



RIGHTS OF PRISONERS IN INDIA

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INTRODUCTION

The Supreme Court of India has been actively involved in responding to human rights violations committed in Indian jails and in the process has recognized a number of prisoners' rights by interpreting articles 21, 19, 22, 32, 37 and 39-A of the Constitution in a positive and human way. In order for a prisoner system to be regulated fairly and effectively, and on the basis of national legislation, policies and practices must be guided by international standards designed to protect the human rights of prisoners.

Who is a prisoner?

Any person who is kept under custody in jail or in prison in violation of any criminal and civil law for committing an act prohibited by law of the land.

“prison” means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

- (a) any place for the confinement of prisoners who are exclusively in the custody of the police;
- (b) any place specially appointed by the State Government under section 541 of the Code of Criminal Procedure, 1882; or

(c) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail.¹

Promulgations and rules:

1. The Prisons Act, 1894:

This law is the first legislation on prison regulation in India. The following are some of the important provisions regarding the rights of the prisoner:

- Housing and sanitary conditions for prisoners.
- Provisions related to the mental and physical state of the inmates.
- Exam of inmates by a qualified medical officer.
- Separation of prisoners for men, women, criminals, civilians, convicted and under trial.
- Provisions for the treatment of trials, civil prisoners, probation and the temporary release of prisoners.

2. The Prisoners Act, 1990:

- It is the duty of the government to remove any prisoner detained under any order or sentence of any court, who has an unpleasant mind to an insane asylum and to another place where he receives adequate treatment.
- Any court that is a superior court may, in case it has recommended to the government the granting of a free pardon to any prisoner, allow it to be released to their own knowledge.

3. The Prisoners Transfer Act of 1950:

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training and

1.Prisons Act, 1894



from overcrowded prisons to less congested prisons within the state.

4. Prisoners (assistance in court) ACT, 1955: This law contains provisions authorizing the removal of prisoners to a civil or criminal court for presenting evidence or responding to the accusation of a crime.

Issues of concern regarding prisoners in Indian

Indian judiciary has understood and recognized a long list of prisoner's right in India.

India has not codified rights for prisoners.

These are: -

- 80% of prisoners are in process
- Delay in the trial.
- Although bail is granted, prisoners are not released.
- Lack of or inadequate provision of medical care for prisoners
- Callous and insensitive attitude of prison authorities
- Punishment by the prison authorities is not compatible with the punishment granted by the court.
- Strong mental and physical torture
- Lack of adequate legal assistance
- Corruption and other bad practices.²

RIGHTS OF PRISONERS IN INDIA

The Indian legal society is based on non-violence of human rights and mutual respect of human dignity of individual. Codified prisoners rights are necessitated because of the human life. Conviction of a crime does not reduce a person from human being to non-human being so all the prisoners are

entitled for an absolute humanitarian rights which are available to all citizen as well as prisoners.

The court which held a person, prisoner has a responsibility to ensure his rights during detention. According to William Black "Prisons are built with stone of laws" so when human rights are violated behind the bars, judiciary plays a prominent role of protector. No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment.³

It is felt that, all rights of the prisoners should be codified for the awareness in the State. Moreover, prisoners are not aware of these rights, or not aware of procedure thereof. V.R. Krishna Iyer (J) has rightly observed: "In our world prisons are still laboratories of torture, warehouses in which human commodities are sadistically kept and where spectrums of inmates range from drift-wood juveniles to heroic dissenters⁴."

SC also said that there could be several factors that lead a prisoner to commit a crime but nevertheless a prisoner is required to be treated as a human being entitled to all the basic human rights, human dignity and human sympathy.⁵

Right to Speedy Trial

The right to a speedy trial is a fundamental right of a prisoner implicit in Article 21 of the Constitution. It guarantees fair, fair and reasonable procedure. The fact that a speedy

³Universal Declaration of human Rights, 1948 article 1

⁴M.P.v S.shyamsunder Trivedi (1994) SCC 395

⁵T. K.Gopal v. State of Karnataka (2000) 6 SCC 16

2.Rama Murthy v/s Karnataka state 1997 2 SCC 642



trial is also in the public interest or that serves the social interest as well, does not make it less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused be determined as quickly as possible under the circumstances. In Hussainara Khatoon case, there was a surprising state of affairs with regard to the administration of justice. An alarming number of men and women, including children, are held in prisons for years waiting to be tried in court. The crimes that were imputed to some of them were insignificant and, although proven, would not justify punishment for more than a few months, perhaps a year or two, and yet these unfortunate and forgotten examples of humanity were imprisoned and deprived of their freedom, for periods ranging from three to ten years without their trial being initiated.

The Honorable Supreme Court expressed its concern and said that:

What faith do these lost souls have in the judicial system that denies them a naked judgment for so many years and keeps them behind the bars, not because they are guilty; But they are too poor to pay bail and the courts do not have time to try them.⁶

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

Solitary confinement in a general sense means the separate confinement of an inmate, with only occasional access by any other person, and also at the discretion of the prison authorities. Strictly speaking, it means the complete isolation of a prisoner

from all of human society. Torture is considered by the police / investigative agency to be a normal practice for verifying information about the crime, the accomplice, extracting the confession. Police officers who are supposed to be the protector of civil liberties of the citizens themselves violate the precious rights of citizens. But the torture of a human being by another human being is essentially an instrument to impose the will of the strong on the weak. Torture is a wound in the soul so painful that sometimes it can almost be touched, but it is also so intangible that there is no way to heal. A person detained or imprisoned on trial should not be subjected to a handcuff in the absence of justified circumstances. When it is discovered that the accused are educated persons, who selflessly dedicate their service to the public cause, have no tendency to escape and are tried and convicted of offenses, there is no reason to handcuff them while being taken from prison to court.

In D.K. Basu case, the Court which dealt with the letter addressed to the Chief Justice as a request for writing made the following order: In almost all states there are accusations and these allegations are increasing in the frequency of deaths in custody, generally described by newspapers as careless deaths. At present, there seems to be no mechanism to deal with such allegations. Since this is an all-India issue for all States, it is desirable that notices be issued to all State Governments to see if they wish to say anything about it. Let the notices issue to the entire State Government. Allow notification also to issue to the Indian Law Commission with a request that appropriate suggestions can be made on the

⁶Hussainara Khatoon v/s. Bihar State



matter. Notification will be made returnable within two months from today.⁷

Custody torture is a naked violation of human dignity and degradation that largely destroys the individual personally. It is a calculated attack against human dignity and when human dignity is wounded, civilization recedes. Fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. Personal freedom, therefore, is a sacred right and cherished under the Constitution. The term life or personal liberty has been considered to include the right to live with human dignity and, therefore, would also include in itself a guarantee against torture and assault by the State or its officials. Article 22 guarantees protection against detention and detention in certain cases and states that no detained person shall be detained without being informed of the reasons for such detention and shall not be denied the right to consult and defend himself by a lawyer of his choice.⁸

Therefore, the Court considered it appropriate to apply the following requirements in all cases of arrest or detention until legal provisions are taken on its behalf as preventive measure.

Right to meet friends and Consult Lawyer

The horizon of human rights is expanding. The rights of prisoners have been recognized not only to protect them from physical discomfort or torture in prison, but also to

save them from mental torture. In PIL filed by Sunil batra, the Supreme Court recognized the right of prisoners to be visited by their friends and relatives. The court favored his visits but subject to the search and discipline and other criteria of security.⁹

The court observed:

Visits to prisoners by relatives and friends are a consolation in isolation, and only a dehumanized system can derive vicarious pleasure in depriving prisoners of this human amenity.

The Supreme Court ruled that the right to life and liberty includes the right to live with human dignity, so a detainee would be entitled to interviews with relatives, friends and lawyers without severe restrictions. The Court emphasized the need to allow prisoners to meet their friends and relatives. The court held that the prisoner or detainee could not move freely out of jail and could not socialize with people outside of jail.

The court said that:

Personal freedom would include the right to socialize with family members and friends subject, of course, to any valid prison regulations and under art. 14 and 21 such prison regulations should be reasonable and not arbitrary.¹⁰

Right to Reasonable Wages in Prison

The remuneration, which is not less than the minimum wage, has to be paid to any person who has been requested to provide work or service by the state. The payment must be equivalent to the service provided; otherwise it would be "forced labor" within the

⁷D.K. Basu v/s State of West Bengal

⁸Article 22 of Indian Constitution

⁹Sunil Batra (II) Vs. Delhi Administration 1980

¹⁰Sunil Batra (II) vs Delhi Administration 1980



meaning of Article 23 of the Constitution. There is no difference between a prisoner serving a sentence inside prison walls and a free man in society.

All convicted prisoners must be forced to work subject to their physical and mental fitness as medically determined. Work should not be conceived as an additional punishment, but as a means to promote the rehabilitation of prisoners, their training for work, formation of better work habits, and to prevent idleness and disorder. Punitive, repressive and distressing work in any form should not be given to prisoners. Work should not become heavy work and imprisonment. Work and training programs should be treated as important ways to impart useful values to the inmates for their vocational and social adjustment and also for their definitive rehabilitation in the free community. Wage rates must be fair and equitable and not merely nominal or insignificant. These indices should be standardized to achieve broad uniformity in the wage system in all state and Union cash prisons.

Whenever during imprisonment, prisoners are forced to work in prison; They must be paid wages at a reasonable price. Wages should not be less than minimum wages.

In the case of *Mahammad Giasuddin v. State of A.P.*, the court ordered the State to take into account that wages should be paid at a reasonable rate. It should not be lower than the minimum wage, this factor must be taken into account at the end of the rules for the payment of wages to prisoners, as well as to give retroactive effect to the salary policy.¹¹

¹¹*Mohammad Giasuddin v. State of A.P.* 1977(3) SC 1926

In the case of the *Popular Union for Democratic Rights v. Union of India*, the Bank noted as follows:

Therefore, we consider that when one person provides work or service to another or a remuneration that is lower than the minimum wage, the work or service that he/she provides clearly falls within the scope and scope of the words "forced labor" Article 23.¹²

In the same case, Thomas J said that fair wages payable to prisoners can be calculated after deducting expenses incurred by the Government in food, clothing and other services provided to prisoners from minimum wages set in the Minimum Wages Act, 1948. Wadwa J in the same case, held that the prisoner is not entitled to the minimum wages set in the Minimum Wages Act of 1948, but there must be a rational 7-foot base for the salaries of the prisoners.¹³

In the same year, the Honorable Supreme Court has held that the work taken from the prisoners without paying adequate remuneration was "forced labor" and a violation of Article 23 of the Constitution. Prisoners have the right to be paid a reasonable salary for the work done and the court is obliged to assert their claim. The Court took a step forward and said there are three types of payments: "fair wages", "living wages" and "reasonable wages". Prisoners must receive reasonable wages, which actually exceed minimum wage.¹⁴

Facilities in prison

¹²*Peoples Union for Democratic Rights v. Union of India* 1982 AIR 1473, 1983 SCR (1) 456

¹³*State of Gujarat v Hon 'ble High Court of Gujarat*, AIR 1998 SC 3164 (Para 45 and Para 77)

¹⁴*Sanjit Roy v. State of Rajasthan*, AIR 1983 SC 328



Right to food and water-The administration will provide all prisoners, at normal times, with food with adequate nutritional value for their health and strength, of a healthy quality and well prepared and served. And drinking water must be available to every prisoner when he needs it. Rule 20 of the "Minimum Rules for the Treatment" of Prisoners, 1957 "adopted by the UN and India is a party.

Right to adequate housing-The Honorable Supreme Court has issued instructions to the State of UP, that wherever these arrests are stored the detained persons must be housed in a dungeon that will provide at least 40 square feet per person. Person with minimal facilities of some furniture such as a cradle for each of the detainees and supply of drinking water. Taking into account the climatic conditions of the place, the blockade must provide an electric fan. There must be hygienic arrangements for the bathroom. The State will guarantee the satisfaction of these conditions in any place where such arrests and detentions are used.¹⁵

Right to Expression

In Prabhakar Panduranga case, the court held that the right to personal liberty includes the right to write a book and get it published and when this right was exercised by a detained his denial without the authority of law violated Article 21.¹⁶

In the case of AUTO SHANKER CASE and others, the petition raises a question concerning press freedom in relation to the right to privacy of the citizens of this country. It also raises the question of the parameters of the right of the press to criticize and comment on the acts and

¹⁵T.N.Mathur v State of UP, 1993(1) SCC 722

¹⁶The state of Maharashtra v. Prabhakar Panduranga 1985 SC 231

conduct of public officials.¹⁷The court held that petitioners have the right to publish what they claim to be the Auto Shankar's life / autobiography story to the extent it appears in public records, even without their consent or authorization. But if they go further and publish their life history, they may be invading their right to privacy and will be responsible for the consequences in accordance with the law. Similarly, the State or its officials cannot prevent or restrict such publication.

Right to Legal Aid

In the case of M.H. Wadanrao Hoskot v. State of Maharashtra, the Court held that the right to legal aid is one of the ingredients of fair procedure. The defence should never be refused legal aid of competent counsel. This implies that true and legal papers should be made available to defendant along with the service of counsel.¹⁸

Free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty.¹⁹The requirement of the free legal aid, the Supreme Court has extended this right and directed the Government to provide financial aid also to the affiliated law colleges as the Government is providing to the medical and engineering colleges.²⁰

¹⁷R. Rajagopal v. State of Tamil Nadu 1995 AIR 264, 1994 SCC (6) 632

¹⁸Rachod Mathur Waswa v. State of Gujarat, AIR 1974 SC 1143

¹⁹Sukdas v. Arunachal Pradesh, AIR 1986 SC 991

²⁰State of Maharashtra v Manubhai Pragaji Vashi, (1995) 5 SCC 730.



If, a prisoner is unable to exercise his constitutional and statutory right of appeal including Special Leave to Appeal for want of legal assistance, the court will grant such right to him under Article 142, read with Articles 21 and 39A of the Constitution

Right to bail during the pendency of appeal

Refusal to grant bail amounts to deprivation of personal liberty of the accused persons. Personal liberty of an accused or convict is fundamental right and can be taken away only in accordance with procedure established by law. So, deprivation of personal liberty must be founded on the most serious consideration relevant to the welfare objectives of the society specified in the Constitution. In the circumstances of the case, the court held that subject to certain safeguards, the appellants were entitled to be released on bail.²¹

All the undertrial prisoners, who have been in remand for offences other than the specific offences under the various Acts, who have been in jail for period of not less than one half of the maximum period of punishment prescribed for the offence shall be released on bail forthwith in accordance with the direction of the Supreme Court.²²

The court also directed that all the district judges shall regularly visit the Central Jails, District Jails, and sub-jails in their

jurisdiction and take appropriate action as per the provisions of the Code.²³

UN NELSON MANDELA RULES (Revised STANDARD MINIMUM RULES-SMR)

Standard minimum rule for treatment for treatment of prisoners first adopted in 1957 and revised in 2015 as Nelson Mandela rules. These rules are a key standard for treatment of prisoners all over the world and are widely used and still playing a major development role in human rights.

The revised SMR were adopted by UN General Assembly on 17 December 2015.²⁴

EIGHT SUBSTANTIVE AREAS WERE REVISED:

- Respect for prisoners inherent dignity
- Medical and health services
- Training of staff
- Complaints and independent inspection
- Access to legal representation
- Protection of vulnerable groups
- investigation of death and torture in custody
- disciplinary measures and sanctions

Conclusion

All human beings are born independent, free and equal in dignity and rights. They are endowed with reason and conscience and should act accordingly, living in a high spirit of love and brotherhood. The practice of torture in prison has been widespread and predominant in India since time

²¹Babu Singh v. State of UP, AIR 1978 SC 527

²²Common Causes v. Union of India, (1994) 4 SCC 33, and as modified in (1996) 6 SCC 775; and Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507

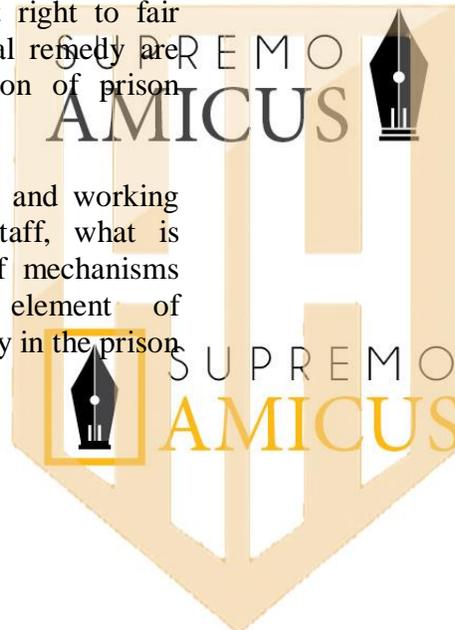
²³ Mir Mohammad Ali v. State of Andhra Pradesh, 2000

²⁴UN-DOCA/Res/70/175



immemorial. Unchallenged and unrestricted, it has become a 'normal' and 'legitimate' practice all over. In the name of investigating crimes, extracting confessions and punishing individuals by the law enforcement agencies, torture is inflicted not only upon the accused but also on bona fide petitioners, complainants or informants amounting to cruel, inhuman, barbaric and degrading treatment, grossly derogatory to the individual dignity of the human person. Torture is also inflicted on women in the form of custodial rape, molestation and other forms of sexual torture. Supreme Court again in has held that right to fair treatment and right of judicial remedy are pre-requisites of administration of prison justice.²⁵

Beside improving the service and working condition of the prisoner staff, what is needed is the introduction of mechanisms that would ensure an element of transparency and accountability in the prison administration.²⁶



²⁵ R.D. Upadhyay's V. state of A.P 2001 SCC 437

²⁶ KAPOOR COMMITTEE ON PRISONS REPORT 1986