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RIGHT TO SLEEP AS A FUNDAMENTAL RIGHT

ABSTRACT

The paper begins with introducing human rights as an essential part of human life ensured under Art. 21 of the Indian Constitution. The notion of sleep and its vitality for the human body is described. Then, the international perspective is discussed in brief stating various international laws and cases which determine the right to sleep a non-violative right with special regard to the rights of prisoners as they are being deprived of basic human life which is a clear violation of one's human rights. Article 21 of the Indian constitutes as one of the most important pillar for ensuring a dignified human life and thus various national cases are stated in order to determine the judiciary's approach towards the right to sleep. The paper concludes with describing noise as a barrier to enjoy the right to sleep which is a fundamental and a human right which cannot be taken away by anyone.

Keywords: Sleep, Human Right, UN.

"Sleep and Death are twin brothers" –Homer

INTRODUCTION

Human rights are the rights inherent and essential to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. They are equal for everyone. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without any kind of discrimination. Sleeping is one of the most crucial elements for

human existence and thus is fundamental in nature and holds an essential value under Article 21 of the Indian Constitution.

NOTION OF SLEEP

“Sleep is essential for a human being to maintain the delicate balance of health necessary..... Sleep is, therefore, a fundamental requirement...” Naming it as a fundamental human right, the Apex court decided that police activity on a dozing swarm added up to infringement of their human right. An individual is entitled to sleep as easily and as unreservedly as he wants. Sleep is fundamental for an individual, to keep up the fragile equalization of wellbeing which is vital for the very presence and endurance of a human. Sleep is, in this way, a central and essential necessity without which the presence of life itself would be in hazard. To disturb sleep, in this way, would add up to torment which is currently acknowledged and accepted as an infringement of a human right. It is like a third-degree strategy which is often tried to be justified in the name of ‘police action’ to extricate reality out of an accused who is engaged with horrifying and wanton crimes.

International perspective

The concept of 'lack of sleep' or 'sleep deprivation' has been recognized by the international human rights framework as a technique for torture or harsh, cruel, and debasing treatment or punishment. However, its worldly and contextual measurements require a more clear definition. The related idea of "sufficient sleep"— as a right or a safeguard for those under cross-examination, interrogation, arrest, or confinement—is likewise poorly characterized and needs clarity.

- **Article 12 of the Universal Declaration of Human Rights (1948)** refers to privacy and it states: *“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”*¹
- Further, **Article 17 of the United Nation’s International Covenant on Civil and Political Rights** states that *“No one shall be subjected to arbitrary or unlawful*

¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 28 August 2020].

*interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference and attacks.”*²

- Finally, **Article 8(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms** signed in 1950 says that ‘*everyone has the right to respect for his private and family life, his home and his correspondence*’.³
- **Article 3 of the European Convention on Human Rights (ECHR)** has also been interpreted to require these two elements. If these elements cannot be identified, the treatment can still amount to other ill-treatment. This is explored below when reviewing their application to sleep deprivation.⁴

International laws about detention do not explicitly limit interrogation duration, define adequate sleep, nor state when sleep deprivation amounts to torture or other ill-treatment.

- The discussion, therefore, needs to be based on authoritative principles under international human rights law, namely **Article 1 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)**.⁵

Accepting the premise that sleep deprivation is primarily used for obtaining information or confession, two elements under the definition emerge to be particularly significant: *intentionality and severe physical or mental pain or suffering*.

- **The UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNSRT)** has regularly identified that

² UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 28 August 2020].

³ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <https://www.refworld.org/docid/3ae6b3b04.html> [accessed 28 August 2020]

⁴ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <https://www.refworld.org/docid/3ae6b3b04.html> [accessed 28 August 2020]

⁵ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html> [accessed 28 August 2020]

sleep deprivation is indeed capable of amounting to torture.⁶

- Conversely, **Article 2 of the Inter- American Convention to Prevent and Punish Torture** contemplates diminishment of capacity as torture in the following:

“... any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of a criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.”⁷

Sleep deprivation is a method of torture. On one hand, various principles have emerged but still, they lack enforceability as they have been opaque on the notion of understanding ‘sleep as an essential element’ for the human body. Although after being influenced by medical knowledge, the 6-8 hours rule as expounded by the European bodies have still not been based explicitly, nor with sufficient nuance, on known health impacts. Nor have normative declarations by the CAT and UNSRT that link torture and sleep deprivation, whilst necessary, been supported by detailed and clear guidance.

International Judicial Approach

The international judicial approach regarding the right to sleep is concerned, the first case that discussed protesters right to sleep was *Clark v. Community for Creative Non-Violence*,⁸ is a United States Supreme Court case that challenged the National Park Service’s regulation which specifically prohibited sleeping in Lafayette Park and the National Mall. The Community for Creative Non-Violence (CCNV) group had planned to hold a demonstration on the National Mall and Lafayette Park where they would erect tent cities to raise awareness of the situation of the homeless. The group obtained the correct permits for a seven-day demonstration starting on the first day of winter. The Park Service however denied the request that participants be able to sleep

⁶ UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 March 2015, A/HRC/28/68, available at: <https://www.refworld.org/docid/550824454.html> [accessed 28 August 2020]

⁷ Organization of American States (OAS), *Inter-American Convention to Prevent and Punish Torture*, 9 December 1985, OAS Treaty Series, No. 67, available at: <https://www.refworld.org/docid/3ae6b3620.html> [accessed 28 August 2020].

⁸ *Clark v. Community for Creative Non-violence*, 468 U.S. 288. (1983).

in the tents. The CCNV challenged this regulation on the basis that it violated their First Amendment right.

- Further, In the case of *Varga and Others v. Hungary*,⁹ the European Court of Human Rights held, unanimously, that there had been a violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights, and a violation of Article 13 (right to an effective remedy) read in conjunction with Article 3 of the Convention. The Court concluded that the limited personal space available to all six detainees, in this case, aggravated by a lack of privacy when using the lavatory, inadequate sleeping arrangements, insect infestation, poor ventilation and restrictions on showers or time spent away from their cells, had amounted to degrading treatment.
- The link between sleep deprivation and diminishing an individual’s personality was further enlightened by the case of *Maritza Urrutia v. Guatemala*. The Inter-American Commission requested that the Inter-American Court find a “*violation because of the use of methods tending to obliterate or diminish her personality, such as sleep deprivation*” (§78(b)). Without specifically condemning sleep deprivation, the Inter- American Court, in turn, ruled that:
*“... according to the circumstances of each particular case, some acts of aggression inflicted on a person may be classified as mental torture, particularly acts that have been prepared and carried out deliberately against the victim to eliminate his mental resistance and force him to accuse himself of or confess to certain criminal conducts, or to subject him to other punishments, in addition to the deprivation of freedom itself.”*⁹
- This is also echoed in **Principle 1** of the **Principles and Best Practices on the Protection of Persons Deprived of Liberty** in the Americas, which protects individuals from “*forced intervention or coercive treatment, from any method intended to obliterate their personality or to diminish their physical or mental capacities.*”¹⁰
- To date, the **European Court of Human Rights** has considered sleep deprivation primarily through **Article 3** assessments of detention conditions, predominantly

⁹ *Varga and ors. v. Hungary*, ECHR 422 (2015).

¹⁰ *Maritza Urrutia v. Guatemala*, Series C No. 103, Inter-American Court of Human Rights (IACrTHR) (2003).

focusing on the conditions that inhibit adequate rest such as transportation, cell overcrowding, lack of comfortable beds, and disruptions caused by the prison environment.

- Although removed from the context of interrogation, the discussion of the term “adequate rest” found in this body of jurisprudence is useful. For example, *Dougoz v. Greece* is an illustrative case where “*the serious overcrowding and absence of sleeping facilities, combined with the inordinate length of the period during which he was detained in such conditions, amounted to degrading treatment contrary to Article 3.*”¹¹
- There have also been several **Russian cases** where transportation conditions—“*the frequency and the length of those transfers, of appalling conditions at the prison assembly sections and in the police vans, and about the intensity of the schedule*”—has not allowed the applicant to sufficiently sleep and were in violation of Article 3. However, what constituted sufficient sleep was not satisfactorily explained.¹²
- The Court has since considered the use of sleep deprivation in other interrogation contexts. In the *Mader v. Croatia case*, for example, where the applicant was “*deprived of sleep and forced to sit on a chair continuously for two days and nineteen hours*” at a police station, the Court found that this alone amounted to inhuman treatment (§108).¹³
- In *Bati v. Turkey*, where the applicants were subjected to sleep deprivation for several days, as well as physical and verbal assault during interrogation, the Court accepted that this treatment “*was liable to harm their mental integrity*” (§114).¹⁴
- Further, in *Guliyev v. Russia*, a prisoner was transported for 65 hours and denied uninterrupted sleep as he was forced to change his position every two

¹¹*Dougoz v. Greece*, ECHR. 40907/98., Council of Europe: European Court of Human Rights (2001).

¹²*Akimenkov v. Russia*, 6 February 2018, 2613/13, 50041/14, §§ 86-87; *Stepan Zimin v. Russia*, 30 January 2018, 63686/13, 60894/14, §§40-42; *Lutskevich v. Russia*, 15 May 2018, 6312/13, 60902/14, §§61-63; *Polikhovich v. Russia*, 30 January 2018, 62630/13, 5562/15, §§41-43; *Kavkazskiy v. Russia*, 28 November 2017, 19327/13, §§58-59.

¹³*Mader v. Croatia*, ECHR. 56185/07 (2011).

¹⁴*Bati v. Turkey*, 33097/96 ECHR (2004).

hours and subjected to constant light. The Court found the combination of “*the duration of the journey, confined space, sleep deprivation, insufficiency of food and possibly inadequate ventilation and lighting*” indeed constituted inhuman treatment.¹⁵

INDIAN PERSPECTIVE

“The right to live with human dignity encompasses within its manifold, some of the finer facets of human civilization which makes life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the person concerned.”¹⁶

Art. 21 is a declaration of deep faith and belief in human rights. In this pattern of guarantee woven in Chapter III of the Constitution, the personal liberty of man is at the root of Art. 21 and each expression used in this Article enhances human dignity and values.¹⁷ Under Article 19(1) (a), read with Article 21 of the Constitution of India, the citizens have a right of a decent environment and they have a right to live peacefully, right to sleep at night and to have a right to leisure which is all necessary ingredients of the right to life guaranteed under Article 21 of the Constitution. People of India have a right to sleep and leisure. Disruption or disturbance in sleep creates mental stress, deficiency in working efficiency, and other things.

JUDICIAL PRONOUNCEMENTS

- Emphasis was also placed on the decision in *Francis Coralie Mullin v. Administrator Union Territory of Delhi and Ors.*,¹⁸ this was a case of detention under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the question was whether the detenu's right under Article 21 included a right to consult a legal adviser and to meet the members of his family. Referring to its earlier Judgments, the Apex Court held that the right to life guaranteed under Article 21 includes the right to live with human dignity and all that goes with it viz. the bare necessities of life such as adequate nutrition, clothing and shelter, facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. It was, therefore, held that any

¹⁵Guliyev v. Russia, ECHR. 24650/02, §64 (2008).

¹⁶CERC v. Union of India, 1995 AIR 922, SCC (3) 42 (1995).

¹⁷Kartar Singh v. state of Punjab, 3 S.C.C. 569 (1994).

¹⁸Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, 2 SCR 516 (1981).

form of torture or cruel inhuman or degrading treatment to even a detenu would be offensive to human dignity and constitute an inroad into his right to live and would be prohibited by Article 21 unless it is under the procedure prescribed by law. No law which authorizes and no procedure which leads to such torture or cruel, inhuman, or degrading treatment can ever stand the test of reasonableness and non-arbitrariness. Such a law would be unconstitutional and void being hit by the provisions of Articles 14 and 21.¹⁹

- The Hon'ble Apex court in ***Kharak Singh v. State of U.P*** while defining the meaning of ancillary visits at nights held that: *"Intrusion into the residence of any person and knocking at his door with the disturbance to his sleep and ordinary comfort necessarily violates his freedom of Right to move freely (under 19(1) (d)) and also is "a deprivation" of his "personal liberty" guaranteed under Art. 21."*²⁰

In ***Sayed Maqsood Ali V/s State of Madhya Pradesh***, the Hon'ble High Court of Madhya Pradesh held that:

*"Every citizen is entitled under Article 21 of the Constitution to live in a decent environment and has the right to sleep peacefully at night. Not for nothing, it has been said sleep is the best cure for waking troubles and the sleep of a labouring man is sweet. Sleep brings serenity. Lack of sleep creates a lack of concentration, irritability, and reduced efficiency. It cannot be lost sight of that silence invigorates the mind, energizes the body, and quietens the soul. That apart, the solitude can be chosen as a companion by a citizen. No one has a right to affect the rights of others to have proper sleep, a peaceful living atmosphere, and undisturbed thought. No citizen can be compelled to suffer annoying effects of noise as that eventually leads to many a malady which includes cardiovascular disturbance, digestive disorders, and neuropsychiatric disturbance."*²¹

- The effect of bad night sleep relied upon by Hon'ble Calcutta High Court (as now being referred to as Kolkata High Court) in ***Burrabazar Fire Works Dealers Association & Ors. v. The Commissioner of Police & Ors***²² as highlighted by an eminent scientist in

¹⁹ Arun Gulab Gavli v. The stte of Maharashtra and ors. 102 BOMLR 390 (2000).

²⁰ Kharak Singh v. State of U.P., 1963 AIR 1295, SCR (1) 332 (1964).

²¹ AIR 2001 MP 220, (3) MPHT 459 (2001).

²² AIR 1998 Cal 121.

this field in her article in the British Medical Journal, in which it was stated that “noise can have positive health effects. The effect of bad night sleep includes mood change, reduce cardiovascular performance and poor performance at intellectual and mechanical tasks and it was further observed, a recent review of research into noise and sleep recommends that sound at night in sleeping quarters should not exceed 45 dB(A).”

“Interference with rest or sleep and the factor associated with it include lack of concentration; irritability reduced efficiency and is one of the most obvious and annoying effects of noise. Sleep is a physiological necessity and therefore, health may be adversely affected by insufficient sleep. Apart from health, apart from deafness, it affects the digestive system, cardiovascular disturbance in the cardiovascular system (circular), etc. Under Article 19, read with Article 21 of the Constitution of India, the citizens have a right of a decent environment and they have a right to live peacefully, right to sleep at night and to have a right to leisure which are all necessary under Article 21 of the Constitution.”

- The Supreme Court in **Church of God (Full Gospel) in India v/s K.K.R. Majestic Colony Welfare Assn:**
“In our view, in a civilized society in the name of religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during daytime or other persons carrying on other activities cannot be permitted. It should not be forgotten that young babies in the neighborhood are also entitled to enjoy their natural right of sleeping in a peaceful atmosphere”.
The Fundamental rights belong to human personality, and not to a mechanical device. Intervention with a machine is not intervention with or invasion of a human faculty or right. No mechanical device can be upgraded to a human faculty. A computer or a robot cannot be conceded the rights under Article 19 (though they may be useful to man to express his faculties).²³
- In **Ramlila Maidan Incident v/s Home Secretary**, This issue was looked over by the court after the police took action against a sleeping crowd at a rally in support of yoga guru Baba Ramdev. The ruling from the Supreme Court means people who disturb

²³Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Assn, CriLJ 4022 (2000).

others sleeping could be violating their human rights. As a result, people could complain about loud music at night, people clattering around noisily when waking up early, employers not giving workers enough time to sleep between shifts, and waking someone up when they didn't want to be. The ruling put the right to sleep alongside the right to privacy and the right to food in the country's constitution. However, this doesn't mean that someone can fall asleep anywhere and claim it was their human right. In determining the right to sleep, courts would consider "*reasonable regulation of time, place, and manner of the act of sleeping.*" The Apex Court passed the verdict after taking 'suo motu' cognizance of media reports showing the brutality of police action against the followers of Ramdev who were sleeping. According to the Court, "*a person cannot be presumed to be engaged in criminal activity or an activity to disturb the peace of mind when asleep.*" Justice Chauhan opined, "*To presume that a person was scheming to disrupt public peace while asleep would be unjust and would be entering into the dreams of that person. I am bewildered to find out as to how such a declaration of the intention to impose the prohibition was affected on a sleeping crowd.*"²⁴

- In the case of ***Moulana Mufti Syed Md. Noorur Rehman Barkati and others v. State of West Bengal***, wherein it has been held as under: "*None can claim an absolute right to suspend other rights or it can disturb other basic human rights and fundamental rights to sleep and leisure. The argument that the Environmental (Protection) Act, Rules and the Schedule therein are ultra vires under Articles 14 & 25, is wholly misconceived as it had not resulted any discrimination and so far as Sound Pollution is concerned, citizens have a right to be protected against excessive sound under Article 19(1)(a) of the Constitution.*"²⁵
- In ***Acharya Maharajshri Narendera Prasadji Anand Prasadji Maharaj v. The State of Gujarat***: After considering the various contentions, the Court observed that "*no rights in an organized society can be absolute. Enjoyment of one's rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the*

²⁴ 5 SCC 1 (2012).

²⁵ AIR Cal 15 (1999).

*imbalance between competing interests". The Court also observed that "a particular fundamental right cannot exist in isolation in a water-tight compartment. One Fundamental Right of a person may have to co-exist in harmony with the exercise of another Fundamental right by others also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole."*²⁶

CONCLUSION

Various Legislations recognize Noise as a form of Pollutant and thus are under the umbrella of Noise Pollution (Regulation and Control) Rules, 2000, and other environment protection Acts which acts as one of the major barrier to Right to Sleep. Sleep, as discussed above, is an essential ingredient to live a healthy and balanced life, and therefore Right to life impliedly included the Right to Sleep. Thus, an inference can be drawn that Constitutional protections present for infringement of Right to life can be taken up in case of deprivation of Right to Sleep. No Doubt every right is not an absolute Right and is subjected to reasonable restriction, but no person can enjoy his right at the cost of another like everyone has right to enjoy but within the ambit of reasonable restrictions. Nor such overriding rights can be imposed on others. Right to Life is in no way in contradiction to Right of Freedom of Speech and Expression and Right to Freedom of Trade but is subject to reasonable restriction.

²⁶ AIR 2098, 1975 SCR (2) 317 (1974).