy of Human rights everywhere”

- Theodore Roosevelt

The recent problem that has been a major worry and has increased over the years are under Trial prisoners and the rights that are guaranteed to them. Humongous numbers of under Trial prisoners are in the jails across the country. Under Trial prisoners are detained under the judicial custody and some have even exhausted a longer period in the custody than the maximum term for which they could have been sentenced, if convicted. Due to this there are various Human rights infringements that are observed. There are several reasons for such increases in number of the under Trial prisoners ranging from denial of fair Trial to shortage of judges. This article will majorly focus on the rights that are available to the under Trial prisoners under the Indian constitution and the international human rights instruments and will also critically view the struggles faced the under Trial prisoners.

WHO ARE UNDER-TRIAL PRISONERS

Under Trial prisoners are people who are charged for a crime, are not convicted and facing the trial. They are under judicial custody during this course of trial. The number of these under Trial prisoners increases as there is delay in justice and increase in the litigation that is filed in the courts on a daily basis. In India it is estimated that the populace of the under Trial is larger. As per the statistics of 2015 December there are almost 67% of prisoners in India ¹

Conflict of Principles

There is a major conflict between two important principles of criminal jurisprudence in the case of under Trial prisoners. Firstly, the principle of presumption of innocent, which highlights on the aspect that every individual must be presumed innocent unless and until the crime is established. Secondly the principle of administration of justice, as per this the

¹ Ministry of Home Affairs, National Crime Records Bureau 2015, 2016, Available at <http://ncrb.nic.in/StatPublications/PSI/Prison2015/PrisonStat2015.htm>

victim or the person affected must get appropriate justice. Thus these two principles are commonly seen in the conflict when it comes to under-Trial prisoners.

HUMAN RIGHTS AVAILABLE TO THE UNDER-TRIALS

Every individual is entitled to basic human rights even if he/she is an under Trial prisoner. Indian constitution as well as other universally accepted human rights instruments guarantees such to the under-Trial prisoners.

Indian Constitution

Indian constitution is consisted as the supreme law of the land, part three of the constitution guarantees fundamental rights to every citizens which are more of human rights which enhances life of every individual². The Supreme Court has held that every individual is entitled to the fundamental rights emphasized under the constitution including under-Trial prisoners³. Indian constitution considers Art.14, 19 and 21 to be the golden triangle of the constitution which cannot be infringed and this is guaranteed an under-Trial prisoner as it is available to a prudent person⁴

Rule Golden Triangle of the Constitution

Rights Guaranteed Article 14

Art.14 of the Indian constitution states that *“The State shall not deny to any person equality before the law and equal protection of laws within the territory of India”*

As per this article equality is provided to all i.e. every individual before that law and must be treated equality in the eyes of law and no distinction can be made unless there is a reasonable classification. In Indian constitution equality is considered as the superlative Connor of the democracy.⁵ This also gives light to the principle of rule of law in the Indian constitution⁶. Thus Art. 14 is guaranteed to every individual and cannot be infringed by denying equality⁷. Even an under-Trial prisoner cannot be denied equality before law and in case of any denial there shall be a immense violation of Art. 14 of the Indian constitution⁸. Under Art.14 of the Indian constitution equality can be curtailed when there

² Arnav Sood, *Prison Reforms In Indian Prison System*, <http://www.legalserviceindia.com/article/1174-Prison-Reforms-In-Indian-Prison-System.html>, accessed on 02/03/2018.

³ *State of A.P v. Challa ramkrishna Reddy*, AIR 2000 SC 2083: (2000) 5 SCC 712.

⁴ *T. V Vatheeswaran v. State of Tamil Nadu*, AIR 1983 SC 316 : (1983) 2 SCC 68.

⁵ Dicey, *Law of the constitution*, 10Ed. (1959).

⁶ *Ashutosh Gupta v. State of Rajasthan*, Appeal (civil) 7777 of 1997

⁷ *Faridabad Singh v. New Delhi Municipal Committee*, AIR 1996 SC1175 : (1996) 2 SCC 459.

⁸ *Dalmia Cement (Bharat) Ltd v. Union of India*, AIR 1996 10 SCC 104.

is reasonable classification and not arbitrary⁹. Reasonable classification is permitted when it answers in affirmative to the twin test i.e. ineligible differentia and rational relation¹⁰. Reasonability and fairness are considered to be the core elements of Art.14 of the Indian constitution¹¹. Thus if there is any distinction while denying equality which is guaranteed to the under Trial prisoners it must be reasonable and must respond positively to the twin test otherwise it shall amount arbitrariness and violation of Art.14 of the Indian constitution¹². Art.14 also focuses on principle of natural justice which is guaranteed to everyone and must be applied in every situation where it is needed¹³. Thus an under Trial prisoner cannot not be denied of principle of natural justice during the judicial custody in the prison¹⁴. An under Trial prisoner has also the rights to seek remedy if there is grave infringement to his/her right guaranteed under Art.14 of the Indian constitution which results in legal injury¹⁵.

Rights guaranteed Article 19

Article 19 of the Indian constitution guarantees several rights to the individual. Most importantly Ar.19 guarantees free speech and expression and freedom to become a member of any association. Art.19(1)(a) states that “*all citizens shall have the right to freedom of speech and expression*” and it is considered to be the fourth pillar of democracy. The right of free speech and expression is available to every person individual of the state¹⁶ and this right indicates right of every individual to express his/her thoughts in any manner i.e. in orals, written or even using gestures. Thus every under-Trial prisoner is also guaranteed with this right and can exercise it in all forms as it leads to political participation in the society¹⁷ and hence such right cannot be taken away from the individual who is a under-trial. He/She must also be given equal opportunities to express their thoughts and actions freely without any constrain which will cause infringement to the right¹⁸. Moreover Art.19(c) of the Indian constitution states that “*every individual can be a part of a union or an association and also be form one*” . This right talks widely about being a part of an association for the purpose not for mala fide intention. Such right cannot be taken any

⁹ *D.C. Bhatia v. Union of India*, AIR 1995 1 SCC 104.

¹⁰ *State of West Bengal v. Anvar Ali*, AIR 1952 SCR 289.

¹¹ *Delhi Development Authority v. Joint Action Committee*, AIR 2008 2 SCC 697.

¹² *E.P Royappa v. State of Tamil Nadu*, AIR 1974 SC 555 (583); *Menaka Gandhi v. Union of India* AIR 1978 AIR 597, 1978 SCR (2) 621.

¹³ *Jagdish Lal v. State of Haryana*, AIR 1997 SC 2366: (1997) 6 SCC.

¹⁴ *Madersa E. Garibnawar v. State of Gujarat*, AIR 2005 Guj 65.

¹⁵ *Ramana Dayaram Singh v. State of Bihar*, 1979 AIR 1628, 1979 SCR (3)1014.

¹⁶ *State of Gujatat v. Ambica Mills*, AIR 1974 SC 1300.

¹⁷ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

¹⁸ *Menaka Gandhi v. Union of India* AIR 1978 AIR 597, 1978 SCR (2) 621.

from an individual¹⁹. An under-Trial prisoner is also has a right to join any association or a group provided it is not formed under mala fide intention to cause harm or damage to the society in general²⁰. Thus such right cannot be taken away on the basis that the individual is an under trail²¹

Rights guaranteed Article 21

Article 21 of the Indian constitution states that “*No person shall be deprived of his life or personal liberty except according to a procedure established by law.* It is been considered as the Magna carta by justice Iyer of the Indian constitution. Art.21 of the Indian constitution mainly emphasizes on right to life and personal liberty. ²²Article 21 of the constitution is not merely a physical act of existence nor a mere animal existence does it constitute various other rights under the ambit of life²³. Thus Art.21 of the constitution provides all rights which is basic requirement of life²⁴. Every individual is entitled of such right and this cannot be infringed and an under Trial prisoner is also entailed with such right which cannot be taken away from him otherwise it will cause a damage to the right guaranteed to him under Art.21 of the constitution²⁵ The facet of live under Art.21 of the Indian constitution gives various rights to the under Trial prisoners²⁶. Art. 21 of the Indian constitution gives major lay emphasis on right of every person to live with dignity²⁷. Right to human dignity goes along with the basic inevitability of life and must granted to every individual without any diversion and free from exploitation²⁸ Dignity under Art.21 of the Indian constitution cannot be curtailed and is granted to each and every individual including the under Trial prisoner and such right has to be protected and must be given to the individual²⁹. Thus every under Trial prisoner is also established with such a right ³⁰ no action can be done which will cause grave injury to the right³¹. Reputation is an integral part of right to life as it makes the human civilization worth living. Right to reputation is guaranteed under Art.21 of the Indian constitution which is available to every individual³². An under Trial prisoner is also entitled with such right and any action which is taken must not harm this

¹⁹ *Raghubar Dayal Jai Prakash v. Union of India*, AIR 1950 SC 263.

²⁰ *Taki Ramji v. State of UP*, AIR 1956 SCR 393.

²¹ *O K Ghosh v. E.X.Joseph*, AIR 1963 SC 815.

²² Arvind P. Datar, *Commentary on the Constitution of India*, Vol. II 22nd ed. reprint 2010.

²³ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

²⁴ *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 129.

²⁵ *Francis Corallie v. Union of Delhi*, AIR 1981 746 , 1981 SCR (2) 516.

²⁶ *Upendar Baxi v. State of UP*, AIR 1983 2 SCC 308.

²⁷ *Menaka Gandhi v. Union of India*, AIR 1978 597, 1978 SCR (2) 621.

²⁸ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 802, 1981 SCR (2) 67.

²⁹ *People's Union for Democratic right v. Union of India*, AIR 1982 1473, 1983 SCR 1456.

³⁰ *Chandra Raja Kumar v. Police Commissioner Hyderabad*, AIR 1998 AP 302.

³¹ *State of Maharashtra v. Chandrabhan*, AIR 1983 SCR (3) 327.

³² *Smt. Kiran Bedi v. Committee of Inquiry*, AIR 1989 SCR (2) 363.

right of the individual³³. As reputation is considered as the as an aspect of life and livelihood all efforts must be taken to protect it ³⁴An important aspect to life is right to health which is granted to an under Trial prisoners as it guaranteed to every individual person³⁵. Such right cannot be curtailed on any grounds from the under-Trial prisoner³⁶. Not only health which must be given and guaranteed to the under Trial prisoner, right to information is also given to granted³⁷. Right to information is also considered as the right to know which must be provided to every individual including the under Trial prisoner³⁸. Right to information is strongly given in light under Art.21 of the Indian constitution and must be protected by all means and must be granted without and classification, taking away of such right or infringement of such right is violate of Art.21 of the Indian constitution³⁹. The Supreme Court has way and again has given out and stressed upon the aspect of fair and free treatment of under-Trial prisoners⁴⁰. In such a case every right must be guaranteed to him/her. Since an individual is an under Trial prisoners it does not disentitles them from any right they are guaranteed with every right that is available to an individual person. Right to free legal aid is one important aspect which is guaranteed under ambit of Art.21 of the Indian constitution. Every under-Trial prisoners many not be in a position to arrange for an legal aid due to various reasons one of which is poor socio- economical background. Thus it is important to grant free legal aid to the under Trial prisoner ⁴¹. Not only free legal aid must be given must efforts must be taken in order to conduct speedy trail. Under Trial prisoners are not convicts. There is a clear line of difference between the two⁴². A under Trial prisoner is just a person who is charged of an offence and facing a Trial and since he is facing a Trial he is placed in the judicial custody⁴³. A under Trial pensioner could be an innocent person or an offender only when a proper Trial is conducted it can be identified. Thus a speedy Trial is needed in such cases. Art.21 of the Indian constitution does stress upon the right to speedy Trial and this is guaranteed to every individual and must be

³³ *State of UP v. Mohammed Naim*, AIR 2006 3 SCC 399.

³⁴ *State of Bihar v. Lal Krishna Advani*, AIR 2003 SC 3357.

³⁵ *State of Punjab v. M.S Chawala*, AIR 1997 SC 1225.

³⁶ *Consumer Education and Research Centre v. Union of India*, AIR 1995 922 SC (3) 42.

³⁷ Nidhi Beniwal, *Role of Judiciary in Protecting the Rights of Prisoners*, retrieved from <http://www.legalservicesindia.com/article/article/role-of-judiciary-in-protecting-the-rights-of-prisoners-1616-1.html>, accessed on 13/03/2018.

³⁸ *R.P Ltd v. Proprietors India express newspaper Bombay Pvt. Ltd*, 1989 AIR 190, 1988 SCR Supl. (3) 212.

³⁹ *Essar Oil Ltd. V. Halar Utkarsh Samiti*, Appeal (civil) 352-353 of 2004.

⁴⁰ *Menaka Gandhi v. Union of india*, AIR 1978 597, 1978 SCR (2) 621.

⁴¹ *M.H. Haskot v. State of Maharashtra*, AIR 1978 SC 1548.

⁴² Saurbh Kothari, *Taking Prisoner's Rights Seriously*, <http://www.legalserviceindia.com/articles/po.htm>, accessed on 03/03/2018.

⁴³ Durga Das Basu, *Case Book on Indian Constitutional Law*, 2nd ed. 2007.

viewed on a greater pace and cannot be infringed⁴⁴. Supreme court has discussed and laid down few guidelines which says that Art.21 of the Indian constitution completely guarantees the right of speedy trial⁴⁵. Speedy trial under Art.21 of the Indian constitution stresses on reasonableness and must fulfil all the states of the Trial⁴⁶. However it is not only important to conduct a speedy Trial it is also important to conduct in a fair manner. Fairness is an important aspect of life and Art.21 of the Indian constitution does give a major emphasis on it. Every under Trial prisoner is entitled with the right of free and fair Trial and this must not be infringed by any cause. Denying of the right to free and fair Trial hits Art.21 of the Indian constitution and causes a legal injury to the individual who is seeking such a right.⁴⁷. In case of judicial custody of the under Trial prisoners they must not be subject to any violence of any sort. They must be safeguard from violence if any is caused. If this is not respected this violates Art.21 of the Indian constitution on a greater ground⁴⁸. Thus these are the rights which are guaranteed under the Indian constitution for the under Trial prisoners which cannot be infringed⁴⁹. If any infringement is done to the rights guaranteed it violates the principle of golden triangle of a greater magnitude.

International Human Rights Instruments

International human rights instruments also give major emphasis on the rights of the under Trial prisoners and it is an international obligation to follow and grant the rights. The international instruments which grant such rights are Universal declaration of Human rights (UDHR)⁵⁰, International Covenant on Civil and political rights (ICCPR)⁵¹ and international covenant on economical, social and cultural development (ICESER)⁵². Basic Principles for the Treatment of Prisoners Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990 gives guidelines one treatment of the prisoners such treatment is also applicable to the under Trial prisoners⁵³.

Most importantly ICCPR gives more emphasis on the rights the rights of under Trial prisoners Art. 9 of the covenant stresses upon the aspect of right to information that must

⁴⁴ *Anil Rai v. State of Bihar*, AIR 2001 SC 3173.

⁴⁵ M.V. Pylee, *Constitutional Amendments in India*, 3rd ed. 2010.

⁴⁶ *A.R. Autulay v. R.S. Nayak*, AIR 1992 SC 170.

⁴⁷ *Zahira Habibualla sheikh v. State of Gujarat*, AIR 2006 SC 1367.

⁴⁸ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

⁴⁹ V.N. Shukla, *Constitution of India*, 12th ed. 2013.

⁵⁰ United Nations Universal Declaration of Human Rights 1948.

⁵¹ International Covenant on Civil and Political Rights, entered into force on 16th December 1966, 1057 U.N.T.S 407.

⁵² International Covenant on Economic, Social and Cultural Rights entered into force Jan.3 1976.

⁵³ Basic Principles for the Treatment of Prisoners Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.

be granted to every individual as well as right to speedy Trial⁵⁴. All the more Art. 10 of the convention makes it clear that dignity is a humanity and dignity is an integral part of life and this must be granted to every individual including the under Trial prisoners⁵⁵. Art. 3 of the ICCPR makes it mandatory that every nation must grant the rights that is available to every individual and must fulfil its obligation by granting such rights⁵⁶. These rights guaranteed under the international human rights are consider to fundamental rights which must not be taken away from any individual⁵⁷. The Supreme Court considered the rights which are international norms and said that it must be granted to every individual as it fulfils the states obligation being a part of the convention⁵⁸. ICCPR provision was used by the Indian courts in granting the rights and also said that there rights are inalienable rights and cannot be infringed by any authority⁵⁹. Thus not granting of the rights that are available to the under Trial prisoners violates the inalienable rights which are considered to be international norms of state obligation⁶⁰.

STRUGGLES FACED BY UNDER TRIAL PRISONERS

Treatment of under Trial Prisoners

The Under-Trial prisoners undergo lots of struggles in the prison. There are kept in the same prison/cell that of the convicts. Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and

⁵⁴ **Article 9** : 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

⁵⁵ **Article 10**:1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person

⁵⁶ Article 3 : The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

⁵⁷ *People's union of India v. Union of India*, AIR 1997 (3) SCC 433.

⁵⁸ *Vishaka and others v. State of Rajasthan*, AIR 1997 6 SCC 241.

⁵⁹ *Nilabati Behara v. State of Orissa*, AIR 1993 2 SCC 746.

⁶⁰ *Hussainara Khatoon v. State of Bihar*, AIR 1980 (1) SCC 98.

the Treatment of Offenders⁶¹ stresses upon the fair treatment of the under Trial prisoners⁶². Standard minimum rules provide that all under Trial prisoners must be treated differently than that of the convicts from giving them a different cell to providing them good and hygienic food⁶³. However, this is not the being followed in reality thus administrative committees must be set up in every regional level to ensure these rules are properly enforced and the basic rights are guaranteed to them.

Shortage of Judges

Since there are large number of cases and less number judges in India to deliver justice there can be a delay in the judicial process and will affect the under Trial prisoners on a greater pace⁶⁴. This lacuna can be avoided when there are sound legal personnel to deal with these cases and then when there is substantial question of law involved can be transferred to the judges.

Delay in Trial of Cases

Delay in conducting the Trial and granting of justice is a major struggle faced by the under Trial prisoners. Till the trial gets over the under Trial prisoners are under the judicial custody and when there is a delay in the Trial it infringes the right of speedy trail⁶⁵. Thus a proper administrative mechanism should be introduced in form of committees with judicial powers to dispose the cases faster. Thus, these are the few struggles faced by the under Trial prisoners can be taken away in an administrative way when there is proper administration.

CONCLUSION

Human rights are considered to be paramount and cannot be infringed in any cause. Under Trial prisoners are also individuals who are entitled of these rights that are available. Denial of basic human rights not only falls outside the realms of Indian constitution or international human rights instruments, it goes against humanity as a whole. Thus rights must be granted to them to ensure and safeguard Humanity. There are struggles faced by the under Trial prisoners during the judicial custody which can be overlooked by introducing administrative mechanism.

⁶¹ Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955

⁶²Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders 1955.

⁶³ Rule 85-92

⁶⁴ *Prakash Singh and others v. Union of India*, AIR 310 1966.

⁶⁵ *Hussainara Khatoon v. State of Bihar*, AIR 1980 (1) SCC 98.