



RIGHTS OF THE PRISONERS

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INTRODUCTION

*“Every saint has a past;
Every sinner has a future”
-Oscar Wilde*

Above 200 years ago, the prisoners were treated badly. Life in the prisons were bitter and punishments were severe. After a very long struggle, the offenders were recognised to be human beings. The socio-legal system in India was mainly based on non-violence, mutual respect and human dignity of a person. A prisoner on committing a crime, does not cease to be a human-being.

*“To deny people their human rights is to challenge their very humanity”
Nelson Mandela*

So, he must be provided with all fundamental rights, though he is imprisoned. This paper presents the rights of the prisoners in detail with related case laws.

PRISONER- MEANING AND DEFINITION:

A prisoner means, “a person under custody in jail or prison because he/she committed an unlawful act”¹.

A prisoner is a “person whose liberty is deprived by forceful restraint or confinement”. Prisoners have basic legal rights that can’t be taken away from them.²

Section 1 of the Prisons Security Act, 1992 defines the term ‘prisoner’. The word prisoner means “ any person for the time-being in a person as a result of any requirement imposed by a Court or otherwise that he be detained in legal custody”.

RIGHTS OF THE PRISONERS:

The basic right of the prisoners include

- Right to food and water
- Right to legal aid
- Right to speedy trial
- Right to expression
- Right against solitary confinement, hand-cuffing and bar fetters and protection from torture
- Right to meet friends and consult lawyer
- Right to reasonable wages in prison
- Right against racial harassment
- Right against sexual harassment or sex crimes
- Right to medical and mental health care
- Right to complain about prison conditions

i. Right to food and water

Prisoner must be given a decent access to sufficient food and to be free from hunger and malnutrition. He also should be provided with sufficient and clean water for personal uses.

ii. Right to legal aid:

In India, there are so many far-flung villages steeped with poverty, destitution and illiteracy. Due to this, when a person is deprived of his legal rights, it is very challenging for him to reach the Court and seek remedy. This is a very pathetic situation in India. So, legal aid is a constitutional right and the Court may appoint an advocate to defend him,

¹ <https://en.wikipedia.org/wiki/prisoner> (retrieved on 28.07.2019)

² <http://www.legalserviceindia.com/legal/article-75-rights-of-prisoners.html> (retrieved on 01.08.2019)



provided he does not object to it. In India, Judiciary had played an important role in developing the concept of legal aid and helped the people to seek remedy from the Courts when there is a violation of their human rights.

In *M.H. Wadanrao Hoskot v. State of Maharashtra*³, the Court held “Right to legal aid is one of the ingredients of fair procedure”.

If a prisoner needs legal assistance to go for an appeal, the Court shall engage a lawyer for his defence to provide him a complete justice. It is implicit in the Court under Article 142 read with Article 21 and 39A of the Indian Constitution.

iii. Right to speedy trial

It is an implied fundamental right of a prisoner under Article 21 of the Indian Constitution. It provides for “just, fair and reasonable procedure”.

In *Hussainara Khatoon v. Home Secretary, State of Bihar*⁴, the Court while dealing with the cases of undertrials who had suffered long incarceration held that a procedure which keeps such a large number of people behind bars without trial so long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of Article 21.

In *Mathew Areeparmtil and Other v. State of Bihar and Other*⁵, where no proceedings at all have taken place in regard to the accused within 3 years, from the date of the lodging of FIR, the accused should be released forthwith under Section 169 of Cr.P.C. If there are cases in which neither charge sheet have been submitted nor investigation has been

completed during the last 3 years, the accused should be released forthwith subject to reinvestigation to the said cases on the fresh facts and they should not be arrested without the permission of the Magistrate.

iv. Right to Expression:

In *State of Maharashtra v. Prabhakar Panduranga*⁶, the Court held that the right to personal liberty includes the right to write a book and get it published. The State or its officials cannot prevent or restrain the publication.

v. Right against solitary confinement, handcuffing and bar fetters and protection from torture:

Solitary confinement means isolation of a prisoner from the human society with only occasional access to other persons and only at the discretion of the jail authorities.

Torture means causing painful tangible or intangible wounds in the body or soul of a person by the Police or investigating agency to extract information regarding crime. In *Arvinder Singh Bagga v. State of UP and Others*⁷, the Court observed that the torture is not merely physical, there may be mental torture and psychological torture.

An arrested person or undertrial prisoner should not be subjected to handcuffing in the absence of justifying circumstances. In *Prem Shankar Shukla v. Delhi Administration*⁸, to handcuff is to hoop harshly and to punish humiliatingly. A detainee is entitled to the minimum freedom of movement under Article 19 which cannot be cut down by the application of hand-cuffs. The handcuffs

³ (1978) 3 SCC 544

⁴ (1980) 1 SCC 81

⁵ AIR 1984 SC 1854

⁶ 1966 AIR 424

⁷ (1994) 6 SCC 565

⁸ AIR 1980 SC 1535



must be the last resort as there are other ways for ensuring security.

Police officers must be the protector of the citizens and not be the one who violates the precious rights of the citizens.

- vi. Right to meet friends and consult lawyer
The prisoners rights work towards protecting them, not only from physical torture but also from mental torture. In *Sunil Batra v. Delhi Administration*⁹, the Supreme Court recognised 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.
- vii. Right to reasonable wages in prison
The prisoners may be asked to provide service by the state and they should be provided with wages not less than the minimum wages. He should not be deprived of reasonable wages just because he is a prisoner serving a sentence. In *Mohammed Giasuddin v. State of AP*¹⁰, the Court directed the state to take into account that the wages should be paid at a reasonable rate. It should not be below minimum wages, this factor should be taken into account while finalizing the rules for payment of wages to prisoners, as well as to give retrospective effect to wage policy.
- viii. Right against racial harassment
Prisoners have right to be free from racial discrimination which includes racial segregation, disparate treatment based on ethnicity or religion or age.
- ix. Right against sexual harassment or sex crimes

The prisoners have a right to be free from sexual harassment by other prisoners or prison personnels.

- x. Right to medical and mental health care
The prisoners must be given adequate medical and mental health treatments.
- xi. Right to complain about prison conditions
The prisoners have the right to complain about prison conditions and seek remedy from prison officials and Courts.

INTERNATIONAL INSTRUMENTS ON PRISONERS RIGHTS:

International Human Rights Laws protect people from racial discrimination and torture. They recognise the rights of specific groups such as women, children, disabled and indigenous people and migrant workers.

A. UN Charter:

The UN Charter was signed on 26th June, 1945 in San Fransisco at UN Conference on International Organisation. It came into force on 24th October , 1945. Some of the principles for the treatment of prisoners are as follows:

- ❖ Prisoners shall be treated with inherent dignity and valued as human beings.
- ❖ No discrimination on the grounds of race, sex, colour, language, religion, political, national, social origin, property, birth, or other status.
- ❖ All prisoners shall retain the human rights and fundamental freedoms set out in UDHR, ICCPR, ICESCR and the optional protocol as well as such other rights as are set out in other UN Covenants.
- ❖ Rights of the prisoners to take part in cultural activities and education.
- ❖ Abolition of solitary confinement as a punishment.

⁹ (1980) SC 1579

¹⁰ 1977 3 SCC 287



- ❖ Prisoners to undertake meaningful remunerated employment.
- ❖ Access to health services without any discrimination.

B. International Bill Of Rights:

a. Universal Declaration of Human Rights (UDHR), 1948:

In United Nations, a movement was started in the form of Universal Declaration of Human Rights in 1948. It was adopted in the General Assembly of the United Nations. Some basic principles of the Administration of Justice are as follows:

- ❖ No one shall be subjected to torture, or to cruel, inhumane or degrading treatment or punishment.
- ❖ Everyone has the right to life, liberty and security of person.
- ❖ No one shall be subjected to arbitrary arrest, detention, or exile.
- ❖ Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

b. The International Covenants on Civil and Political Rights (ICCPR), 1966:

The ICCPR remains the core instrumental treaty on the protection of the rights of the prisoners. The provisions of the covenants are as follows:

- ❖ No one shall be subjected to cruel, inhumane or degrading treatment or punishments.
- ❖ Everyone has the right to liberty and security of person.
- ❖ No one shall be subjected to arbitrary arrest or detention.
- ❖ All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity.

- ❖ No one shall be imprisoned merely on a ground of inability to fulfil a contractual obligation.

C. UN Core Conventions and Specific Instruments:

In 1955, Amnesty International formulated certain standard rules for the treatment of prisoners which are as follows:

- ❖ Principle of Equality should prevail;
- ❖ Men and women shall so far as possible 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, inhumane, degrading punishments shall be completely prohibited. (Convention against Torture and other cruel, inhumane, degrading treatment or punishments).
- ❖ State party has to take effective legislative, judicial and other measures to prevent acts of torture.
- ❖ No state party shall expel, return or extradite a person who is in danger of being subjected to torture.
- ❖ State party should ensure all acts of torture are offences under its criminal law.

NATIONAL LAWS OF INDIA REGARDING RIGHTS OF THE PRISONERS:

1) Constitution of India:

A prisoner is also a human being in the eyes of law. So, the fundamental rights guaranteed in the Part III of the



Indian Constitution are available to them.¹¹

Article 14 states that equals should be treated equally. It also talks about the concept of reasonable classification. So, the prison authorities must categorise the prisoners only with the object of reformation.¹²

Article 19 guarantees six freedoms to all the citizens of India. Among these *freedom of speech and expression* and *freedom to become member of an association* only can be enjoyed by the prisoners. The other four freedoms such as freedom of movement, freedom to residence and to settle and freedom of profession cannot be enjoyed by the prisoners.

Article 21 says “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

It talks about two concepts.

- Right to life.
- Principle of liberty.

So this article applies to all the Indian citizens including the prisoners.

Article 21 impliedly guarantees certain rights to the prisoners.

- i. Right to protective homes
- ii. Right to free legal aid
- iii. Right to speedy trial
- iv. Right against cruel and unusual punishment
- v. Right to fair trial
- vi. Right against custodial violence
- vii. Right to live with human dignity

Besides these, the Constitution of India provides certain rights to the prisoners.

- i. Right to meet friends and consult lawyer
- ii. Right against solitary confinement, handcuffing and bar fetters and protection from torture
- iii. Right to reasonable wages in prison

2) Other Enactments:

A. The Prisons Act, 1894

It is the first legislation in India to talk about the prison regulations. The main provisions regarding the reformation of prisoners are as follows:

- ❖ Accomodation and sanitary conditions for prisoners,
- ❖ Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison,
- ❖ Provisions relating to the examination of prisoners by qualified medical officer,
- ❖ Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners,
- ❖ Provisions relating to treatment of undertrials, civil prisoners, parole and temporary release of prisoners.

B. The Prisoners Act, 1990:

It is the duty 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.

Any court which is a High Court may in a case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognizance.

C. The Transfer of Prisoners Act, 1950:

¹¹ Jain M.P., “Indian Constitutional Law”, 5th Edition, Volume 1, Wadhwa and Co., Nagpur (2003)

¹² Chowdhury Roy Nitai, “Indian Prison Laws and Correction of Prisoners”, Deep and Deep Publications, New Delhi (2002)



This Act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training and from over populated jails to less congested jails within the State.

D. The Prisoners (Attendance in Courts) Act, 1955:

This Act contains provisions authorising the removal of prisoners to a civil or criminal court for giving evidence or for answering to the charge of an offence.

REGIONAL LAWS:

A. European Convention On Human Rights (1953-1969):

This Convention has some importance of human rights. Some of the important provisions of this Convention are as follows:

- ❖ No one shall be deprived of his life intentionally save in the execution of a sentence of a Court following his conviction of a crime for which this penalty is provided by law.
- ❖ No one shall subject to inhuman treatment or degrading treatment or punishment.
- ❖ Everyone who is deprived of his liberty by arrest shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release be order if the detention is not lawful.
- ❖ Everyone who been the victim of arrest in contravention of the provisions shall have an enforceable right to compensation.

B. Prison Litigation Reform Act (PLRA):

In the United States, the Prison Litigation Reform Act was enacted in 1996. The intent was to limit frivolous lawsuits by prisoners.

CONCLUSION

“Forgiveness is the attribute of the strong”

- Gandhi.

In a famous case, the Supreme Court in US said that life is not merely an animal existence. So, being a prisoner he/she must be provided with all the rights which a free man is provided with. The Court must act as a custodian and protector of fundamental and basic rights of the citizens. The Indian Constitution expressly and impliedly provides certain rights to the prisoners. The Prisons Act, 1894 contain provisions for the welfare and protection of prisoners. A prisoner is a human being, a natural person and also a legal person. The prisoners rights should be taken seriously inorder to achieve complete justice.

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