No Judgment, No Appeal: A Plea to Revive the Mandate of Hoskot

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Published in: Subash C. Raina & Usha S. Razdan, Law and Development – An Anthology of Topical Legal Studies (New Delhi: Regency Publications, 2003), p. 180-186.

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A Plea for Reviving the Mandate of *Hoskot*

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In the evening of March 12, 2003, Tilak Singh, a convict serving life sentence, hung himself to death from a tree in the backyard of Tihar Jail. Tilak Singh, a migrant construction labourer residing in the Harijan Basti in Jahangirpuri in Delhi, had been convicted in 2001 for the murder of a fellow labourer. The prisoner, according to the press report that made the incident public, was depressed for several months out of frustration in not being able to get a copy of the judgment of the trial court in his case so that he could file an appeal in the High Court [1]. The prison officials admitted that successive jail superintendents had made several unsuccessful applications for a copy of the judgment. They too did realise the importance of this one document to the convict. The press report quoted the prison officials as saying that they "need a copy of the judgment for everything" [2] – whether the convict was to be released on parole or granted remissions by the Sentence Revision Board. Tilak Singh's death evokes indignation at one more failure of our criminal justice system and points to the multiple violations of rights to which the prisoners in our country are subject. It necessitates a recapitulation of the constitutional and legal requirement in regard to the right of a prisoner to receive a copy of a judgment which awards a sentence of imprisonment.

The Code of Criminal Procedure, 1973 (Cr. PC, 1973) contains specific provisions in the matter of filing of appeals. S.382 requires that every appeal "shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against." Where the appellant is in jail, the prisoner has to present the petition of appeal to "the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court [3]." A petition of appeal cannot, therefore, be filed without a copy of the judgment appealed against. In practical terms too, it is inconceivable that grounds of appeal can be drawn up without the judgment appealed against being made available. While the Cr.P.C. 1973 recognises the importance of this requirement, it spells out no consequences for the failure to provide such copy. S.363 (1) mandates furnishing of a copy of the judgment of the trial court to an accused sentenced to imprisonment a free of cost "immediately after the pronouncement of judgment[4]." This provision was only a slight modification of the corresponding provision of the 1898 Code [5]. Even S.363 (2) Cr. P.C., 1973 which mandates that the court shall, when the accused so desires, provide a copy of the judgment translated "in his own language if practicable[6]" is a modified version of S. 371 (1) of the 1898 Code [7]. Thus for at least over a 100 years now the right of the Indian prisoner to be provided with a copy of the judgment of the

trial court which convicts has been statutorily mandated [8].

This statutory requirement acknowledges the fact that the majority of Indian prisoners, whether as undertrials or as convicts, belong to the economically underprivileged sections of the society [9]. Prisoners, behind the high-walls of jails, constitute an 'invisible' population to whom the availability of legal assistance can determine whether they can or cannot access justice. Several expert committees that have examined the issue have underscored the need to provide legal assistance to prisoners within jails from the point of entry till the stage of release from the prison [10]. They also point to the absence of provisions in the jails manuals, the blue book for prison authorities, that bring out the mandatory nature of the statutory requirement of providing the prisoner a copy of the judgment of the court that award conviction and sentence [11]. This has also to be seen in the context of the general lack of availability of legal aid within jails [12]. Not surprisingly, instances, like those of Tilak Singh, occur with fair regularity.

In 1978, the Supreme Court was approached by a convict seeking special leave to appeal against the conviction and sentence awarded to him for the crime of fabricating academic records. While the court was not impressed with the merits of the case, it anguished over the explanation the petitioner offered for the delay of over 4 years in filing the special leave petition. The petitioner, Madhav Hayawadanrao Hoskot, stated that he was given only in 1978, a copy of the judgment of the High Court rendered in 1973. The jail officials insisted that a clerk did deliver the judgment of the prisoner but took it back to enclose it to a mercy petition to the Governor for remission of sentence. Even while it was not prepared to accept this explanation, the court noted that "the fact remains that prisoners are situationally at the mercy of the prison 'brass' but their right to appeal, which is part of the constitutional process to resist illegal deprivation of liberty, is in peril, if district jail officials' *ipse dixit* that copies have been served is to pass muster without a title of prisoner's acknowledgment. What is more, there is no statutory provision for free legal services to a prisoner, absent which a right of appeal for the legal illiterates is nugatory and, therefore, a negation of that fair legal procedure which is implicit in Article 21 of the Constitution, as made explicit by this Court in *Maneka Gandhi* [13]."

The court went on to explain that "every step that makes the right of appeal fruitful is obligatory and every action which stultifies it is unfair and ergo, unconstitutional. It would be pertinent to point out to two requirements: (1) the service of a copy of a judgment to the prisoner in time to file an appeal and (2) the provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service[14]." In delineating the constitutional basis of the right to legal assistance, the court invoked Article 39-A as an interpretative tool for Article 21. It said: "If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special leave to appeal for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual 'for doing complete justice'[15]."

The court then gave the following directions:

- Courts shall forthwith furnish a free transcript of the judgment when sentencing a person to prison term;
- In the event of any such copy being sent to the jail authorities for delivery to the prisoner, by the appellate, revisional or other Court, the official concerned shall, with quick despatch, get it delivered to the sentence and obtain written acknowledgment thereof from him;
- Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the Jail Administration;
- Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the Court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner's defence, provided the party does not object to that lawyer;
- The State which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum as the Court may equitably fix [16].

Krishna Iyer, J., who wrote for the court said that S. 363 Cr. P.C, 1973 “is an activist expression of this import of Article 21 and is inviolable [17].” Nevertheless, the *Hoskot* dictum did not usher changes in either the jail manuals or in the practice of the prison administration. The Supreme Court Legal Aid Committee in 1994 filed a PIL in the Supreme Court seeking directions for providing effective legal assistance to convicts in jails in order to improve their access to courts. The petition was based on an analysis of cases filed by the Committee on behalf of convicts over a period of three to four years. A sampling of twenty cases that had been filed after considerable delay, and therefore dismissed at the threshold, traced the reasons for the delay to the inexplicable tardiness of the prison and subordinate court administration in collecting documents necessary for filing the appeal and transmitting them to the Committee. Specific directions were sought to the state governments and prison authorities to heed the mandate of *Hoskot,* amend the jail manuals and ensure prompt legal services, including the furnishing of relevant documents, to the inmates of jails. After several hearings spread over four years, the petition was closed with a series of directions to the states to issue instructions to its officials and the jail authorities to promptly make available to prisoners free copies of judgments, inform them of their right to avail of legal aid and provide them with effective assistance in applying for and obtaining legal aid for pursuing cases before the trial court, the High Court and the Supreme Court [18].

Tilak Singh reminds us that there are many among the over 2 lakh undertrials and convicts in our jails that face a similar predicament [19]. There was in his case, a clear breach of both the statutory and the constitutional requirement of providing the prisoner the basic document to enable him to exercise his right of appeal. The consequent denial of access to justice was so severe as to drive Tilak Singh to commit suicide. It is not insignificant that this happened in a jail which is touted as a model institution in the country [20]. The situation in lesser noticed jails can only be worse. Tilak Singh's needless death should spur the demand for an

effective legal regime to enforce strict accountability for violation of the rights of prisoners. There appears no justification in delaying the translation of the dictum of *Hoskot* into practice as an effective means of access to justice.

Endnotes

6. "Tihar prisoner kills self", Indian Express, New Delhi, March 13, 2003, p. 4.
7. *Id.*
8. S.383, Cr. P.C, 1973. Although the prison manuals, which are separate for each State in the country, contain similar provisions, they do not spell out any consequences for the prison administration upon failure to observe this mandatory requirement.
9. Sec. 363(1), Cr. P.c., 1973 reads thus: "When the accused is sentenced to imprisonment, copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost".
10. Section 371 (4) of the 1898 Code read as under: "When the accused is sentenced to imprisonment then, without prejudice to the provisions of sub-section (1) or sub-section (2), a copy of the finding and sentence shall, as soon as may be after the delivery of the judgment, be given to the accused free of cost."
11. S. 363 (2), Cr. PC 1973: "(2) On the application of the accused, a certified copy of the judgment, or when he so desires, a translation in his own language if practicable or in the language of the Court, shall be given to him without delay, and such copy shall, in every case where the judgment is apparently by the accused, be given free of cost: Provided that where a sentence of death is passed or confirmed by the High Court, a certified copy of judgment shall be immediately given to the accused free of cost whether or not he applies for the same."
12. S. 371 (1) of the 1898 Code read thus: "On the application of the accused a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost."
13. As regards Judgments of the High Court, the proviso to S. 363 (2) mandates that a free copy of the Judgment would be given to the accused only were a sentence of death is passed or confirmed. In a PIL by the Supreme Court Legal Services Committee, the Supreme Court has, in August 1998 issued a positive direction to every State and Union Territory that "they will, by issuing administrative orders/ instructions ensure that every prisoner/ convict is provided with a free copy of the Judgment of the Sessions Court or the High Court in her/ his case or matter within 30 days of the pronouncement of such Judgment and that the Registry of the Court concerned will personally endorse such copy to the Superintendent of the Jail for forwarding the same to the petitioner": *Supreme Court Legal Services Committee v. Union of India* (1998) 5 SCALE SP-19.
14. See generally Kumkum Chadha, The Indian Jail: A Contemporary Document, Vikas Publishing Pvt. Ltd. (1983). Prof. Upendra Baxi notes that the prison population is dominated by "low-income groups, with little or no education and with occupations attended by low status ranking": Upendra Baxi Crisis of the Indian Legal System, Vikas Publishing Pvt. Ltd. (1982), 146.
15. See generally, Report of the All India Committee on Jail Reforms 1980-83 (Mulla Committee Report); P.N. Bhagwati and V.R. Krishna Iyer, Report on National Juridicare: Equal Justice Social Justice (1977) and V.R. Krishna Iyer (et al.) Processual Justice to the People: Report of the expert committee

on legal aid (1973).

16. The jail manuals contain provisions that enable the filing of an appeal even without the copy of the judgment: for e.g., see Rule 550 of the Orissa Jail manual.
17. Prisoners have to invariably depend upon the senior jail staff or co prisoners for assistance in drawing up petitions.
18. *M.H. Hoskot v. State of Maharashtra* (1978) 3 SCC 544 at 548.
19. *Id*. at 552-53. The court also pointed out, with reference to Article 8 of the Universal Declaration of Human Rights as well as Article 14 (3) of the International Covenant on (Civil and Political Rights, that "the other ingredient of fair procedure to a prisoner, who has to seek his liberation through the Court process is lawyer's services."
20. *Id*. at 556-57.
21. *Id*. at 557. The court made it clear that "these benign prescriptions operate by force of Article 21 (strengthened by Article 19 (1) (d) read with sub-article (5) from the lowest to the highest Court where deprivation of life and personal liberty is in substantial peril."
22. *Id*. at 553.
23. *Supreme Court Legal Services Committee v. Union of India*, 1998 (5) SCALE SP-19. However, even these directions were observed more in their breach as criminal cases continued to reach the Supreme Court Legal Services Committee long after the expiry of the period of limitation for filing a SLP. For a decision of a High Court holding that the burden was on jail authorities to explain why the jail appeal was not sent in time, see *Phusu Kooiri v. State of Assam* 1986 Cri LJ 1057. See also, A. Subramani, "Early disposal of appeals sought", *The Hindu*, New Delhi, September 8, 2001, 9.
24. According to the *Prison Statistics 2000* published by the National Crime Records Bureau (NCRB), there were at the end of 2000 1,93,267 undertrials and 63,975 convicts. 49.4% of the convicts were serving life imprisonment.
25. Its location in the capital of the country makes Tihar the centre of media attention giving it a profile that bears closer scrutiny than at present: "CJI's assurance to Tihar officials", *The Hindu*, New Delhi, January 26, 2003, p. 4.