



RIGHTS OF PRISONERS

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ABSTRACT

RIGHTS OF PRISONERS: AN ALARMING ISSUE

Every individual whether it is a native or outsider of a country are born independent, free, equal in dignity and have equal human rights. So, even if they commit an offence and guilty of the same then also they are endowed with reasons and conscience for the accomplishment of their human rights irrespective of their nationality, sex, religion, race and ethnic origin other than that we are entitled to human rights without discrimination as these rights are themselves fundamental and universal in nature which is governed by law. Basically, the word "**Prisoner**" means any person who is kept under the custody in jail or prison because he or she is committed an act prohibited by the law of land or moreover is also known as the inmate. He is a person who is against his or her will and deprived of liberty. Generally, there are different types of rights of prisoners such as Right to Legal Aid, Right to speedy trial, Right against solitary confinement, handcuffing, bar fetters and protection from torture, Right to consult lawyers, Right to reasonable wages in prison, Right to fair trial and many more. In global parameters are very sexy friend has stated in many of the promulgation search our Constitution of India **Article 14, 19, 21**, Universal Declaration of Human Rights, International Conference on Civil and Political Rights, The Prisoner Act, 1966 and

The Prisoner (Attendance in Courts Act, 1955). Every man has his property in one person this is nobody has any right to himself. The labour of his body and the work of his hands, we may say the property owned by him- John Locke. Therefore we can say that every prisoner is provided with the set of different rights which should be protected by the laws of different nations of the world.

INTRODUCTION

What are human rights?

Each and every individual endowed human rights and all human beings are born independent, free and equal in dignity, rights and privileges. Human rights are the very emerging concept in the 21st century that should be understood in a definite manner to understand the concept of rights of prisoners as they also possess equal human rights irrespective of their religion, cast, creed, sex, race, nationality, opinions, beliefs, preferences, jobs, historical background, language or any other status. Human rights are interrelated independent indivisible which are guaranteed by the law of the Nations. These rights are universal in nature that means it is present in every scenario of the lifestyle. These universal human rights are expressed in the form of treaties, statutes, ordinances, promulgation, customs, international law. For example, the universal human rights: International Human Rights knowledge down obligations of government to act in a certain way or refrain from certain acts and it is implemented as well as imposed to every nation of the world to maintain the international peace and security that is a major concern. Non discrimination is a very important aspect



that can be seen in every element of international human rights law. The principle of non discrimination is present in all major Human Rights .Particular name of some of the international Human Rights convention is Convention on the Elimination of all form of the Discrimination against Women which is concerned only for the women prevailing in the different parts of the world.

Human rights of prisoners

As we know every individual possess different rights and privileges therefore prisoners also provided with different set of rights as a normal individual provided to. Being Human Rights are mentioned in various conventions like the **1993 ViennaWorld Conference** on human rights is based on the human rights of prisoners itself. The conference focuses on the promotion and the production of all human rights and fundamental freedoms regardless of their political economic and cultural systems of different natives.

Who are Prisoners?

In a simple language, the word Prisoner means any person or an individual who is kept under custody or in jail or in prison because he or she committed and offence which is prohibited by the law of a country. A Prisoner is also known as an inmate restrained by his arrival and liberty to go elsewhere. And this Liberty can be deprived by unwilling full force, restraint and confinement which is against the will of an individual who committed the offence. This confinement sometimes leads to violent behaviour by the police officials which is against the human respect of an individual who kept under the custody. By committing

any offence he or she can't be deprived of having his or her human rights. Even if the person is confined or imprisoned in custody for the wrongful act done by the same person also entitled to have same human rights as a normal individual entitled to. Human Rights ensure that every individual entitled to dignified life.

" No one shall be subject to torture on cruelty, inhumanity or degrading treatment of punishment"

Prisoners are entitled to the basic legal rights that can't be taken away from them even if committed serious offences for example, **Kasab**- a serious of offender who was actively engaged in the 26/ 11 bomb blasts **Mumbai** which is the again a serious offence is related to the terrorism. He also entitled to the same treatment as well as same rights of prisoners as a normal offender is entitled to. It was seen clearly that he was engaged in the same activity even if he was given equal rights like right to be heard etc.

Some of the basic legal rights are as follows:

- The right of food and water
- Protection from torture
- Protection from cruelty
- Natural justice
- Right to be heard
- Right to hire legal representative
- Protection from violent behaviour
- Racial harassment
- Being able to get in touch with an attorney to defend himself.

MEANING AND NECESSITY OF PRISONERS RIGHTS

What are prisoners rights?



The word president means any person who is kept in the custody or in jail because he or she committed an offence or an act which is against the law of a nation. And the rights which are entitled to every prisoner refer to be as prisoners' rights. Prisoners' rights focus with the rights of the person who were behind the bar restrained from the freedom and liberty. They also have a legal basic rights from them even if they are committed a serious offence. These basic legal rights include right to food, water, right to human treatment etc. Section 1 of the Prison Security Act 1992 defines the term prisoner. According to this act, prisoner refers to the person for the time being in a prison as a result of any requirement imposed by the court or otherwise that he or she be detained in a legal custody. There is a separate law for the prisoners' rights. Many of the laws are directly or indirectly related to the fundamental principles focusing on human rights. These rights are entitled by prisoners under the constitution of India, Prison Act 1894 and there are various promulgations for the protection of prisoners' rights.

State of Arunachal Pradesh

Vs

Challa Ramakrishna Reddy

In this case it was held by the Court of law that a prisoner is entitled to fundamental rights. Everybody has been constitutionally curtailed. Supreme Court has emphasized with that a prisoner whether a convict under trial or detained does not seem to be a human being and considered to be an equal human being with the same degree of the rights guaranteed by the constitution of India included the right of life guaranteed by the constitution of India.

Necessity of rights of prisoners

Every man has a property in his own person: Everybody has any right to but himself. The labour of his body, and the work of his hands, we may say are properly. **John Locke**, "the second treatise on civil government".

Every individual entitled women treatment in order to do so he must be free from the initiation of force.

"A right is a moral principle defining and functioning immense freedom of action in a social context" - **Ayn Rand**

Human rights are absolute in nature and are required by the rational nature of a human being. Human rights are important in the relationship that exists between the individual and the society and the individual to the Government of the country. The government plays an important role in exercising power over its people for implementing the rights on prisoners.

Some of the most important attributes of human rights are as follows:

1. There for every individual
2. They are internationally guaranteed
3. They are protected by the law
4. They are related to the humanitarian grounds
5. They protect dignity of a human being
6. They are entitled each and every individual rights
7. These rights cannot be taken away

TYPES OF RIGHTS OF PRISONERS

In general

Indonesian flight of Canada divided into the following categories or we can say that



the basic necessity that are mentioned generally as follows:

- Prisoners are to be treated with dignity
- Should be protected from violent behaviour physical mental torture what any kind of in human treatment or degrading punishment which is against the human rights.
- Should be protected from sexual harassment or sex crimes.
- Prisoner have right to complain about prison conditions and access to the courts.
- Prisoners with disabilities are entitled to certain reasonable accommodation.
- Prisoners are entitled to receive medical care and mental health treatment.
- Statutory availed rights appropriately based on proper classification

The perspective about the rights of prisoners is very much change in recent years. If we compare it from ancient, attitude towards business was brutal and barbaric. Change in the attitude of perspective towards Prisoners has been done after a very long struggle which understood by classifying the rights of prisoners into following categories that are discussed below:

Right to Legal Aid

Legally google it is not a matter of Charity or something like that but a matter of constitutional rights. It is given by the constitutional itself which ensures a person is not able to hire a lawyer to defend himself, he will get a Legal Aid that means provided to him without paying any cost for the service of a lawyer.

Right to Speedy Trial

Basically right to speedy trial is given under Article 21 of the Constitution with itself is a

fundamental right of a prisoner. In which it ensures fair just and reasonable procedure that is favourable to the aggrieved party. This right is on the public interest or serve the social interest also.

In the case of **Hussainara Khatoon v. State**, ashokan state of affairs in regard to the administration of justice came forward in this case men and women that also include children and behind the prison was 4 years and here waiting for the justice which is related to the delayed justice which really means justice delayed is justice denied.

The Hon'ble Supreme Court said that "What with can these lost souls have in the judicial system which denies them a bare trial for 11?"

many years and keeps them behind the bars not because they are guilty; but because they are too poor to afford bail and the courts have no time to try them

In **Shaheen Welfare Association v. Union of India and others**, the court while delivering the judgment said that " in spite officer review, from the figures which we have cited above ,it is clear that there is very little prospect of a speedy trial of cases under TADA in some of

the States because of the absence of an adequate number of Designated Courts even in cases where a chargesheet has been filed and the cases are ready for trial.. But when the release of under-trials on bail is severely restricted as in the case of TADA by virtue of the provisions of Section 20 (8) of TADA, it becomes necessary that the trial does proceed and conclude within treasonable time. Where this is not practical, release on bail which can be taken to embedded in the right of a speedy trial may,



in some cases, be necessary to meet the requirements of **Article 21**.

Right against Solitary Confinement, Handcuffing & Bar Fetters

Generally, solitary confinement means the separate confinement of a prisoner with only situational access any other person, and that also depends upon the decision of a court. In solitary confinement there is a complete isolation of a person from family and Society. On the other handcuffing is also not allowed except under certain circumstances

Rights against torture

Torture is a very wide term which includes mental torture, physical torture, which sometimes act as a wound in a soul that can't be easily cured. From protecting the Prisoner from these situations there separate rights given against torture to the Prisoners.

Right to meet friends and consult lawyer

Every Prisoner have right to meet his or her friends he can consult a appropriate lawyer to defend himself. He could not be restrained from doing so.

In the case of **Sunil Batra(II) v. Delhi Administration** , the Supreme Court recognized the right of the prisoners to be visited by their friends and relatives. The court favoured their visits but subject to search and discipline and other security criteria.

The court observed:

- Visits to prisoners by family and friends are a solace in insulation, and only a dehumanized
- system can derive vicarious delight in depriving prison inmates of this humane amenity.
- Right to reasonable wages in prison

- Rights of prisoners also include the right to reasonable wages in the prison. Every person is entitled a minimum reasonable beach for the services he provided. That person should get equivalent money addition as per the services rendered by him.

In the case of **People's Union for Democratic Rights v. Union of India**, the Bench observed thus:

“We are, therefore, of the view that where a person provides labour or service to another or remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words “forced labour” under **Article 23**.

RIGHTS OF PRISONERS UNDER DIFFERENT STATUTES

Constitution

Prisoners rights under the constitution of India

Generally constitution of India does not expressly provided the provision that is only related to the rights of prisoners a very notable case **T.V. Vatheeswaran v. State of Tamil Nadu**, it was held that the Articles 14, 19 and 21 are available to the prisoners same as Freeman. Prison walls do not keep out fundamental rights. Article 14 of the Constitution of India says that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. Thus Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification.



Article 21 of the constitution

Article 21 of the Constitution says no person shall be deprived of his life or personal liberty except according to the procedure established by law. Following are the rights of prisoners which are only provided under the article 21 of the constitution which is to the rights of prisoners:

1. Right to free Legal Aid
2. Right to speedy trial
3. Right against handcuffing
4. Rights against torture
5. Rights against custodial violence in police custody.
6. Right to live with human dignity

International human rights

UN charter

There are some guidelines that are provided below student proclaimed by general assembly resolution of 14 December 1990

1. All prisoners shall be treated with the respect due to the inherent dignity and the value As human beings.
2. Freeze colour ,sex ,language, religion, political or other opinion, National social origin property birth or other status.
3. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with the states other social objective and its fundamental responsibilities for promoting the well being and development of all members of the society.
4. All prisoners shall have right to take part in each and every cultural activity that is performed in the premises.
5. There should be a abolition of solitary confinement as a punishment.

6. Prisoners are also entitled to the health services available in the primary itself without any discrimination.
7. The above said principal shall be applied impartially.

International bill of rights:

Universal Declaration of Human Rights

Universal Declaration of Human Rights out stations of the government to act in a particular manner order to promote and protect the human rights of individual that is prisoners to ensure their fundamental rights.

International Convenants on Civil and political rights ,1966

- It is a key Treaty on the protection of rights of prisoners which ensures following rights :
- No one shall be subjected to cruel inhuman treatments
- Everyone right to liberty and security of a person
- No person shall be subject to arbitrary arrest or detention.
- No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

UN core conventions and specific instruments

There are core conventions and specific instruments in which there is a concept of rights of prisoners. This conventions promote rights of prisoners and provides protection against infringement of rights of prisoners.

Prisoners Act, 1894

This promulgation has been passed in the year 1894 which was the first legislation that



concerned with the prisons regulation in India. Following are the some important provisions that are concerned only with the Prisoners rights:

- Specific accommodation and sanitary conditions for prisoners
- Provisions related to mental and physical state of prisoners.
- Provisions relating to the examination of prisoners by qualified medical officer.
- Provisions related to the treatment of prisoners.

The Prisoner Act ,1990

This act was enacted in the year 1990 which ensures the duties of the government for the removal of any Prisoner detained under any order or sentence of any Court which is of unsound mind to a lunatic Asylum and other place where he will be given proper treatment he required to.

The Transfer of Prisoners Act ,1950 was enacted for the transfer of prisoners from one place to another place as the name suggest . Transferring of prisoners from one place to another takes place for the vocational training or for free rehabilitation.

The Prisoners (Attendance in Court) Act ,1955

This promulgation was enacted to organise the removal of prisoners to a Civil and Criminal Court for giving evidence for answering to the charge of an offence.

Policy documents, Government Schemes

There is a separate policy documents and separate government schemes that elaborates the condition of women Prisoners specifically in India. Government of India.

International expert committee on women prisoners under the chairmanship of **Justice Krishna Iyer** to examine the condition of women Prisoners in jail.

Regional law

European Convention on Human rights

This convention is one of the notable convention in the world which has its own history and significance because of its flexible provisions as discussed below:

- No person is to be deprived of his life
- No person is to be given a harsh treatment or inhuman treatment including brutal punishments.

RIGHTS OF PRISONERS IN INDIA : CURRENT SCENARIO

Human rights of prisoners in India: Current scenario on violation

Specifically, if we talk about India, rights of prisoners are violated many times. Be it physical torture, sexual torture, mental torture, defamatory statement, extracting confessions in the name of Investigation of crimes which is also comes in the infringement of rights of prisoners.

The Hon'ble Supreme Court of India in the case of Joginder Kumar v. State of UP and Ors. said that

the “the quality of a nation’s civilization can be largely measured by the methods it uses in the enforcement of criminal law. The horizon of human rights is expanding. At the same the time, the crime rate is also increasing. the court has been receiving complaints about violation of human rights because of indiscriminate arrests. A realistic approach should be made in this direction.



The law of arrest is one of balancing individual rights, liberties and privileges, on one hand and individual duties obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first – the criminal or society, the law violator or the law abider.

ISSUES CONCERN WITH THE RIGHTS : Prisoners Welfare Schemes

The Hon'ble Supreme Court of India in the case of **Rama Murthy V State of Karnataka** specified 9 problems that the Indian Prisons are afflicted with. Those are as below:

1. 80% prisoners are under trials
2. 4. Delay in trial.
3. 5. Even though bail is granted, prisoners are not released.
4. 6. Lack or insufficient provision of medical aid to prisoners
5. 7. Callous and insensitive attitude of jail authorities
6. 8. Punishment carried out by jail authorities not coherent with punishment given by court.
7. 9. Harsh mental and physical torture
8. 10. Lack of proper legal aid
9. 11. Corruption and other malpractices.

Solution to the worldwide and in India: Prison welfare schemes

To the solution to the above problem as discussed above can be tackled by promoting and introducing various provisions prison welfare schemes help the Prisoners to lead a better life after their

release also and lead a better life in a prison also. It also includes involving of prisoners in various activities which is educational in nature or knowledgeable in nature so that they do not indulge in any evil activity directly indirectly harmed the society.

Business should be involved in various games and sports activities so that their mind could be diverted from many mysterious activities.

To be given proper opportunities to work in various factories so that they could understand the importance of work which divert their Minds too.

Job placements should also be provided to the Prisoners to enhance their morale.

They should be provided with proper Healthcare, sanitary and medical conditions for their sustainable development.

RECENT REPORT ON RIGHT OF PRISONERS

CHRI LAUNCHES TWO REPORTS ON ALARMING CONDITIONS IN INDIAN PRISONS

The Commonwealth Human Rights Initiative has launched a set of unique reports that spotlight the dismal conditions in India's prisons. These reports underline how a lack of review has led to alarming conditions in jails—with a huge under-trial population of which a majority is poor.

Looking into the Haze: A Study on Prison Monitoring in India, and Circle of Justice: A

National Report Under Trial Review Committees on Prison Monitoring were presented to the media and human rights activists in Delhi.



WHAT PRISONERS SHOULD KNOW ABOUT SOCIAL SECURITY : RECENT DEVELOPMENT

Prisoners should know about the right that are given under various provisions under various statutes. Prisoners are entitled to one under constitution of India such as freedom from Cruel and unusual punishment and the right to medical care. There is an act for providing protection for infringement of rights of prisoners which is discussed below:

The No Social Security Benefits for Prisoners Act of 2009

Prohibits payment of any retroactive Title II or Title XVI payments to a current or terminated who is subject to :

- A prisoner,
- Confined in a public institution based on a court order for a criminal act (CPICO);
- A fugitive felon (FF); or
- In violation of probation or parole (PPV).

CONCLUSION

As we know everything has a past likewise, the conditions of rights of prisoners which are day by day improving by the recent developments by the governing bodies of different states for the promotion and the protection of rights of prisoners which are a part of fundamental rights and Human Rights as well. Eradication of infringement of rights of prisoners can be done through various prisoners welfare schemes which tackles the current scenario of each and every country regarding the infringement of rights of prisoners in numerous manners recharge mental torture, physical abuse, sexual torture, handcuffing, inducing the Prisoners, compelling the witnesses the name of Investigation etc. This can be

tackled serious reforms and practices which should be taken place as soon as possible. regulation in India. Following are the some important provisions that are concerned only with the Prisoners rights:

