Internalizing International Human Rights on Prisoners in India – A Juristic perspective

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Abstract

Life, Liberty, Equality and Dignity are the basic tenets of human rights. It evolved at the global level and is internalized by the Legislature and harmonized by the judiciary at the domestic level. India suffered under the imperialistic yoke for centuries. All the existing Criminal laws are based on British legal system. Hence it declared human rights as its cardinal principle to the protected at all costs. Being the largest democracy with a heterogeneous population makes this aspect even more important and difficult. Therefore corresponding to the developments of human rights at the global level, India periodically attempts to internalize such laws into the domestic system either by amending the Constitution or through legislative enactments. In spite of that, there is persisting gap between the evolving global laws and the existing laws relating to prisoners rights. Global human rights are far ahead of national human rights. In this context, this research attempts to analyze the role of the Supreme Court in assimilating internalizing and harmonizing the global laws in order to minimize the gap. In this research work, certain questions crop up, which are sought to be answered.

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“There is no iron curtain between a prisoner and the fundamental rights” said Hon’ble Justice V.R. Krishna Iyer in Sunil Batra case. The profundity of this simple statement is enormous. Prisoners’ rights are very sensitive one, mostly neglected or brushed aside. By birth no man is a criminal, circumstances mould some as criminals. The saying is embodies in all religious principles. Gandhi, the Mahatma following that great religious precedent said, “Hate the sin, but not the sinner”. It is accepted by the Indian legal system with a true sense of ‘heart and soul’ and is the cardinal principle of criminal justice system in India.

Prisoners as ‘persons’ are entitled to all those rights available to ‘persons’. The treatment meted out to prisoners differs from country to country. But in no country they are accorded all human rights. Commenting on that general unhealthy trend, Hon’ble Justice V.R. Krishna Iyer observed “Barbarity in sentence and torture in prison are a trend, which aggravates the malady and is so self-defeating that punitive cruelty is a curative futility.”

Freedom fighters, put behind bars are also treated as prisoners. After the country attains independence, they become heroes and leaders of the new nations. The autocratic regime on India for more than two centuries saw many a freedom fighter behind the bars, leaving the prisons a crowded place in British India. India has inherited most of the laws relating to prisoners from the British, whose aim was to facilitate effective control over colonial India. After independence, these laws especially its structure continued, but modifications were made to other aspects. It is relevant to understand the rights available to all sorts of prisoners, convicted for political causes or for various other offences committed by them, against the State as well as individuals.

The laws relating to prisoners in India have been influenced by international instruments on one side and on the other the practice of treating prisoners which is the residue of British imperialism which also introduced the police and prison system. These systems are responsible for the continuance of inhuman treatment of the prisoners. In this paper an attempt is made to probe the following research problems what is the role of the Supreme Court of India in enforcing prisoner’s right and critically analyze the harmonization process in various phases and its various dimensions

Research Methodology

It is an ex-post facto research. The cases decided by the Supreme Court from 1950 to 2010 related to human rights have been taken for analysis. The process of interpretation by the judiciary is analyzed. However, in this research work, the role of the Supreme Court in enforcing the international human rights law into domestic law has been explored, analyzed and formulated only through the cases already decided by the Supreme Court. This research work consists of various stages.

Firstly, Supreme Court judgements in which one or more international human rights instruments mentioned are explored. Secondly, Such explored cases are arranged chronologically and classified into four groups, which constitute four phases namely from 1950 to 1966 i.e. from the commencement of the Indian Constitution to the year of the enactment of International Covenant on Civil and Political Rights, 1966 (ICCPR) and International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) the Second phase from 1966 to 1979 i.e. after the enactment of ICCPR and ICESCR to the year of ratification of these two instruments by India, the third phase commenced from 1979 i.e. after the ratification of the two covenants and before the enactment of Protection of Human Rights Act, 1993, the fourth phase commences from the enactment of Protection of Human Rights, 1993 to 2011 is a period of
international human rights, such cases are referred as 'Reference' and 'Expansion'. If the Supreme Court mentioned international human rights instruments in its judgments and used such instruments for the purpose of expanding domestic human rights in the light of international human rights, such cases are referred as 'expansion' and other cases are mentioned as 'reference'. This research applies explorative, formulative, analytical and critical methods. The human rights cases decided by the Supreme Court have been explored. After exploration, the role played by the Supreme Court in harmonizing the international with the domestic law is formulated. The role of the Supreme Court is analyzed in the context of international human rights and a critical evaluation is made about the role of the Supreme Court in this regard. Trend analysis is used to critically analyze the role of the Supreme Court during various phase of harmonization.

With the help of “AIR Info-tech” and <Manupatra.com> software all these cases which have the concept “human rights” in the judgement decided by the Supreme Court from 1950 to 2010 are enumerated first. There are --- cases found in the “AIR Info-tech” with the content of “human rights”. This study is confined only to the human rights cases decided by the Supreme Court of India which predominantly related to international human rights are as found in the international treaties and conventions. For the purpose of this analysis the Supreme Court cases have been selected irrespective of the judgement remaining as obiter dicta or ratio decidendi.

From 1950-66

In that phase, the Court did not referred or invoked directly any international human rights instruments connected with prisoners.

From 1966-1979

In this period, the positivist traditional approach of the Supreme Court turned to an activist approach. The changing political winds had an effect on the Supreme Court. The activism of the Supreme Court was slow and imperceptible and came to be noticed only towards the end of this phase when India was reeling under emergency. The Court slowly started perceiving the larger dimension of its Constitutional role in this period. In this phase, Court did not cross swords with the executive, but legitimised State intervention for regulating the economy and enacting social justice, barring a few cases on the prisoner's rights. Therefore, an attempt is made to explain and explore the dynamism of the plenary power of the Supreme Court in safeguarding the prisoner’s rights in these cases.

The significant development in this phase is ratification of the International Covenant on Civil and Political Rights, 1966 in 1979. Subsequently an Optional protocol was passed to constitute Human Rights Committee to receive and consider the individual claims of the victims in 1976. By the influence of the ICCPR, 1966, UN adopted a Declaration on Protection of All Persons from being subjected to Torture and other Cruel Inhuman or degrading treatment or punishment. But India had reservation in this convention.

The Supreme Court observed in Nandini Satpathi case the Supreme Court of India interpreted Article 22(1) of the Constitution in consonance with Article 3(b) of the ICCPR, 1966 and extended the operation of this right of the accused person under circumstances of near custodial interrogation. In this case it was found that the judges of the Supreme Court attempted to infuse the human rights principles in the domestic jurisdiction to render complete justice thus bringing in harmonization. This phase witnessed an increasing consciousness about the desirability of prison reforms.

In A.D. M. Jabalpur v. V.S.Shukla, Khanna.J. dissenting note stated that “in case of conflict between international law and municipal law, the latter should prevail. But if two constructions of the municipal law were possible, the Court should construct its judgment in such a way as to bring harmony between the municipal law and international law or treaty.” The Supreme Court initially refers the Constitutional provisions in 1950’s and 1960’s. In the dawn of 1970’s the judicial activism enable the Court to interrelate the Article 21 with other provisions of Fundamental Rights of the Constitution. Late 1970’s and 1980’s the Supreme Court assimilate the International human rights instruments in the domestic law.

The Supreme Court expanded its scope for preserving and protecting the right to legal aid of the indigent persons in Hussainara Khatoon Case. It case was the starting edge of the application of International human rights instruments in the domestic jurisdiction. This case reveals that judicial activism in India stepped into an area of legislative vacuum in the field of human rights. The language of Article 21 was merged with Article 14(3)(d) of the ICCPR. In this case P.N.Bhagwathi, J. observed that “we are crying on our roof top that we are implementing human rights in the administration of justice, but it is a shame on our part that our bail system is connected with monetary loss.” The Court criticized the administration of criminal justice and bail provisions which interwoven with monetary aspects. The legal system’s is belief that monetary loss would alone compel a person to appear before judicial procedure was also criticised.

The right of prisoners to ask for observance of human rights has been recognized by the Supreme Court in Charles Shobraj v. Superintendent, Central Jail, Tihar. The fruits of Article 21 were made available to the prisoners while dealing with the question of their right of reading and writing books in jail. This view was reflected in subsequent Supreme Court judgements. In Ismail Iqbal Sodawala v. Union of India the Court observed that it is the duty of the Court to hand over a copy of judgment free of cost to the prisoner immediately after pronouncement of judgments. Otherwise it would amount to unfair trial. The same opinion was followed subsequently in M.H.Hoskot v. State of Maharashtra. In these cases the impact of the International instruments is largely felt and it influenced the minds of the Indian judiciary. The fag end of this phase was the darkest
period in the political history of modern India. The emergency period, probably strengthened judicial activism. Hence harmonization of international law into domestic sphere was thus it started with A.D.M. Jabalpur case.

From 1979-93

The above trend was continued in this phase wherein the Supreme Court directly harmonizes several international human rights instruments in the domestic law. It was consistently guided by the UDHR and other international instruments in interpreting the provisions of the constitution and the laws. In this phase the Indian Judiciary is slow and steady and became active champion of Civil and Political Rights. It is evident from plethora of judgments decided by the Court with the aid of the international instruments.

In this phase, ‘Custodial torture’ is a nightmare for any prisoner. It means any act of inflicting excruciating pain especially as a punishment or coercion by an enforcing authority or any person or group of persons upon a criminal or suspect or arrestee for extracting information or to make a confession. When it is in an advanced degree, it is sadistic, inhuman, unreasonable, irrational, uncivil and beastlike or beastly, hence brutal. It is not merely physical, there may be mental torture calculated to create fright and submission to the demands or commands. When such threats are from a person in authority like police officer the mental torture caused by it is even more grave.

In Sunil Batra Case (II), a landmark case under Article 21, the International Conventions were referred and also invoked. This case arose from a habeas corpus writ petition, based on a letter sent by a prisoner to a judge of the Supreme Court complaining of brutal assault by the Head Warden on another fellow prisoner. Due to intense physical torture a prisoner developed a tear of the anus due to forced insertion of stick by some prison official. The prisoner's medical examination revealed the fact of his being tortured by warden. The Court was shocked to hear that not only the lower but the higher officials were meeting out such inhuman treatment.” In this case the Court in its decision referred to the Convention on the Protection of All Persons from being subject to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975. Guided by the International standards laid down by the Declaration, the Court issued detailed directions relating to the treatment of prisoners, prevention of torture in prisons and redressal of their grievance. The Court also directed the State to follow the United Nations Standard Minimum Rules for the Treatment of Prisoners without fail. All the directions and guidelines issued by the court reflect the spirit of the said Convention, thereby giving the Declarations a practical and positive meaning. This set the trend and with this decision the Court began to consider a prisoner as a human being and conferred dignity to the prisoner.

In Francis Coralie Mulin, a petition was filed by a British national under Article 32 of Indian Constitution raising a question in regard to the right of a detainee to have a meeting and interview with her lawyer and members of her family. She was denied the facility of interview with her lawyer. It was imposed by the authorities under the prison rules. The principal ground on which the Constitutional validity of these provisions was challenged was that these provisions were violative of Article 21 of the Constitution.

In this context the Court condemned cruelty by torture in the following words “Any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with the procedure prescribed by law, but no law which authorizes and no procedure prescribed by law, which leads to such torture or cruel, inhuman or degrading element can never stand the test of reasonableness and non arbitrariness it would plainly unconstitutional and void as being violative of Article 14 and 21. It would be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment, which is enunciated in Article 5 of the UDHR and guaranteed by Article 7 of the ICCPR. The right to live, which is comprehended within the broad connotation of the right to life, can conceivably be abridged according to procedure established by law and therefore when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration.” The Court strongly spoke against affront to prisoners dignity by relying on the international instruments.

In Prem Shankar Shukla v. Delhi Administration, the Supreme Court strongly spoke against affront to prisoner’s dignity. The Court struck down the rule of handcuffing as violation of human rights on the basis of the international standards laid down in Article 5 of the UDHR, 1948 and Article 10 of the ICCPR, 1966.

This period saw justice V.R. Krishna Iyer and P.N. Bhagwathi towering over others as champions of prison justice. In Charles Sobraj v. Superintendence, Central Jail, Tihar, V.R.Krishna Iyer,J., observed that “Iron is allergenic to human body” and categorically stated that “Iron chains, bar fetters and handcuffs should not be imposed on any prisoner except with the permission of the Court.” Deeply pained by tales of torture in prison Court expressed its anguish in these words, “we are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death, the vulnerability of human rights assumes traumatic torturesome poignancy when the violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome offences against them as has happened. Police lock-up if reports in news papers have a streak of credence are becoming more and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order.”

The Constitutionality of the death penalty was raised by the Supreme Court on several occasions. The Law Commission of India in its 35th report was for retaining the death
sentence in India. Adequate safeguard is prescribed in the Criminal Procedure Code for imposing death penalty and all relevant facts and circumstances are taken into consideration. The judge balances a number of aggravating or mitigating circumstances of the case and records his reasons in writing for awarding the death sentence. Ordinarily for murder, life sentence would be an appropriate punishment and for death penalty special reasons must exist. In several cases the Court emphasized the fact that death penalty is an exception rather than a rule and it ought to be imposed only in the gravest of grave cases of extreme culpability or in the rarest of rare cases when the alternative option is unquestionably foreclosed. But it is criticized that it is violation of International human rights. Article 6(1) of the ICCPR states “Every human being has the inherent right to life. Law shall protect this right. No one shall be arbitrarily deprived of his life.” Article 6(2) provides “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of crime and not contrary to the provisions of the present covenant.” Further Article 6(6) states “Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State party to the present covenant. But when we read the complete provision of Article 6 it is clear that its intention was not to abolish death penalty completely. In 1982, UN Human Rights Committee commenting on Article 6 supports for the abolition of death penalty and requested the world countries to take adequate measures in this regard. The Second Optional Protocol of the ICCPR requires the state party to abolish death penalty.

The validity of the capital punishment was challenged in Bachan Singh v. State of Punjab on the ground of fallibility in the legal process, resulting in the execution of innocent people. The Supreme Court reconsidered the earlier judgments in the case of Rajendra Prasad v. State of UP and relied on the inter-relationship of Articles 14, 19 and 21 as we achieved in Maneka Gandhi v. Union of India to give its judgments. This novel approach gave a new dimension of interpretation of fundamental rights and freedoms. The question pondered over by the Court was whether death sentence would violate Article 21, and Article 6(1) of the ICCPR. On international standards on death penalty and ICCPR, the Court observed that most states subscribing to these international standards have retained the death penalty for murder and a few other crimes in their penal laws. Finally it held that death penalty did not violate Article 21 because neither India’s ratification of the ICCPR nor the expansive interpretations of Article 21 after the Maneka Gandhi case have made a change in the prevailing standards of decency and human dignity. It also reasoned that ICCPR did not outlaw capital punishment as such.

In Jolly George Verghese v. Bank of Cochin, the Court discussed the question whether a person could be arrested and detained in civil prison on the ground of inability to fulfill a contractual obligation. Viewing this case from the angle of Article 11 of the ICCPR, the Court said that ‘no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation’. The question of interpretation was the impact of a provision in the international covenant on a provision in the national law. Here, Section 51 of the Civil Procedure Code was to be interpreted in the light of Article 11 of ICCPR to minimize the possibility of detention for breach of contractual obligation.. Justice V.R.Krishna Iyer observed that, “to this extent, Section 51 CPC was amended judicially, in the light of a provision in the international human rights document.”

The Rights of the accused as stated in Article 22 of the Constitution was discussed by the Supreme Court in the light of the international instruments. In CBI v. A.J. Kulkarni, the question of production of the accused within 24 hours to the nearest Magistrate was raised before the Supreme Court from the human right perspective. By harmonizing Article 9 and Article 14 of the ICCPR, 1966 the Court observed that, if there is failure to produce the arrested person before the nearest Magistrate within 24 hours, it makes the arrest illegal. The judiciary authorized the detention of the accused under judicial custody or police custody from time to time if the investigation is not complete. There can be no detention in police custody after expiry of 15 days. If the investigation is not completed within 60 or 90 days, the accused has to be released on bail under Section 167(2) Cr.P.C.

Administrations of justice in general and criminal or corrective justice in particular are sovereign rights of States. As per the traditional notion of sovereign immunity any wrongs committed against any person in course of employment is immune from the liability. However the Court interpreted sovereign immunity in a different manner in the light of international instrument and held the liability of State to compensate in wrongful arrest or detention. This period saw Compensatory jurisprudence being developed by the Supreme Court, though India had not ratified and had reserved the clause of compensation for victims in lieu of Article 9(5) of ICCPR, but it is adopted in several decisions by the Supreme Court. Thus was started a new era of compensatory jurisprudence in Indian legal history. This newly forged weapon is helped to protect the torture victims in many of its decisions.

In Rudal Shah v. State of Bihar, the petitioner was awarded Rs.35, 000 as compensation against the State of Bihar as he was kept in jail for 14 years after he was acquitted by a criminal court. The question before the Court was whether it could grant some compensation under Article 32 to the petitioner for his wrongful detention. The Court strongly criticized the inefficiency of the administrative mechanism leading to flagrant infringements of fundamental right and held the opinion that it cannot be corrected by any other means. It led to the judiciary to adopt the right to compensation for the unlawful acts of the government. This stand of the Court was repeated in Bhim Singh v. State of J&K wherein the Court awarded compensation to the petitioner for his illegal detention in police custody which was held to constitute violation of Article 21.

The Court in Sheela Barse v. Secretary, Children’s Aid Society referred UN Declaration on Rights of Child, 1959 for protection of children from exploitation in prison. While issuing the directions to the State of Maharashtra to protect
children from exploitation in jails, the Supreme Court held that the convention which had been ratified by India, and which elucidated norms for the protection of children, cast an obligation on the state to implement their principles. In this connection the Court observed: “In 1959, the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations. In 1966, the International Covenants appropriately recognized the importance of the child. India is party to these International Charters having ratified the Declaration; it is an obligation of the government of India as also the State machinery to implement the same in the proper way.” In this way the Court emphasized the significance of international human right instrument and internalized it to the domestic law.

In Saheli v. Commissioner of Police, the Court held that the State was liable to pay compensation to the mother of the deceased who had died because of police beating and assault. These two cases were decided by the Supreme Court by applying Article 9(5) of the ICCPR, thereby consolidating the international laws here.

From 1993-2011

This phase witnessed the Supreme Court going from strength to strength in its self proclaimed was as ‘people’s protector’ or ‘Supreme Court for Indians’. Its activism was unabated allowing its sane voice to be heard above the din. The new weapon forged by it i.e, ‘Compensatory Jurisprudence’ was used many times in these phase also, creating jitters in the administration.

In Nilabeti Behera v. State of Orissa, Supreme Court considered the question of monetary compensation to the victim of unlawful arrest and detention. In this instant case the victim Suman Behera and another accused were handcuffed and tied together and kept in custody at the police station. Next day the body of the Suman Behera was found on the railway track with multiple injury. Additional Solicitor General urged that it was not a case of custodial death but of death of Suman Behera caused by injuries sustained by him in a train accident, after he managed to escape from police custody by chewing off the rope with which he had been tied at the Police outpost. The Court rejected the contention and ordered the government to pay compensation to the deceased mother by referring to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of guaranteed right. Article 9(5) reads as follows: “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

In Joginder Kumar Case, the Supreme Court took measures for preventing custodial violence through documentation of arrests. It suggested that police should inform the arrest and detention of a person to a nearest relative, friend or neighbor. It is also urged that the UN Body of Principles for the protection of all the persons under any form of detention and imprisonment and the UN Standard Minimum Rules for the treatment of prisoners are to be followed. A shocked Supreme Court looked down at the inhuman treatment of prisoners lodged in hospitals, in Citizens for Democracy v. State of Assam and Ors, and observed, “the handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is, the least we can say, inhuman and in utter violation of the human rights guaranteed to an individual under the International law and the law of the land. We are therefore of the view that the action of the respondents was wholly unjustified and against law. We direct that the detenues – in case they are still in hospital – be relieved from fetters and the ropes with immediate effect.”

Supreme Court time and again held that torture is not permissible and it is a human rights violation. In D.K. Basu v. State Bengal of West is a case all those matters related to torture of prisoners are outlined and steps to be taken by the authorities to end such torture was given in the form of guidelines by the Court. It observed that, “Custodial violence” and abuse of police power is not only peculiar to this country but it is widespread. It has been the concern of International community because the problem is universal and the challenge is almost global. The UDHR, which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates in Article 5, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Further the Court held that the custodial death is the worst crime in a civilized society governed by the Rule of Law. The right inherent in Article 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. Any form of torture or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. The precious rights guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials, detenues and other prisoners in custody, except according to the procedure established by law and by placing such reasonable restrictions as are permitted by law. Despite the pious declaration, the crime continues unabated, though every civilized nation has shown its concern and takes steps for its eradication.

In this case, the Court went to the extent of saying that since compensation was being directed by the Courts to be paid by the State, which has been held vicariously liable for the illegal acts of its officials, the reservation to Article 9(5) of the ICCPR by the government of India has lost its relevance. In fact, the sentencing policy of the judiciary in torture related cases, against erring officials in India has become very strict. For an established breach of fundamental rights, compensation can now be awarded in the exercise of public law jurisdiction by the Supreme Court and High Courts, in addition to private law remedy for torture action and punishment of wrongdoer under criminal law. In this case the Court gathering support from Article 5 of UDHR laid down a code for protection of detainees at and after arrest. Regarding award of compensation in case of illegal arrest and detention, by referring to Article 9(5) of the ICCPR it observed that, “The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the

www.theinternationaljournal.org > RJSSM: Volume: 01, Number: 10, Feb-2012 Page 106
amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm on the wounds and not to punish the transgressors or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State in law is duty bound to do.”

Compensatory Jurisprudence was once again stressed by the Supreme Court in People’s Union for Civil Liberties v. Union of India & Another. A large number of cases were referred to and once again the Court relied on ICCPR instrument of 1966, read which was along with our Constitutional rights to chalk out protective and remedial measures earlier unheard of to torture victims in police custody. This case was concerned with the award of compensation in a case of fake encounter resulting into custodial death of two persons alleged to be terrorists, who were shot dead by the police. The Court considered the question of fake encounter by police while the accused was in custody. By referring Article 9(5) of the ICCPR and a good number of foreign judgments, the Court awarded a compensation of Rs. 1 lac to the families of each of the deceased families.

Right against exploitation is available to persons including prisoners and hence no prisoner can be compelled to work forcibly. In State of Gujarat v. Hon’ble High Court of Gujarat, the Court considered the question of putting prisoners to hard labour, as part of their punishment. It laid down that they should be paid wages for such work at rates prescribed under Minimum Wages Law. Otherwise the person provides service to another for remuneration less than minimum wage labour and that service would amount to “forced Labour” or ‘beggar’ under Article 23. In this case the Court referred the provision Article 8 of the ICCPR which says that, “No one shall be held in slavery and the slavery trade in all their forms shall be prohibited.”

In State of Andhra Pradesh v. Challa RamakrishanReddy & Others, the Supreme Court cautioned the public authorities that the Constitutional right to life should not be denied to anyone, even to persons detained or imprisoned, as they do not cease to be … human beings … and still retain the residue of constitutional rights. Punishment or sentence that may be imposed on accused persons or prisoners, which constitute torture or cruel by inhuman or degradation treatment, can amount to violation of the right to life. The Court relied on the combination of Article 14 and 21 of the Constitution and clubbed it with international legal principles embodied in Article 5 of the UDHR and Article 7 of the ICCPR it held that “(A)ny form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad in to this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorizes and no procedure which leads to such torture or cruelty, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Article 14 and 21.

In Pratap Singh v. State of Jharkhand and another, the Constitutional bench of the Supreme Court discussed whether the date for determination of age of juvenile offender is date of offence or the date he produced before the Court was raised before the Court. In this connection the Court observed the obligation of the enactment of Rule 9 and Rule 27 of the Juvenile Justice Act, by referring the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 also know an Beijing Rules and declare that the rules in the legislation shall not be interpreted as precluding the application of the Standard Minimum Rules for the treatment of prisoners adopted by the UN and other human rights instruments and standards recognized by the international community that related to the care and protection of the young.

In Alok Nath Dutta v. State of West Bengal, the appellant was sentenced to death for conspiring to commit murder. On the issue of the death penalty, Justice S.B.Sinha mentioned the growing demand in the international forum to abolish the death penalty and referring to the Second Optional Protocol of the International Covenant on Civil and Political Rights, 1966, converted the death penalty to life imprisonment based on its precedent and the evidentiary issues involved in this case.

Again, in Munshi Singh Gautam v. State of M.P. the Supreme Court set aside the conviction of the three accused on the basis of the evidentiary and procedural issues and held that Article 5 of the UDHR highlights the problem of torture and custodial violence as one of universal concern.

In Dalbir Singh v. State of U.P. & Ors The Court held that rarely in cases of police torture or custodial death, there is any direct ocular evidence of the complicity of the police personnel, who alone who can explain the circumstances in which a person in their custody had died. Torture and custodial violence cannot be permitted to defy the fundamental rights under Articles 20(3) and 22 of the Constitution by relying Article 5 of the UDHR. The court awarded compensation for the petitioner.

Similarly in Swamy Sharadabadand v. State of Karnataka, Justice S.B.Sinha observed that “growing demand in the international fora, particularly the Second Optional Protocol of International Covenant on Civil and Political Rights, 1986, the American Constitution of Human Rights etc are recommended to abolish the death penalty and to bring the change in the barbaric sentence”. The Court relied the international human rights instruments and regional instruments in the domestic law to make reform in the death sentence.

Recently the Court assimilated the international human rights instruments relating to the issue of non-bailable warrants in Inder Mohan Goswami v. State of Uttaranchal, It quashed the non-bailable warrants issued by the lower court. It relied on several decisions to reach the conclusion, and mentioned that liberty is an important human right
enunciated in the American Declaration of Independence, 1776, the French Declaration of the Rights of Men and the Citizen, 1789, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, 1966.

Justice S.B. Sinha in Harendra Sarkar v. State of Assam with Kailash Gaur & Ors v. State of Assam, while discussed the application of “Doctrine of Reverse Burden” in certain category of offences, where accused has burden to establish his innocence before the Court of law, the Court observed that “whether parliament intended to lay a different standard of proof in relation to certain offences or certain pattern of crimes, it did so. In such a case subject to establishing some primary fact, the burden of proof has been cast upon the respondent. There is large number of statutes where the doctrine of reverse burden has been applied. Save and except those cases where Parliamentary statutes apply the doctrine of reverse burden, the Court should not employ the same per se would not be violates of UDHR, but also the fundamental rights of the accused as envisaged under Article 21 of the Constitution of India.”

In Man Bahdur v. State of A.P. the Court while discussing the right to a fair trial of the accused in the light to international instrument. It observed that, “Article 12 of Universal Declaration of Human Rights provides right to a fair trial. Such rights are enshrined in our Constitutional scheme bring Article 21 of the Constitution of India. If a right to fair trial, his case must be examined keeping in view the ordinary law of the land.

In Smt.Selvi and Ors v. State of Karnataka, the Court discussed the whether the involuntary administration of the impugned techniques violates the ‘right against self-incrimination’ enumerated in Article 20(3) of the Constitution. The Court recognized that the right against self-incrimination has been recognized in the international human rights instruments. It observed that “in the ICCPR, Article 14(3)(g) enumerates the minimum guarantees that are to be accorded during a trial and states that everyone has a right not to be compelled to testify against himself or to confess guilt and the guarantee of ‘presumption of innocence’ bears a direct link to the right against self incrimination since compelling the accused person to testify would place the burden of proving innocence on the accused instead of requiring the prosecution to prove guilt.”

Guaranteeing civil and political rights to citizens is mandatory in a democracy. The Indian Constitution framed for a nascent democracy fresh from a long colonial past has wide ranging civil and political rights. Almost all the positive aspects of UDHR are embedded in the Constitution. The same zeal was shown by India, when it ratified the 1966, Civil and Political rights convention excepting provisions. When the Constitution incorporates and the government accepts international human rights provisions substantially, the gap between the international and the domestic law is minimal and the gap widens when it is to the contrary. The role of the Supreme Court in harmonization is more so if the gap is wide. Here the role of the Supreme Court is not so wide. Yet the above analysis under different phases reveals that the Supreme Court’s role is not the same in all categories. In one it is vibrant, in another it is dormant and in yet another presence is visible. All this depends on the width of the gap to be bridged.

Conclusion

Prisoner’s rights are sensitive category under the Civil and Political rights of the international human rights instruments and the domestic legislations. It is found that there are 28 cases reported from 1950 to 2010.

<table>
<thead>
<tr>
<th>Phases</th>
<th>Reference</th>
<th>Expansion</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Phase</td>
<td>1950-66</td>
<td>Nil</td>
</tr>
<tr>
<td>Second Phase</td>
<td>1966-79</td>
<td>1</td>
</tr>
<tr>
<td>Third Phase</td>
<td>1979-93</td>
<td>0</td>
</tr>
<tr>
<td>Fourth Phase</td>
<td>1993-2010</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>1</td>
<td>27</td>
</tr>
</tbody>
</table>

It is found that the role of the Supreme Court in the enforcement of the international human rights instruments touched the entire gamut of criminal jurisprudence starting from the arrest of a person, for an alleged offence, including arrest on suspicion and ending in capital punishment and compensation in the case of fake encounters. The last aspect i.e. compensatory jurisprudence was unheard of earlier in conventional common law tradition where immunity is invoked to defend the state and its authorities while discharging their function in the process of maintaining law and order and jail administration. The doctrine of sovereign immunity erases all excesses. But the activist Supreme Court nailed that effectively.

It is also found that all the cases except one in the prisoners’ category have been used to expand the horizon of human rights available to prisoners. Only in A.D.M. Jabalpur case, the Supreme Court stopped with mere reference of the international instrument and did not go in for expansion. This case was decided during the darkest period of Indian democracy, when national emergency was in force. Probably due to that, the Supreme Court did not avail the opportunity of expanding the human rights available to the prisoners.

In Rudal Shah case, the Supreme Court directed the authorities to pay compensation to the victim who was negligently detained in prison without any authority of law for a period of 14 years. This was in accordance with the international norms. Similarly, compensation was awarded to the victim who was kept under illegal detention by the police in Bhim Singh v. State of Jammu & Kashmir case. In Niabati Behra and Saheli, the mothers of victims of custodial violence were awarded compensation by the Supreme Court.

Compensatory jurisprudence apart, the Supreme Court ventured into aying detailed guidelines to safeguard the rights of the prisoners. In Sheela Barse case the Court aid down guidelines to women prisoners including detenues who are under police custody. It is based on UDHR stipulations. An attempt was made to extend the human rights available to other prisoners including male prisoners.
in Joginder Kumar Singh case. It is related to the treatment of prisoners.

The process of harmonization was at its peak in D.K. Basu case, where detailed guidelines dealing with the procedures of arrest and detention and protection of prisoners including compensation for victims of fake encounters was laid down. The Court stipulated that the guidelines as laid down in this case are to be followed till appropriate legislative enactments are made. Till date no such legislation has been passed (except minor modifications made in the present rule, 2007) to replace this code, which has been inspired by the international instruments. The Standard Minimum Rules of Prisoners laid down by the UN was applied in Prem Shankar Shukla case, to forbid handcuffing and other inhuman treatments, normally meted out to under trial prisoners by the police. In Kulkarni case bail was granted to the prisoners for the failure of the prosecution to complete investigation on time. However while ratifying the Civil and Political Rights, India categorically made few reservations. One such reservation was on compensation to the victims. But in the cases cited above, the Supreme Court brought in the principle of compensatory jurisprudence in India even in the absence of legislation on the same. The Supreme Court brought in harmonization to enable the prisoners to have all these human rights which they can possibly have. Hence for the furtherance of human rights of prisoners the Court felt it necessary to harmonize international laws.

From the above analysis it is clear that the Supreme Court played a substantial role in enforcing the international human rights with the domestic human rights with reference to Civil and Political Rights dimensions. In the process of harmonization, the Supreme Court did not rest with mere invocation of international human rights instruments, but also saw to it that some of the rights available in the international instruments become part and parcel of the domestic law and thereby enforceable. Some part of the related judgements is quoted verbatim to substantiate the above findings relating to qualitative changing trend of the Supreme Court. For instance, in Jolly George Verghese v. Bank of Cochin, the decision concluded “indeed the construction I have adopted of Section 51 Civil Procedure Code has the flavour of Article 11 of the Human Rights Covenants, counsel for the appellant insisted the law and justice must be on speaking terms – by justice he meant, in the present case, that a debtor unable to pay must not be detained in civil prison.... counsel for the respondent did argue that international law is the vanishing point of jurisprudence is itself vanishing in a world where humanity is moving steadily, though slowly, towards a world order, led by that intensely active, although yet intellectual body, the UNO. Its resolutions and covenants mirror the conscience of mankind and inseminate, within the member states, progressive legislation, but till this last step of actual enactment of law takes place, the citizen in a world of sovereign states has only inchoate rights in the domestic courts under these international covenants.”

Prisoner’s human rights constitute an important domain for enforcement. As Professor Baxi in his book “Crisis of Indian Legal System” observed that after independence the republican Constitution introduced various rights to prisoners in its Constitution, but the same prison system and police system of the British Raj continue. In spite of Constitutional provisions, the structural and functional changes in the police system could not take place. Therefore some of the human rights available to prisoners at the global level were denied to Indian prisoners. Hence in this sphere the Supreme Court harmonized and enforced widely when compared with other Civil and Political Rights.