Right to Live With Dignity and Its Impact on Prison Administration

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Abstract: The Constitution of India grants to the citizen fundamental rights under Part 3rd of the Constitution. There are seven types of fundamental rights, if we count right to education separately. Right to life and personal liberty is the part of “right to freedom”. The paper is related to the right to live with dignity of prisoners. Right to life and personal liberty is enshrined in every human being because of being a human. Human being is a species of mankind named ‘homo sapiens’. It is presumed that all human are common and having common basic needs and qualities while additional qualities, vices & specifications come afterwards. So far as, a person should be enriched with basic rights nobody should be deprived of such rights whatever the status he holds he may be a common man or may be a prisoner. ‘Human being should be treated with humanity’. To deprive someone with one’s right is the tendency of dehumanization. Various rights are provided to prisoners but in practicality whether such rights are available or not to these prisoners it is a matter of concern.

Introduction: Right to life and liberty for a human being would include in itself right to food, clothing, decent environment and reasonable accommodation to live in which allows him to grow in all aspects- physical, mental and intellectual. Right to live with dignity is the core heart of the right to life and personal liberty. It is protected under Article 21 of The Constitution of India. It is described as one of the most ‘sacred & cherished right’ under the Constitution. Article 21 of The Constitution when it was proposed by Drafting Committee in Constituent Assembly it was numbered as Article15. Draft Article 15 as originally passed by the Constituent Assembly provided that “No person shall be deprived of his life or liberty without due process of law...........” The Drafting Committee suggested two changes in this Article;

(1) the addition of the word ‘personal’ before ‘liberty’ and,
(2) the substitution of expression ‘except according to procedure established by law’ for the words ‘without due process of law’.

The reason behind the first change was that otherwise (liberty) must be construed very widely so as to include even the freedoms already dealt within Article 13(now Article 19) .The reason given for the second change was that the substituted expression was more specific. The reason given for the first change was clearly right Article 13 (now 19) conferred certain freedoms only on citizens while Article 15 (now 21) applies to citizens and non citizens in a uniform manner and it was wise to argue that the word ‘liberty’ included the freedoms which had been denied to non-citizens by Draft Article 13 (now 19) . The reason for second change was that word ‘due process of law’ was flexible (or imprecise) and vague. The word ‘due process’ were replaced by ‘procedure established by law’.

In natural age of law right to life was limited only having breadth inside and outside but with the development of human society it has widened its scope. Right to life and personal liberty is secured to every human being irrespective of his nationality, race, caste, creed, sex, religion or any other specification. The soul of the provision lies in the fact that whoever he is, first of all he is a human being, a creature of the almighty God! So he should be enriched with all necessary human rights. It deals with substantive & procedural both rights. This is based on basic Indian ancient philosophy of “live and let them live”. The significance of this right lies in the truth that this right cannot be suspended even in the emergency period.

The legislative history of Article 21 of The Constitution: Article 21 of The Constitution when it was proposed by Drafting Committee in Constituent Assembly it was numbered as Article15. Draft Article 15 as originally passed by the Constituent Assembly provided that “No person shall be deprived of his life or liberty without due process of law...........” The Drafting Committee suggested two changes in this Article;
The limited application of due process of law could be seen in Article 10 & 11 of The Bill of Rights, 1689 which provided............that excessive bail ought not to be required, neither the excessive fine should be imposed nor cruel and unjust punishment should be inflicted. The doctrine of due process was evolved in order to protect the individual from any arbitrary action of the executive and of judiciary also because a person may be deprived of his life or personal liberty not only by legislative actions. It was invoked only for the purpose of protection from arbitrary executive power. No person should be proceeded against except for the violation of an existing law. Indian Constitution uses the term ‘procedure established by law’ in Article 21, following the Japanese Constitution model, as quoted there;

The Japanese Constitution, 1946 provides, “No person shall be deprived of his life or personal liberty, nor any other criminal penalty be imposed, except according to procedure established by law”.4

The author of The Constitution was supposed by adopting the word ‘procedure established by law’ would be more close to achieving the goal of The Constitution. However, Japan also afterwards interpreted the words ‘procedure established by law’ as to imply the word ‘due process’. A bright paradox of the Constitution is that the doctrine of due process which was rejected by the Constitution makers was adopted by Indian judiciary to extend the sweep of Indian judiciary. Due process is a dynamic concept and the Supreme Court has denied to giving it a static definition.5

**Interpretation of terms ‘life’, ‘personal liberty’ and right to ‘live with dignity’: In Munn vs. Illions 6 Justice Field observed that ‘life’ means “something more than mere animal existence and the inhibition against the deprivation of life extends to all those limbs and faculties by which life is enjoyed”. The right to life guaranteed under Article 21 not only protects physical existence but also secures qualitative life. In A. K. Gopalan vs. State of Madras honourable Justice Mr. Shastri observed that “the right to life is the most difficult word to define and its’ protection generally takes the form of a declaration that no person shall be deprived of it save by due process of law or by authority of law”. Article 21 of the Constitution enshrines that “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

In England, under Article 39 of Magna Carta (1215 A.D.) was issued under the Lordship of King George, it asserted that “No freeman shall be arrested or detained in prison or deprived of his freedom or outlawed or banished or in any way molested & we will not set forth against him nor send against him unless by the lawful judgment of his peers & by the law of the land”. Liberty means freedom to enjoy all human and fundamental rights which is protected under the Constitution of India or anywhere else. The liberty is construed in relation of ‘personal liberty’. According to Dicey, right to personal liberty means in substance “a person’s right not to be subjected to imprisonment, arrest or other physical coercion in any other manner does not admit of legal justification.”8

While Wade & Phillips says, “There are two main aspects of the law relating to individual liberty: first the grounds on which an individual may be deprived of his personal liberty second, the remedies which an individual has if he wishes to contest the legality of such detention.”9

Personal liberty does not only mean freedom from physical restraint or detention but it includes the freedom to enjoy all such rights which are necessary for making complete our personality. When any individual is conferred with rights and is capable to enjoy one’s rights it can be said that he is leading his life with dignity. If any of the rights is not specifically protected but is necessary or required for the enjoyment of some other right then such right should be protected because all rights are co-related to each other. Right to live with dignity includes in itself all such rights which are held essential to lead the dignified life and for the development of the personality. To decline such rights would create arbitrariness and misuse of discretion on the part of authority.

The Supreme Court in Francis Coralie vs. Delhi10 held that “the right to life includes the right to live with dignity and all that goes along with it namely the bare necessaries of life such as adequate nutrition, clothing and shelter over the head, facilities for reading & writing, expressing oneself for diverse forms.” In The District Registrar & Collector vs. Canara Bank11 it is restated that the expression ‘personal liberty’ in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man & some of them have been raised to distinct fundamental rights and given additional protection under Article 19. Right to personal liberty means life free from encroachments unsustainable in law.

In Ichhu Devi vs. Union of India12 learned Justice P.N. Bhashwati said ‘the Court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention.’ In P.Ratinam vs. Union of India13 the Supreme Court has defined ‘life’ as follows: ‘the right to live...
with human dignity and the same does not connote continue drudgery. It takes within its fold some of the fine graces of civilization which makes life worth living and the expanded concept of life would mean the tradition, culture and heritage of the person concerned.’

**The Position under Indian Legal System:** The Preamble to the Indian Constitution clearly indicates that justice, liberty and equality must be secured to all citizens of India. Besides, it mandates the State to promote fraternity among the people, ensuring the life of dignity to individuals & the unity & integrity of the nation. Article 38 of the Constitution also requires the State to promote economic, social & political justice. Rights which are not explicitly mentioned in any of the provision have found place under the umbrella of Art.21. The protection of Article 21 is also extended to rights of prisoners and persons living in any correctional home.

Besides Article 21, Article 20 & 22 of the Constitution of India also provides protection to prisoners. Article 20 protects against ex-post facto laws, double jeopardy & right to self-incrimination. Article 22 of the Constitution guaranteed against arrest & detention in certain cases. It assures that person should be informed with the reasons of his arrest & should be produced before the nearest magistrate within 24 hours of his arrest. The Code of Criminal Procedure, 1973 (in short Cr.P.C.) also states similar provisions to protect the arrested person. Protection against unlawful arrest under Section 41,45,151 of Cr.P.C., right to fair & speedy investigation under section 309 of Cr.P.C., right to be produced before the magistrate under section 57 & 76 of Cr.P.C., immunity in certain conditions under section 82,83,84 in Indian Penal Code,1860.

Besides these, Prisons Act, 1894, The Prisoners’ Act, 1900, The Probation of Offender’s Act, 1958, The Transfer of Prisoner’s Act, 1950, The Protection of Human Rights Act, 1993, The Juvenile Justice Protection Act, 2000 are to support the prisoners because the sense and sympathy are not enemies to penal system. Prisoners are also a human being they should be treated as a human.

**International Covenants to protect the dignity of Prisoners:** International Covenants are also in support being humanized to prison system. International agencies do agree with the fact that maltreatment with human being are continuing in prisons, juvenile care homes mental asylums and other reformation homes. With the aim to curb this dehumanizing tendency the International agencies have adopted various conventions and relevant provisions. The *Universal Declaration of Human Rights, 1948* (UDHR in short) was adopted by UN General Assembly on 10th December with the aim to protect and enlarge the human rights.

**Article 5**, of UDHR, 1948 states,”No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.” **Article 9** of the said Declaration says, “No one shall be arrested, detained, or exiled arbitrarily.”

The other Convention adopted by UNO on 16th December, 1966 *International Covenant on Civil & Political Rights, 1966* (ICCPR in short) prescribes some provisions as under **Article 6** of the said Convention, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life” and under **Article 7** states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. 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.”

**Article 9** of ICCPR States; 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. 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.

**Article 10** of ICCPR states, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

The UN Convention against Torture & Other Cruel, Inhuman, Degrading Treatment or Punishment and UN Standard Minimum Rules for Treatment of Prisoners, 1977 also explains the provisions to protect the human rights of prisoners. The Declaration on The Protection of All Persons from being subjected to torture & other cruel inhuman or degrading treatment adopted by UN General Assembly Resolution 3452 (xxx) of 9th December.
Judicial Approach towards the right to live with dignity of prisoners:

It is a basic tenet of International human rights law that nothing can put a human being beyond the reach of human rights protection. Some people may be less deserving than others. Some may lose many of their rights through having been imprisoned through proper & legal procedure. But the basic rights as right to life, health, fair procedure & justice, human treatment & dignity & security from ill treatment or torture remain. There is a minimum standard for the way State treat people, whoever they are. No one shall fall below it.

Rights of prisoners are the matter of concern under Article 21 of the Constitution Supreme Court has established plethora of rights under Article 21 through right to life and personal liberty, Article 3 of UDHR, 1948 says that it is the obligation on every civilized nation to respect the right that every person has to protect his life and personal liberty. In 1950, when the question of interpretation of Article 21 arose before the Court in A.K. Gopalan case the court held that If the detention is according to the procedure established by the law in which he is detained such detention is valid. Court will not further see that procedure is just or unjust.

According to the Article 21 of the Constitution, the word ‘procedure established by law’ meant the procedure established by legislature nothing more. A person could be deprived of his life or personal liberty in accordance with the procedure laid down in relevant legislation only. But in Kharak Singh vs. State of U.P. the Court reconsidered its’ view & held that rules, regulations and policies made by executive would be covered under the procedure established by law because these are also the part of law. In Maneka Gandhi vs. Union of India the Apex Court gave the new dimension to Article 21 when the question of interpretation of ‘procedure established by law’ arose before the court. The Court held that procedure whether it is enacted by the legislature or framed by the executive should be fair, just and reasonable. It should be according to the principle of natural justice. Thus the concept of due process was incorporated into Article 21 and the scope was extended. The expansion of Article 21 affected criminal jurisprudence, prison maladministration & prisoners’ rights at large.

There is no iron curtain drawn between the Constitution and the prisons. Conviction for a crime does not render one a non person whose rights are subjected to the prison administration. In Sunil Batra vs. Delhi Administration two persons filed separate petitions one of them were kept in bar fetters. The court held this inhuman treatment to him and said that keeping in fetters continuously someone reduces the person from a human being to an animal and this treatment is so cruel and unusual that the use of bar fetter is anathema to the spirit of the Constitution.

In Sunil Batra vs. Delhi Administration (Ind) the court stated again that where the rights of a prisoner either under the Constitution or under other laws, are violated the writ power of the court can and should run to his rescue. A prisoner wear the armour of basic freedom even behind bars and that on break thereof by lawless officials the law will respond to his distress signals through writ aid, prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials dressed in a little brief authority when part IIIrd is invoked by a convict.

In Prem Shankar Vs Delhi Administration the petitioner being a under trial was hand cuffed. The court held it inhuman and stated the prisoner should be hand cuffed only when they are trying to escape or flee away. The court stated that section 46 of Cr.P.C. the police officials or other person making the same shall actually touch or confine the body of the person to be arrested, unless there is a submission to the custody by word or action. If there is a forcible resistance to the endeavour to arrest or an attempt to evade the arrest then law allows to police officer or other person to use all necessary means to effect arrest. Besides sec. 49 Cr.P.C. stated arrested person must not be subjected to more restraint than to prevent escape.

Though, Indian judicial system believes in the fact that ‘justice delayed is justice denied’ but although several under trial prisoners are languishing in different jails because of pro long delay in justice. Right to speedy trial is a facet of fair procedure guaranteed under Article 21 of the Constitution. Right to speedy trial is held an integral part of right to live with dignity. In Vakil Prasad Singh vs. State of Bihar the court held that the quick justice is regarded as sine qua non of Article 21. The issue of speedy trial was raised and considered in Hussainara Khatoon’s case where it was decided that the delay in conducting of trial is the violation of Article 21. The court emphasized that it is implicit in the broad sweep and content of Article 21. A fair trial implies a speedy trial. The Supreme Court has also directed release of all under trials who have been in jail for periods longer than the maximum term of imprisonment for which they could be sentenced if convicted of the offence.
charged. Afterwards in Kadra Pahadiya vs. State of Bihar\textsuperscript{24} the fact came in front of the Court was that several under trials were languishing in jail for 8 years without any trial having any progress. The Supreme Court commented that “it is a crying shame upon our judicial system which keeps man in jail.”

But the repeated injuries of such a violation are still continued because of various reasons as mal administration, poverty, lack of legal services. When a social activist Sheela Barse filed a petition in Court one other pity situation came before the court, which depicted the true availability of human rights in prisons. Sheela Barse requested the court to release the girl aged 16 years from jail. Ordering on the petition the court held that it is a matter of regret that despite many provisions, a child is kept in jail. A child is an asset of the country and it is the responsibility of the State to keep safe the children and to make efforts for the full development of his /her personality.\textsuperscript{24} But afterwards again in NHRC submitted in its’ report that one 11 years old girl was living in jail with adult prisoners.

The one other heinous instance of prison system and police brutality was seen in Khatri vs. State of Bihar\textsuperscript{25}. In this matter petitioners were blinded by police officials & they requested to provide legal service because of being indigent. The court held the obligation of the State that the State cannot avoid. It is the component of right to live with dignity. Already in Raghuvir Singh vs. State of Haryana\textsuperscript{26} the court held police torture is disastrous to our human rights. The court issued the guidelines in D.K.Basu vs. State of West Bengal\textsuperscript{27} regarding the rights of arrested person that he should be informed of his grounds of arrest and his relative or friends should be informed of his arrest and a police officer will arrest to a person will bear his identity card. In 2009, in the case of Suchita Srivastava vs. Chandigarh Administration\textsuperscript{28} the Apex Court held that the right to procreativity of a woman is an integral part of her right to life and right to live with dignity. The petitioner woman was living in correctional home running by government.

With the span of time new situations have been coming before the Court and the court has been protecting successfully the rights of prisoners whether convicted or under trials. But even then the repeated incidents of police atrocities have not come up to an end. The question of right to live with dignity of prisoners came into consideration once again through the writ petition filed in 2013 cited as Re-Inhuman Conditions in 1382 Prisons\textsuperscript{29}. Former chief justice Mr. Lohati took into consideration the inhuman conditions prevailing in 1382 prisons in India as reflected in Dainik Bhaskar (National Edition) on 24\textsuperscript{th} March 2013 J. Lohati highlighted that report in which problems of overcrowding in prisons, unnatural death of prisoners, gross inadequacy of staff and available staff being untrained. J. Lohati pointed out that there was hardly any scheme running for reformation of first time offenders. Petitioner pleaded that rights were violated because under trials are living in jails for continuous period as well as the person who is accused of compoundable offence were also living in jail. Model Prison Manual 2003 was not implemented. The Court ordered to implement the manual seriously and to provide to legal aid to prisoners. The Court also directed to release under trial prisoners who were incarcerated for a long time without being disposed of their trials.

\textbf{National Human Right Commission’s Reports & Recommendations:}

The administration of criminal justice and the conditions prevailing in prisons have long been extremely deplorable and sub-human; prisoners are mal treated; criminals’ trials are inordinately delayed; police brutality is legendary. There are lots of instances before us of police brutality & prolonged delay in disposal of justice caused grave miscarriage of justice in spite of achieving the goal of socio-economic justice, idea of distributive justice and concept of welfare state. The situation is too much pity in prisons as the National Human Rights Commission visited in jails of Uttar Pradesh and mentioned in its’ report that high overcrowding can be seen in jail. The UP Government has to make a thorough assessment of the required jail capacity and plan construction of new jails and expansion of the existing ones. Only then the human rights of prisoners relating to the basic minimum needs of accommodation, sanitation and hygiene can be realized.

In NHRC Seventh Report 1999-2000 the Commission stated that the overall conditions of jails were pathetic and that the inmates were living in conditions that gravely affected their dignity & their physical and mental well being. Toilet facilities were inadequate and in a deplorable conditions.\textsuperscript{31} In 2010, NHRC has recommended that medical examination of all prisoners should be conducted at the time of their admissions in jails in order to find out whether the prisoner is suffering from Tuberculosis, HIV, lungs disease or any other disease, It was found that prisoners in various jails due to spread of contagious disease like tuberculosis are dead. NHRC is getting worried of death during the investigation in a police station.
The NHRC said that the police do not have any right to take away the life of a person. The police officer can justify the death of arrested person or is being arrested in name of a private defence and by showing that he was trying to escape from arrest or if he has committed the crime punishable with the death or imprisonment for life.

The NHRC said, when the police officer in-charge of a police station receives information about death in an encounter with the police he shall enter that information in register. When the police officers belonging to the same police station are members of the encounter party, whose action resulted in death then such cases should be made over for investigation to some other independent investigating agency. A magisterial enquiry should be held in all cases of death which occurs in police station within three months.

Prompt prosecution & disciplinary action must be initiated against all delinquent officers found guilty in magisterial enquiry/police investigations. All cases of deaths shall be reported to the Commission by the Senior Superintendent of Police/ Superintendent of Police of the district within 48 hours of such deaths. A second report of incident must also be sent to NHRC within three months providing post mortem report, Inquest report, finding of magisterial inquiry, result of forensic examination, report of ballistic expert.

According to Commission, Prison posts are lying vacant. Pay scales of officers are very low. There is also shortage of technicians. There is a shortage of regular cooks which is also a reason of poor quality food. It has become necessary for the jail administration to provide adequate & efficient arrangements for the imparting of vocational training in carefully selected trades to the prisoners in order to enable them to lead the self sustaining life.

Suggestion: The following suggestion can be sustained after this study:

- Jail officials should be taught about human values and human rights.
- Habitual offenders and first time offenders should be kept separate.
- The trial should be conducted rapidly because the justice delayed is justice denied.
- Laws of archaic time as Prison Act, 1894 & Prisoners’ Act, 1900 should be amended with the advancement of time.
- There should be a good coordination between law making & executing authority.
- Any inhuman treatment on the part of authority whether it is serious or not should be taken into consideration.
- NHRC should be allowed for camping in jails to make them aware of their rights and to know the real situation of jail.
- In women prisons problem of molestation, rape commits so the male staff should be avoided.
- Proper medical check up of prisoners should be conducted. In women prison a trained gynaecologist should be appointed to visit regularly.
- Sufficient & trained staff should be appointed in prisons.
- Jails should be computerized and CCTV cameras should be fixed there to.
- Such schemes should be implemented honestly which are aimed with the rehabilitation of prisoners after their detention period up to end so that they can lead to normal life.
- Sanitation & ventilation arrangement should be proper.

Conclusion: Right to life and liberty is the most of the cherished, pious, important and progressive rights of all rights. Walls of jails do not say bye to human rights. This liberty of human existence requires the collective effort on every one’s part especially the civil society so that the most pious gift of God to man can be saved. It is confirmed by the Supreme Court in its’ words, “Imprisonment does not spell farewell to fundamental rights”.32 The Supreme Court always has been playing the role of guardian of them and their sentences. Indian Penal system is a unique combination of deterrent theory & reformation theory and the focus is on the reformation of prisoners. Mahatma Gandhi said, that ‘hate crime not the criminal’. Now, we are living in 21st century any type of degrading treatment with any human being which deprives him with his right to live with dignity is a shameful. There are various laws to protect them it is only in the hands of the officials who are implementing such laws ‘not to be arbitrary & be obedient of those laws’. Constitution has expressed its’ faith on him and they should not break that belief.

The role of judiciary is appreciating in this aspect but Courts cannot always be available everywhere. However, it is a matter of regret that the repeated incidents are continued. Though the court has delivered relief in reported cases but it would not be sufficient in the path of achieving the Constitutional goal because the Constitution talks
about not only in reported incidents but also of every citizen & human being. Life of every human being is precious so it should be protected. Right to live with dignity is deserved by every human being. To live with the right to live with dignity is the realization to lead such life which presents before a person some broad aspects to develop his life and makes him free from unnecessary restraint only reasonable restrictions must be imposed.

References:

1. Niyamavedi vs. C.B.I. cited as 1999(1) Ker.LT 560 page
3. Ibid.
6. (1876) 14US 113
7. AIR 1950 SC 50page
9. *Constitutional & Administrative law,9th* ed. By A.W. Bradely, Prof. of Constitutional Law, University of Edinburgh
15. Supra noted at 7
26. AIR 1981 SC 928P.
29. (2009)9 SCC 1p
30. AIR 2016 SC 993page