



E-ISSN: 2790-068
P-ISSN: 2790-0673
IJLJJ 2022; 2(2): 113-115
Received: 10-07-2022
Accepted: 13-08-2022

Jashanpreet Kaur
Masters of Law, University
School of Law, Guru Kashi
University, Punjab, India

Dr. Arpana Bansal
Associate Professor,
University School of Law,
Guru Kashi University,
Punjab, India

The protection of constitutional safeguards for rights of arrested person

Jashanpreet Kaur and Dr. Arpana Bansal

Abstract

The question arises in our democratic, and secular Country like India that do Accused also deserves some Legal Rights within the Judicial Custody/Jail/Prison? Well, the due answer is of course yes. The Legal Rights are those rights of an individual which shall not suppose to be violated or deprived pertaining to Natural Rights, Human Rights as mandated by the Principles of Universal Declaration of Human Rights, 1948, the Principle of Natural Justice under the Indian Constitution, the Right to Liberty under Article 21 of the Indian Constitution. The paradigm of Judicial Mindsets or the Due Interpretations of Indian Judiciary have moulded towards 'Reformative Theory from Retributive Theory', just because to ensure that even the Accused Right of Human Rights and Natural/Basic Rights shall be preserved in its best and efficient manner by the Indian Criminal Authorities or the Agencies. Under this Research Paper, the Researcher endeavours towards mentioning or highlighting about the Wider Facets of Accused Rights as guaranteed by the Indian Constitution, Prevention of Illicit/Illegal Approaches adopted by the Police Authorities/Officers in Indian Prison against Accused in Remand or sometimes may be in Judicial Custody inclusive of Custodial Death, Brutal Treatment by Hindering their Basic Rights, and other forms of Malice Encounters which is by 'Ipso Facto Forbidden by Indian Statutes/Law'.

The revolution of the Indian Criminal Agencies inclusive of Indian Judiciary and our Indian Legislature or the Indian Parliament has to implemented or the time has come to think pro-actively for the 'Safeguarding of Legal and Humanitarian Rights of Accused within the Closed Portions of Judicial Custody on the Paramount Level or Spectrum'.

Keywords: Judicial custody, accused, Indian judiciary, reformatory theory, rights

Introduction

Accused Rights: An Indispensable Sustainability

The Sustainable Environment for the Accused is most indispensable in accordance with the Legal Principles under the Human Rights Law, Principles of Indian Constitution under Article 21, Article 20(1) and Article 20(2). Undoubtedly, an Accused is Innocent until proven Guilty which is the common presumption of Indian Criminal Law, so irrespective of the fact that their accusation has not been proved or whether if it gets proved also, then also the need for the 'Due Protection of their Legal Rights' has to be maintained and nurtured by the Indian Criminal Administration at any cost.

In the case of Johnson V. Avery ^[1], the Hon'ble Court held that, there is the true and positive need of reformation towards the Accused who are whether under the period of sentencing or not by securing their Natural and Human Rights Aspects in an efficient and effective manner.

In the famous and renowned case of Sunil Batra v. Delhi Administration ^[2], the Hon'ble Supreme Court held that the Facets of Article 14, Article 19 & Article 21 have been widely hindered by depriving their Natural and Legal Rights in the Prison by the Police Authorities, and by such activity they are disregarding the 'Fruitful and Legal Boundaries of Indian Statutes under the Ultra Vires Capacity'.

Safeguards of Accused Persons within the Closed Walls of Judicial Custody/ Indian Prison

As far the Rights of an Accused is being considered, time to time Hon'ble Supreme Court through various cases and also under the Indian Criminal Statutes subject to different Laws, the various Rights of an Accused have been broadly discussed, below mentioned are some of them:

Correspondence
Jashanpreet Kaur
Masters of Law, University
School of Law, Guru Kashi
University, Punjab, India

- **Right to get Due Opportunity:** It is one of those Rights being conferred to the Accused Persons where they absolutely do not get full freedom or the luxurious life settlements but basic freedom as like Right to have Clean Atmosphere, Right to Read, Right to get Food, Right to Receive a Humane Behaviour, are some of them, which needs to be fulfilled on the part of the Accused as one of their Basic Human Rights conferred to them by the Indian Constitution and Indian Legislation at large ^[3].

It is 'Prima Facie' clear that an Accused person in Judicial Custody shall not suppose to enjoy at par as being enjoyed by the Normal Civilians, and therefore, it is being rationale that 'One Should Not Violate their Basic Human and Natural Rights as conferred to them by the Indian Statutes'. The concept of justifying or securing Legal Rights are only not up to the domain or classification of Non-Accused Persons but has raised or duly extended towards the Accused Persons also, which the Hon'ble Supreme Court has widely interpreted in order to Protect the Rights of an Accused Person within the custody respectively ^[4]. The inherent rights including Right against Savage or Brutal Encounters in Jail or Prison, Right to have Counsel of his Own Choice, Right to be Informed, Right to Sustain with Basic Facilities, etc.

- Article 19(1)(a) of the Indian Constitution ensures the Freedom of Speech and Expression to every Detainees/Accused Person within the Jail which shall not at all be abrogated or violated by anyone ^[5]. Right to have a Freedom of Movement within the Jail is also secured by Article 19 of the Indian Constitution to Accused Person, and also simultaneously Right to Profess the Religion of their Choice are such special rights which shall not at all be abrogated on part of them else it shall be the gross violation of their Basic Human and Natural Rights.

Right to Fair Procedure

The Accused person is also having the substantial and sustainable right to get a dignified life under the Indian Prison as conferred by Article 21 of the Indian Constitution, so 'Fair Trial and Due Procedure of Law' has to be initiated or exercised by the Indian Judiciary and Police Authorities who are further conferred the power to do the same by the Indian Parliament held in the renowned case of A.K. Gopalan V. State of Madras ^[6].

- Accused Right of Personal Liberty in Judicial Custody under Article 21 of the Indian Constitution: The Hon'ble Supreme Court has widely interpreted through most of the leading cases that how much important is Personal Liberty Right to Accused and Non-Accused respectively. Similarly, the normal civilians or citizens if they are enjoying their proper legal rights, then the Accused is also a Person, so whatsoever the Rights been enjoying by the Common Masses of the Society, the same shall be deserved by the Accused Person in the Jail with some limitations as considering the fact that they are an Accused.

Right to Speedy Trial

This is another form of Right conferred to the Accused i.e., Accused Right to Speedy Trial under which when an Offence has been committed by the Accused, then it has to

be disposed by submitting due evidences, proper trial procedures have to be conducted, and one thing has to be kept in mind by the Police Authorities that beyond certain time period the Accused shall not be put in Remand i.e. Once Arrested, then within 24 hours of the Arrest Time Period they have to be produced to the concerned Magistrate, and the extra hours an Accused shall not be in kept over there as it will be contrary to the provisions of Natural Justice under Article 14, Article 19, Article 20 and Article 21 of the Indian Constitution. Therefore, this Right is of Utmost Importance to the Accused Person.

The due process of law has to be strictly followed up by the Indian Courts and other Indian Criminal Agencies as it shall be in accordance with the Legal Facets for the all-round protection of the Legal Interests of the Accused on the paramount spectrum.

In the case of A.R. Antulay V. R.S. Nayak ^[7], the Hon'ble Supreme Court has set an effective suggestions in favour of the detainees or the accused person on the large i.e. 'Preservation and Nurture of Basic Human Rights' and also in some cases the Hon'ble Supreme Court interpreted in 'Advance of the Preservation of Human Rights and Natural Justice Principles for Detainees/Accused in the Judicial Custody pertaining to Speedy Trial, Expeditious Inquiry, Effective Investigation, Proper Filing of Evidences, Fair Trials', etc.

The rationale is to 'Secure the Life of Accused in the Jail' and also in some cases prevent them from Custodial Deaths which been for last couple of years have brutally encroached upon by the Police Personnel's in the Jail which is undoubtedly Illegal and are Strictly forbidden by Law.

Right to Legal Aid

Article 39-A of the Indian Constitution which comes under the domain of Directive Principles of State Policy under Part IV, which can be duly exercised by the Accused Person in the Jail. Any sort of Legal Queries, Advices in case if Accused Persons desires to ask by their Legal Counsel can anytime performs the same and no person shall stop or restrict them, else it shall be the 'Violation of their Legal Right'.

Right against Hand Cuffing

In Prem Shanker v. Delhi Administration ^[8], the Hon'ble Court has given the interpretations about No-Handcuff Process for an Accused in case if he voluntarily submits his Commission of Offence before the Police Authorities, and in such case, they only tend to be informed about their nature of offence they have committed, and from such gestures only the Arrest process is 'Prima Facie' completed. In the leading case, the Hon'ble Court has mandated about the Wide Emancipation of Article 21 i.e. Right to Personal Liberty under Indian Constitution in a very wider spectrum i.e., it does not only guarantee that the 'Person shall not be deprived of their Legal Rights and Liberties' but also it includes that the person needs to be treated duly and reasonably by the Police Officers without any Illicit/Illegal Approaches.

Right of Accused Against Barbaric Act of Custodial Torture and Custodial Death: A Shame Against Article 21 of Indian Constitution

Humans are the greatest gift to the Mankind, if we do not have humans on this planet, how the Country going to be

Survive. Thereby, meaning that the atrocities the Accused Person been facing within the hardship chains of Judicial Custody or Police Remand, how that needs to be controlled or minimized or eradicated, well this seems the biggest question over the Indian Parliament and Indian Apex Judiciary.

Our Constitution says that Illegally Doing any such Act which negatively affects the Society at large, is a punishable offence and are strictly forbidden by law for sure, then how these Brutal Practices of Custodial Torture and Custodial Death against the Accused are going on and that too with rapid face for last couple of years, which is still going on in most of the States in India and that too without any control or due prevention.

The life of an Accused is indeed under an alarming level of threats as they are such misfortune persons who has to undergo dual kinds of punishments, firstly, what the Court decides for them as Pecuniary Measures and Secondly after Getting Conviction, the Dreadful Happenings being Committed against them in jail.

Also, in some cases when their Charge of Offence has not yet been proved in the Court of Law, then under Pre-Trial Stages also, they been tortured and sometimes gets killed by the Police Authorities within the course of Pre-Sentencing. So, basically, the Authorities are misusing their Power and are going Ultra-Vires to their Actual Conferred Capacity which is still under unwatched situation. Therefore, what is happening most of the Innocents or the Accused whose allegations has not been proved yet, are becoming the 'Gross Victims for such Dreadful Deaths in forms of Custodial Death or Custodial Torture committed by the Police Authorities within the Closed Chains of Judicial Custody or Indian Prison'.

The Personal Liberty Right of an Individual, Accused Person/Detainees are very important Rights as conferred to them by the Indian Constitution and shall not be abrogated at any cost, as humans are humans whether they have committed any crime or not, but they still be counted in the domain of humans, so Rights has to be Exercised by them, whether or without in jail or not.

The Police Authorities needs to understand their due obligations towards preserving the Accused Legal Rights in an efficient manner, and just because they have the power to arrest or do other legal procedures against them, they shall not do harm to them by arbitrarily exercising their Ultra Vires Power which always needs to be Intra Vires, as no person is above the law, and not even the 'Public Servants' as well.

In the leading case, it has been widely decided by the Hon'ble Supreme Court that Right to Personal Liberty under the wide domain of Article 21 of the Indian Constitution are being guaranteed to entire persons who living in our Society at large, although the wrongdoers needs to be punished who have committed crimes against the State or Women, but that person also deserves the 'Due Legal Rights, Human Rights and their Natural Rights' which shall not be abrogated or deprived by the Indian Criminal Agencies.

Conclusion

The need has been felt for last couple of years by considering the Illegal Menaces been facing up by the Accused in the Jail whether it is under the Illicit Facets of Custodial Torture or Custodial Death, or Other forms of Malpractices Committed against the Accused in the Jail,

which needs to be either minimized or reformed else the true or effective believe from the Indian Judiciary will be vanished or gets end on the part of the Common Masses of the Society, their respective families respectively.

The Indian Judiciary is the paramount body for the due protection of interests, fair judgement policy platform, where each person is in the hope that the judgement shall be impartial and will not at all defeats the wide and fruitful spectrum or facets of Law. But for last couple of years, it has been found by the scholars that the Accused even in the Jail are not safe, as there came around lots of Illegal Murders, Illegal Custodial Tortures by the Police Authorities which is indeed not legal and are thoroughly forbidden by law, but they been going on rapidly and even the Indian Judiciary are not doing any substantial actions against such Wrongdoer whom we called as a 'Public Servant of India'.

The biggest lacuna is the gross implementations by the Indian Parliament, as though they have made provisions pertaining to the Preservation of Rights of Accused or Detainees in Jail or Prison, but pragmatically no one is following the same, and simultaneously there are no checks and balance respectively and as a result the 'There Going on the Gross Sabotages of the Legal, Basic and Human Rights of the Detainees/Accused Person in the Judicial Custody along with the Illicit and Illegal Killings of Accused whose Charges of Offences might Prove or Disproved in the Court of Law'.

References

1. 393 U.S. 483; c1969.
2. 1980 AIR; c1597.
3. Article 20(1), Article 19 and Article 21 of the Indian Constitution.
4. Sunil Batra (II) v. Delhi Administration, A.I.R. S.C. 1579; c1980
5. Article 19 of the Indian Constitution; c1950.
6. A.I.R. S.C. 27. c1950
7. 1988.
8. 1980.