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Arrest may not always be a Constitutional Mandate

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ABSTRACT

Our nation is known for its democracy and its rich culture, but it is very depressing that the developing country just like India has no qualified and specific legislation for the rights of prisoners, this fact cannot be rejected that our honorable judiciary has not ignored the personals and recognize various rights for them through their judgments and interpretations. Moreover, the rights related to prisoners experienced a drastic change during the past decades as an increased consciousness about the desperate need of Prison Reform on the people. A prisoner is an individual who is restrained to enjoy his liberty and capture under the prison or detention as a punishment for crime. Being a convict or being under trial does not reject the need for human rights for the survival and protection of life. Through my paper I would like to explain about the various constitutional legal frameworks that India provides to safeguard the interests and rights of prisoners and elucidates the various executive and judicial guidelines issued from time to time with respect to needs and care of prisoners. Even though, are several international legal instruments that have contributed immensely to the progressive development of human rights of prisoners, my paper conveys available instruments and compares them with laws prevailing in India for providing protections to maintain their human rights and legal rights. The final part of paper submits various suggestions to refine the prevailing status of prisoners in India to acquaint them with the rights that they deserve as humans.

Keywords: *Liberty, Fundamental rights, constitutional directives, legal framework.*

Right to personal liberty is an imperative concern of every human being. The right to personal liberty is won by our forefathers after their Hercules fights for freedom, liberty and independence which cannot be achieved without arduous² struggles. If these values are not followed within the parameters of our constitutional guarantees, then the struggles would be left nugatory³. Detaining a person without any circumstantial ground or with a preconceived notion or without a valid reason cannot be acceptable and it would jeopardize⁴

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² Arduous; involving or requiring strenuous effort; difficult and tiring.

³ nugatory of no value or importance.

⁴ jeopardize put (someone or something) into a situation in which there is a danger of loss, harm, or failure

them in dire straits⁵ as far as human rights are concerned. For example: custodial death is one of the worst crimes in a civilized society and human rights violations continues to prevail until now.

In cases of preventive detention, the court has attributed to forestall public disorders. It is a dreaded power of the state to restrain a person even without undergoing a trial, these provisions were intended to prevent public disorders, instability to the general public, the procedures under preventive detention must always fall under Article 21 the (due process of law) an article 22 (safeguarding against arbitrary arrest and detention), Preventive detention must always be constrained to a very narrow limit.

The threat to human rights and bodily integrity remains the highest in police stations. Usually, the Trends witnessed in all police stations is where accused are sentenced to custodial tortures, verbal and physical abuses, emotional and mental abuse such as addressing with impolite and derogatory remarks in an insensitive manner, police atrocities and even custodial deaths continue to remain still now. The word “custody” appearing in Section 170 Crpc does not contemplate either police or judicial custody but it illustrates the representation of the accused by the investigating officer before the court while filing a chargesheet. Chief Justice N.V Ramana have reiterated that if judiciary wants to gain the trust of the poor and vulnerable it must assure the marginalized that it exists for them. He lamented⁶ on the sorry state of legal immobility where equality does not arise as

a practical reality, which is not been availed to the vulnerable sections and they have lived outside the systems of justice. if judiciary wants to get the faith of citizens, we must make everyone feel assured that we exist for them.

We cannot have two parallel or A Dual system of justice such as one for the Affluent, resourceful, and politically influential groups and the other for the poor, marginalized, underprivileged or huge suffering from financial distress or who does not have capabilities to shoulder the burden of any litigation cost. Since judicial processes are a lengthy, formal, and expensive it might dissuade⁷ the poor from getting accessibility to justice. These situations impose a tougher challenge on the part of judiciary to break these barriers. if we wanted remain as a society governed by the rule of law it is imperative for us to bridge the gap of accessibility of justice between highly privileged and the vulnerable. Accessing justice is not just an aspirational goal we need to work hand in hand to make it a practical reality. The existence of a dual legal system will only chip away the legitimacy of law. Just for a cause if Law allows Arresting of persons, it does not mean the state can use the power arbitrarily or in an indiscriminate manner to crush the personal liberty of the accused.

Personal liberty is an important aspect of every constitutional mandate, but it has its seminal significance to arrest an accused only during judicial investigation or when it is deemed as a matter of necessity under custodial investigations or to try offenses of heinous crimes or where there

⁵ in a very bad or difficult situation

⁶ lamented conventional way of describing someone who has died or something that has ceased to exist.

⁷ dissuade, persuade (someone) not to take a particular course of action.

is a possibility of influencing the witness or the accused may have absconded, when there may be apprehensions that the accused may tamper with evidence. Lack of an effective legal representation at police stations offers a huge detriment to the detained persons, the first hours of arrest or detention offers a huge detriment to the detained person and decide the fate of the case for the accused.

According to the National Crime Records Bureau it has revealed that the number of custodial deaths varies year to year, an average about 100 custodial deaths every year, 3.5 died due to injuries caused by police officers, 8.6 have escaped from custody, 28.1 died due to suicide and arrest due to assorted reasons like illness and injuries caused in road accidents. A judicial inquiry which is mandatory for every suspicious custodial death was conducted into 26.4 cases. To reduce such a menace in police station for e.g. To reduce custodial death, it is necessary to reduce the number of arrests. If Arrest is made a routine process it may result in irreparable damage to the reputation, honor, thereby leading to social stigmatization affecting the self-esteem of the person.

Do police officers Abuse the power to arrest?

A police officer cannot indiscriminately use the power to arrest a person in (special action forum Vs union of India) the court further held that a police officer shall furnish to the magistrate the reasons and materials which necessitates the arrest for further detention of the accused. the purpose is to ensure that the police should not abuse power of arrest.

How does judiciary guarantee the transparency in

law while conducting inquiry and custodial interrogation in order to minimize abuse of human rights in police stations?

Most of the guidelines providing information to a friend or relative intimating the arrest of the accused, medical examination, and permission to meet a lawyer having incorporated now in the code of criminal procedure. To check the violations of human rights, CCTV cameras have been installed in police stations and it has been even directed the states to cover more areas of CCTV cameras in every police station of their respective jurisdictions and facility of an audio video recordings and they shall study the footage and periodically publish reports on their observation. The Supreme Court in (BK Basua vs state of West Bengal) held that certain guidelines must be followed to check custodial tortures and police atrocities and have vested responsibilities on police officers effecting arrest.

Some of the constitutional provisions enhanced by the judiciary include:

- Right to legal aid

The concept of legal aid provides a legal remedy to protect the human rights of prisoners who are undergoing trial of conviction of any offense. In M.H Wadanrao Hosket vs state of Maharashtra, the court has held that right to legal aid is one of the components of Fair procedure relating to Art 21, Section 304 CRPC Providing legal services to accused persons.

- Polygraph or Narco Analysis and Brain Mapping

The Supreme Court has declared Narco analysis, (Selvi Vs state of Karnataka, polygraph test and

brain mapping unconstitutional and violated of human rights, it can only be used to such test when the prisoner gave his willful consent to them.

- Right to meet friends and relatives and consult lawyers

Since right to life and personal liberty and reached in article 21 provides that prisoners' rights cannot be constrained to physical distress or torture in person. In Dharmbir vs state of UP, the court ordered the state government to permit family members, Friends or even relatives to visit the person, or in an under guarded conditions to visit the families for the prisoners at least once in a year.

- Right to a speedy trial

Since, The Right to speedy trial is a fundamental right under the constitution of India article 21 t guarantees just, fair, and reasonable procedures to be conducted at the time of proceeding with trial. Speedy trial is a social legal right, to protect the individual it makes it essential for the accused person. The provisions where speedy trial of the accused is on a primary motive of the criminal justice system. Once you take the cognizance of the allegation then the trial must be conducted speedily to find out who is guilty or who is innocent and discharge the innocent. It is relevant to mention that there is a delay, directly constituted, then the denial of justice we just said that “justice delayed is justice denied.”

Ensuring legal immunity to the protect human rights rather than violations

Right to free Legal Aid is an integral right ensured by the Constitution. It frames the basis of just freedom which is the essence of Article 21, which

says, “No person shall be deprived of his life or personal liberty except according to procedure established by law “. The CJI recommendation to display boards on human rights to disseminate information about the legal aid and availability of free legal aid services must be made, and the police officer must keep in mind that the constitutional mandate is to protect human rights and not to violate them. So, they need to regularly encourage employing scientific tools of interrogation and investigations are conducted to eliminate custodial violence and no stone shall be left unturned to eliminate such violence.

The Top court has taken corrective measures and provided the executive and legislator with essential guidelines. It is clear from the inspection of the above contribution that the judiciary is extremely sensitive and keen to protect the human rights of people. The motive remains same that the police authorities and the prison authorities need to be trained and accommodated so that they take prisoners' rights very seriously. Being a prisoner does not mean that they are eligible to demand fundamental rights. even if he is confined in prison, he can enjoy all his basic rights. The prisoners still have all their constitutional rights when they are convicted of a crime and deprived of their freedom in accordance with the procedure laid down by the law.

Let us see the various steps the authorities have taken to ensure the protection of the rights and liberty of the prisoners:

- At the time of COVID 19 most of the prisoner has faced the problem of overcrowding and saturation which led to the lack of facility and proper reforms of prisoner's, government needs to

construct a greater number of prisons in different areas in their respective jurisdictions.

- It imposes a greater duty and responsibility to the authorities to make sure the prison management is always in conformity with the present Indian criminal provisions, punishments and justice thereby optimizing the efficient and effective use of the presentsituation.

- Authorities have to increase a greater concern to provide guidance for offences committed by young offenders aged between 18-20 years because they are the future of our nation and they go under heavy mental change so prison authorities need to work ontheir better meant.

- Another problem that the prisoners has faced a lot time is the disposal of their appeals pending before the higher courts this has happened due to the pendency of appeal casesand also due to lack of required strength of judges. The judiciary must have greater number of judges and the cases should be settled as soon as possible.

In order to avoid custodial atrocities and custodial violence is at the time of interrogation the committees are duty bound to audit all the management and provide to the management an adequate report based on observation to the committee beforehand.
