
AN ANALYSIS OF THE RIGHTS OF PRISONERS

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ABSTRACT

Human Rights are Natural Rights, meaning that a living being is born with such rights and thus these rights are indispensable; taking away all their rights would be rather cruel and inhuman. Every human being, convicted of a crime or not is entitled to some rights, with exceptions due to the nature of their crimes and/or as a consequence of confinement in prison. Nonetheless, the Indian Constitution, some Statutes, International Law, and Judicial decisions have laid some guidelines as to how a prisoner shall be treated. The paramount right that a prisoner has in India is Article 21 of the Indian Constitution, of course, with an exception to the death penalty, but even in that case the convict is given a fair chance to put up a fair fight and they are even entitled to appeals and pardons, respecting the above-mentioned article.

Many International Conventions and Covenants also talk about the rights of prisoners and our Constitution says that in the absence of a Municipal Law in a certain area, International Law shall prevail. Even though not all Conventions are binding on us, many of them are binding irrespective of the ratification by the States or even the membership of States. In the current paper, most major laws and provisions from Municipal as well as International Law are discussed. Some major judicial decisions that shaped such rights have also been mentioned and discussed.

INTRODUCTION

*"A convict is entitled to the invaluable right secured by Article 21."*¹

Why should someone who has been alleged of or convicted of criminal offences

be entitled to human rights/natural rights or any other rights at all? To answer this question, it is pertinent to understand the concept of human rights.

The concept of human rights or natural rights is not a new phenomenon. Human right is a concept that has constantly been evolving through human history, the foundation we can trace back from the evolution of the natural law. In which the theory of human rights can be established in the concept of 'natural rights' that was propounded in the seventeenth century by famous philosopher and political theorist **John Locke**, who advocated that certain rights are "natural" to individuals as human beings, having existed even in the State of nature before the growth of the societies and emergence of the State.²

The term 'prisoner' may perhaps be used to refer to any person who has breached the law of the land and is consequently in police custody, restraining his liberty for the welfare of society.³

A prisoner, when being imprisoned, does not lose all the rights. They lose only a capacity for righteousness which are the indispensable consequence of the confinement, and the rest of the rights are preserved.⁴

The prisoners are protected by the rights guaranteed by the International Conventions and Constitution of India, enacted by the legislatures like The Prisons Act, 1894, The Prisoners Act, 1990. The rights are also protected and interpreted by the Judiciary like an inmate is not ceased as a human being or cannot be treated as a slave or bonded labour; even though the person is in prison, all protections and rights are guaranteed. This research paper deals with different laws and regulations adopted by India concerning rights that could be availed by the prisoners. The legislation and suggestive case laws are supplementary factors to establish the necessity of prisoner rights.

¹ Sunil Batra vs Delhi Administration, 1980 AIR 1579

² South Asian Human Rights Documentation Centre, Introduction of the Human Rights: An overview including the issues of Gender Justice, Environmental and consumer Law (Oxford University Press, 2010)

³ Shyantika Khan, Prisoner Rights: India v. The World, iPleaders (December 11, 2021, 6:34 P.M.), <https://blog.ipleaders.in/prisoner-rights-india-v-world>

⁴ A.K. Roy Vs Union of India and Anothers, AIR 1982 SC 710

CONSTITUTIONAL PROVISIONS

The Constitution of India nowhere expressly provides any provision for the protection of prisoners or prison justice. Still, certain fundamental rights have been guaranteed in part III of the Indian Constitution, which are available to the prisoners as well because a prisoner is treated as a 'person' in prison.

1. Article 14

The Constitution of India states: "The state shall not deny to any person equality before law or the equal protection of laws within the territory of India."

Therefore, Article 14 contemplated that like should be treated alike and provided the concept of reasonable classification. This article is a handy guide and basis for the prison authorities to determine the various classes of prisoners and their classifications with the purpose of reformation.⁵

The Indian Constitution guarantees six freedoms to all the citizens of India. Among these freedoms, there are certain freedoms that the prisoners cannot enjoy because of the very nature of these freedoms, such as "freedom of movement"⁶, "freedom to residence and to settle",⁷ and "freedom of profession".⁸ But there are other freedoms under this article that a prisoner can enjoy even behind bars, for instance "Freedom of Speech and Expression"⁹ & "Freedom to Become Member of an Association".¹⁰

Moreover, the Constitution of India provides various other provisions, though they cannot directly be called prisoner's rights but may be relevant. Among them are Article 20 (1&2), Article 21, and Article 22.

In the Indian Constitution, there were no express provisions related to the rights of prisoners, but in the case of "*State of Andhra Pradesh Vs. Challa Ramkrishnn Reddy*",¹¹ it was held that the prisoners are also people, and they will not lose their basic constitutional rights.

⁵ Nitai Roy Chowdhury, "Indian Prison Laws and Correction of Prisoners" 75 (Deep and Deep Publications, New Delhi, 2002)

⁶ Constitution of India, Article 19(1)(d)

⁷ Constitution of India, Article 19(1)(e)

⁸ Constitution of India, Article 19(1)(g)

⁹ Constitution of India, Article 19(1)(a)

¹⁰ Constitution of India, Article 19(1)(c)

¹¹ State of Andhra Pradesh Vs Challa Ramakrishna Reddy, AIR 2000 SC 2083

The Supreme Case stated that a "prisoner whether a convict, under-trial or detenu, does not cease to be a human being, and while lodged in jail, he enjoys all his Fundamental Rights as mentioned by the Constitution, including Article 21-right to life."

2. Right to Legal Aid

The discourse of human rights would become insignificant unless a person is provided with legal aid to facilitate him to have access to justice in case of violation of his human rights. Legal aid is no longer a question of charity or benevolence but is one of the constitutional rights, and the legal system itself is expected to deal specifically with it. Although our country has a complex economic structure and hence crises arise like poverty, destitution and illiteracy, providing legal machinery itself is expected to deal with that. Legal Aid gives assurance to:

- Equality before law
- Right to Counsel
- Right to fair trial.

Suppose a prisoner sentenced to imprisonment, is practically incapable to exercise his constitutional and statutory right of appeal, for need of legal aid. In that case, there is implicit in the Court under Article 142 read with Article 21 and 39-A of the Constitution, authority to assign counsel for such imprisoned individual for ensuring complete justice. Where the prisoner is disabled from appointing a lawyer, on rational grounds such as indigence or an incommunicado situation, the Court shall, if the circumstances of the case, the severity of the punishment, and the ends of justice so required, allocate competent counsel for the prisoner's defence, provided the party doesn't object to that lawyer.¹²

Indian Judiciary has played an imperative role in developing the concept of legal aid and also widened its scope to give fair justice to the prisoners. In the case of "*M. Hayawadanrao Hoskot Vs. State of Maharashtra*"¹³, the Court held that the 'Right to Legal Aid' is one of the components of the procedure.

3. Right to Speedy Trial

¹² Saurbh Kothari, Taking Prisoners Rights Seriously, Legal Service India (December 11, 2021, 6:47 P.M.), <http://www.legalserviceindia.com/articles/po.htm>

¹³ M. Hayawadanrao Hoskot V. State of Maharashtra, 1978 AIR 1548

The right to a speedy trial a fundamental right of a prisoner embedded in Article 21 of the Indian Constitution. It ensures just, fair and reasonable procedure.¹⁴ It also ensures that the prosecutor may not delay the trial of a criminal suspect arbitrary which serves the social welfare of the State and give justice to the victims of the crimes. The fact that a speedy trial is an addition to the public interest or that it aids the social interest does not make it any the less right of the accused. It is in the interest of all involved that the guilt or innocence of the accused is established as quickly as possible in the circumstances.

Right to speedy trial is a concept that deals with the removal of justice. In the leading landmark case "*Hussainara Khatoon V. Home Secretary, State of Bihar*",¹⁵ it was held that speedy trial of an accused is his fundamental right under Article 21. If any person is denied their right to speedy trial, they can directly go to the Supreme Court under Article 32 to enforce such rights.

4. Right against Handcuffing, Bar Fetters, Solitary Confinement and Protection from Torture

"Solitary Confinement", as stated in Black's law dictionary, in a broad sense, means the isolated confinement of a prisoner, with only infrequent access to any other person, and that also only at the discretion of the prison authorities and in a stricter sense, it means the absolute isolation of a prisoner from all humanity/society and his confinement in a cell is arranged that he has so no direct interaction with or sight of no human being or no employment or instruction. In "*Sunil Batra V. Delhi Administration*",¹⁶ it was held that solitary confinement may perhaps be enforced only in exceptional cases where a convict/prisonr is of such a dangerous character that he must be isolated from other prisoners. Solitary confinement has a degrading and dehumanising effect on prisoners. The constant and unrelieved isolation of prisoners represents the most destructive abnormal environment. The results of long solitary confinement are disastrous to the physical and mental health of those subjected to it.

5. Right to reasonable wages

Whenever during imprisonment, the prisoners are made to work in prison, they must be paid at a reasonable rate. The wage rate should not be insignificant or below minimum wage. In

¹⁴ Dr. Durga Das Basu, Introduction to the Constitution of India (20th ed.,2009, Lexis Nexis, Butterworths Wadwa Publication.)

¹⁵ Hussainara Khatoon V. Home Secretary, State of Bihar, AIR 1979 SC 1360

¹⁶ Sunil Batra *supra* note 1

"*Mohammad Giasuddin V. State of A.P.*"¹⁷ the Court ordered the State to take into account this factor while determining the rules for payment of wages to prisoners and to give retrospective effect to wage policy.

6. Right to meet friends and consult their lawyer

Prisoners are protected not only physically but also mentally. Individuals must meet or consult a lawyer. Lawyers are their legal representatives; their act directly affects the convict's case. Visiting of friends and family members gives them mental stability to survive in such a worst condition where people are unknown to each other. In "*Francis Coralie Mullin V. The Administrator, Union Territory of Delhi And Others*",¹⁸ the Supreme Court held that prisoners could have an interview with family members, friends and lawyers without any severe restrictions. The Court emphasised upon the need of facilitating the prisoners to meet their friends and relatives. The Court held that the prisoner or convict could not move about freely by going outside the jail and could not socialise with persons outside the prison.

7. Rights against Inhuman Treatment

In plentiful cases, the Supreme Court of India has taken a serious note of the inhuman treatment of prisoners. It has delivered appropriate directions to the concerned authorities for safeguarding the prisoners' rights. The Supreme Court interpreted the right against torture into Articles 14 and 19 of the Constitution. The Court opined that "the treatment of a human being which insults human dignity, imposes needless torture and degrades the man to the level of a beast would unquestionably be arbitrary and can be questioned under Article 14". In the "*Raghubir Singh v. State of Bihar*"¹⁹, the Apex Court conveyed its anguish over police torture by upholding the life sentence awarded to a police officer accountable for the death of a suspect due to torture in a police lock-up. In "*Kishore Singh v. State of Rajasthan*"²⁰, the Supreme Court held that the use of the third-degree technique by police is violative of Article 21. The judgment of the Supreme Court in the case of "*D.K. Basu*"²¹ is noteworthy. While dealing with the case, the Court specifically concentrated on the problem of custodial torture. It issued several directions to eradicate this evil for better protection and promotion of Human Rights. The

¹⁷ Mohammad Giasuddin V. State of A.P, 1977 AIR 1926

¹⁸ Francis Coralie Mullin V. The Administrator, Union Territory of Delhi And Others, 1981 AIR 746

¹⁹ Raghubir Singh Vs. State of Bihar, 1987 AIR 149, 1986 SCR (3) 802

²⁰ Kishore Singh Vs. State of Rajasthan, AIR 1954 Raj 264

²¹ D.K. Basu Vs. State of West Bengal, (1997 (1) SCC 416)

Supreme Court declared custodial torture "a naked violation of human dignity" in the instant case. It proclaimed that the law does not permit the use of third-degree techniques or torture on an accused person since "actions of the State must be right, just and fair, torture for obtaining any kind of confession would neither be right nor just nor fair".²²

8. Role of Judiciary in the Administration of Prison Justice

Indian Judiciary, primarily Supreme Court, plays a vibrant and active role in the reformation and administration of prisons. One can say that till the eighties Indian Judiciary adopted status quo jurisprudence and showed a lack of understanding and concern in its "hand-off" approach to the functions of prisons. It was in 1974 when Apex Court came up with new prison jurisprudence. In a major breakthrough Court in D.B.M. Patnaik's case²³ asserted that mere detention does not rob the convicts of all the fundamental rights enshrined in our Constitution. Supreme Court again in 1977, in Hiralal's case,²⁴ stressed on the rehabilitation of prisoners and reformation of prisons. This judicial wave continued. In Sunil Batra's case²⁵, which is taken as a milestone in the field of prison justice and rights of the prisoners in India, Court held that "the fact that a person is legally in prison does not prevent the use of Habeas Corpus to protect his other inherent rights". In Prem Shankar Shukla's case²⁶, Court observed that no person shall be hand-cuffed, fettered routinely for the convenience of the custodian's escort. Supreme Court, again in R.D. Upadhyay's case²⁷, has held that the right to fair treatment and the right to judicial remedy are pre-requisites for the administration of prison justice. In Hussain Ara Khatun's case,²⁸ the Court adopted a dynamic and constructive role concerning prison reforms. Court, apart from other things, emphasised on the improvements in the conditions of the prisons in India.

Therefore, this vibrant role of the Indian Judiciary shows the change of attitude toward prisoners' rights and the reformation of prisons by treating prisons as correctional rehabilitative institutions.

²² Dr. Manoj Kumar Sadual, PROTECTION OF HUMAN RIGHTS OF PRISONERS IN INDIA: ROLE OF JUDICIARY, Vol 4, Issue 5, International Journal of Scientific Research (ICJR) (2015)

²³ D. B. M. Patnaik v. State of A. P., AIR 1974 (SC 2092)

²⁴ Hiralal Mallick v. State of Bihar., AIR 1977 (SC 2237)

²⁵ Supra note 1

²⁶ Prem Shankar Shukla Vs. Delhi Administration., AIR 1980 (SC 1535)

²⁷ R.D. Upadhyay Vs. State of A.P. and Ors., AIR 2001 (SCC 437)

²⁸ Hussain Ara Khatun Vs. State of Bihar, AIR 1979 (SC 1377)

9. The judgment in Kashmira Singh v. State of Punjab²⁹

The Supreme Court, in its decision, pointed out that the right to bail comes under the terminology "personal liberty" in article 21 of the Indian Constitution and confining a person in jail for years for a crime not committed by them is a breach of justice.

ENACTMENTS AND RULES

1. The Prison Act, 1894

This act is the first legislation concerning prison regulation in India. Following are the provisions of that:

- Accommodation and sanitary conditions of the prisoners.
- A medical officer must be there.
- There are some provisions relating to the mental and physical State of prisoners
- Separation of prisoners for male, female, criminal, civil, convicted, and under-trial prisoners.

2. The Prisoners Act, 1990

It is the government's obligation to remove any prisoner detained under any order or sentence of any court who is of unsound mind to a lunatic asylum and other places where he will be given proper treatment.

3. The Transfer of Prisoners Act, 1950.

This act was passed to prevent overcrowding in prisons. Prisoners are transferred from one State to another intended for vocational training and to get rid of overcrowding.

INTERNATIONAL LAW

1. UN Charter

The UN Charter was signed in June 1945, in San Francisco, U.S.A. at the culmination of the United Nations conference on international organization, and came into force in October 1945.

²⁹ Kashmira Singh Vs. State of Punjab AIR 1977 SC 2147

‘Basic Principles For The Treatment of Prisoners’³⁰ stood approved/implemented and declared by the UNGA resolution 45/111 of 14 December 1990. The principles are stated below:

- All prisoners shall be regarded with respect due to their inherent dignity and value as human beings.
- It is essential to respect the religious beliefs in addition to the cultural precepts of the group which prisoners belong to.
- The obligation of prisons for the custody of prisoners and for the protection of society against crime shall be fulfilled in keeping with a State's other social objectives and its fundamental duties for promoting the welfare and development of all members of society.
- Except for those limitations that are evidently imposed by the fact of incarceration, all prisoners shall preserve their human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol, as well as all other rights as are stated in other United Nations covenants.
- All prisoners shall have the right to participate in cultural activities and education directed at the holistic development of the individual personality.
- Efforts shall be made to abolish solitary confinement as a sentence, or the restriction of its use, should be carried out and encouraged.
- Conditions shall be created empowering prisoners to undertake considerable remunerated employment which will facilitate their reintegration into the country's labour market and also permit them to contribute to their own financial support and to that of their families.
- Prisoners shall have proper access to the health services available in the State with no discrimination on the bases of their legal status.
- With the contribution and help of the society and social institutions, and with due regard to the welfare of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

³⁰ Office of High Commissioner of Human Rights, Basic Principles For The Treatment of Prisoners, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners> (April 5, 2022, 3:14 P.M)

- There shall be no discrimination on the bases of colour, religion, race, language, sex, political or other opinion, origin, property, birth or other status.
- The above principles shall be applied impartially.³¹

2. International Bill of Rights

a) Universal Declaration of Human Rights:

The document provides some basic principles of the administration of justice. Relevant obligations in the document are –

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment³²
- Every individual has the right to life, liberty, and the security of person.³³
- No one shall be subjected to an arbitrary arrest, detention or exile.³⁴
- Every person charged with a penal offence has the right to be presumed innocent, until proven guilty according to the law in a trial at which he has had all the guarantees essential for his defence.³⁵

b) The International Covenants On Civil And Political Rights, 1966:

This remains the central contributory treaty on the protection of the rights of the prisoners. Relevant obligations of the covenants are:

- Nobody shall be subjected to cruel, inhuman and/or degrading treatment or sentences.³⁶
- Every individual has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention.³⁷
- All individuals deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.³⁸
- Nobody shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.³⁹ States which haven't abolished the death penalty, sentence of death may be imposed only for the most grave crimes in agreement with the law in force at the time of

³¹ *ibid*

³² UDHR, 1948, Article.5

³³ UDHR, 1948, Article.3

³⁴ UDHR, 1948, Article.9

³⁵ UDHR, 1948, Article.11

³⁶ ICCPR, 1966, Article.7

³⁷ ICCPR, 1966, Article.9

³⁸ ICCPR, 1966, Article.10

³⁹ ICCPR, 1966, Article.11

the commission of the crime. This penalty can only be imposed pursuant to a final judgement adjudicated by a competent court.⁴⁰

- Any individual sentenced to death shall have the right to seek pardon or commutation of the sentence.⁴¹
- Death Penalty shall not be imposed for the crimes committed by individuals below 18 years of age and shall not be imposed on pregnant women.⁴²

c) UN Core Conventions And Specific Instruments:

I. Standard Minimum Rules For The Treatment of Prisoners:⁴³

Amnesty International 1955 framed certain universal rules for the treatment of prisoners. Relevant rules are:

- Principle of equality should prevail; there shall be no discrimination on grounds of race, sex, colour, religion. Political or other view, national or social origin, property, birth or other status among prisoners⁴⁴.
- Men and women shall so far as feasible be detained in separate institution;
- Complete separation between civil prisoners and persons imprisoned by reason of criminal offence; young prisoners should be kept separate from the adult prisoners.
- All sorts of cruel inhuman degrading punishments shall be completely prohibited.
- Availability of at least one qualified Medical officer with the knowledge of psychiatry.

II. Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment:

- State party has to take effective legislative, judicial and other measures to prevent acts of torture.⁴⁵
- No state party shall expel, return or extradite a person who is in danger of being subjected to torture.⁴⁶

⁴⁰ ICCPR, 1966, Article.6 (2)

⁴¹ ICCPR, 1966, Article.6 (4)

⁴² ICCPR, 1966, Article.6 (5)

⁴³ Standard Minimum Rules for Treatment of Prisoners, *adopted by* Aug. 30, 1955, Rule 6(1).

⁴⁴ *ibid*

⁴⁵ UNCAT 1984, Article 2

⁴⁶ UNCAT 1984, Article 3

- State party should guarantee that all acts of torture are offences under its criminal law.⁴⁷

CONCLUSION

For a prisoner, imprisonment itself is a punishment. Thus, prisons are expected to be places of rehabilitation, not places where an extra penalty is added, resulting in the violation of their human rights. The importance of acknowledging the rights of every human being needs no emphasis, and, therefore, courts of justice must protect the fundamental rights of the prisoners. Jail authorities take various steps to educate the prisoners on their legal rights, health and sanitation problems, HIV/AIDS, and mental health concerns. Such practices are helping in transforming the traditional and colonial outlook of the Indian prison system and help the prisoners become more responsible, creative, and potential citizens. United States' Supreme Court in 'Manna v. People of Illinois' in the past said that life is not merely animal existence. Even the State does not have the authority to violate Article 21. A prisoner never ceases to be a human being. Even though prisoners are deprived of a few of their rights, that is in harmony with the procedure established by law. Prisoners still hold the residue of constitutional rights.

The Court must deter breaches as it is the custodian and protector of Fundamental Rights and basic human rights. We, in spite of everything have a long way to go to bring about real rehabilitative change, but we are on the way to a definite bright future.

⁴⁷ UNCAT 1984, Article 4