



RIGHTS OF PRISONERS

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Introduction- In India the socio-legal system is rooted on non-violence, mutual respect and to maintain the humanity of every individual. If an individual commits any crime then it doesn't mean that by committing a crime he or she ceases to be a human being. Every individual have the human right either it's a prisoner or not. Therefore, if any person who is a prisoner and is being tortured or harassed in some way then it will lead to injustice and in order to protect this injustice, rights are given to prisoners for their protection and welfare.

According to Black's Law Dictionary "prisoner" is "a person who is deprived of his/ her personal liberty" or "a person against whose will, he/ she would be kept in a confinement or a custody".

In layman's language the word 'prisoner' means that 'a person who is kept under legal custody in a jail or a prison since that person had committed any offence or act which is prohibited by the law'. A prisoner is also known as an inmate who is deprived of his/ her liberty.

According to Section 1(6) of Prison Security Act 1992- 'prisoner means any person for the time being in a prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody.'¹

There are some basic legal rights which cannot be taken away from them like-

- Right to food and water
- Right to have a legal practitioner or attorney in order to defend himself
- Right to be protected against any violence, harassment etc.

Justice V.R. Krishna Iyer has rightly observed that- "In our world prisons are still laboratories of torture, warehouses in which human commodities are sadistically kept and where spectrums of inmates range from driftwood juveniles to heroic dissenters."²

The notion about the discipline of prison has shown an extreme change in the modern administration of judiciary. The recommendations which were given by the Jails Committee of 1919-20 provided the way for the abolition of inhuman punishments given to prisoners of any indiscipline. After that the All India Jail Reform Committee 1980-83 also recommended various rights of prisoners and therefore, many changes were encouraged like the revocation of punishment due to good conduct, providing canteen facilities, payment of wages for services etc.

'In the case of **State of A.P. v. Challa Ramkrishna Reddy**, [AIR 2000 SC 2083] it was held that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. The Supreme Court has emphasized 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 guaranteed by the Constitution of India including the right to life guaranteed by the

¹<http://www.legislation.gov.uk/ukpga/1992/25/section/>

²https://shodhganga.inflibnet.ac.in/bitstream/10603/46512/12/12_chapter%204.pdf



Constitution. Even a person is convicted and deprived of his liberty in accordance with the procedure established by law; a prisoner still retains the residue of constitutional rights.³

Right to Fundamental Rights-

Article 14: Equality before law- It says that 'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'⁴

Article 14 of the Constitution contemplates that every person even it's a prisoner or not have the equal right to be treated equally irrespective of its religion, caste, sex, race, etc. As a prisoner is also a human being and should be treated alike.

In a landmark case of **T.V. Vatheeswaran v. State of Tamil Nadu**⁵ it was held that 'Article 14, 19 and 21 are available to the prisoners as well as freemen. Prison walls do not keep out fundamental rights.'⁶

Article 19: Protection of certain rights regarding freedom of speech, etc- This)

Article guarantees six freedoms to every citizens of India. In the group of all the six freedoms prisoners cannot enjoy each one of them as because of the essence of the freedoms. But certain rights included in the Article like 'freedom of speech and expression' and 'freedom to become a member of associations or unions' are available for them.

Article 21: Protection of life and personal liberty- It says that 'No person shall be deprived of his life or personal liberty except according to procedure established by law.'⁷

This Article specify two concepts- a) Right to life; and

b) Principle of personal liberty

The Supreme Court of India has many times widened the ambit of 'right to life' in many cases through different reasonings. In the case of State of **Andhra Pradesh v. Challa Ramkrishna Reddy, AIR 2000 SC 2083** the Supreme Court held that 'right to life is one of the basic human rights, guaranteed to every person by Article 21 and not even the State has authority to violate it. A prisoner does not cease to be a human being even when lodged in jail; he continues to enjoy all his fundamental rights including the right to life.'⁸

'In State of **Maharashtra v. Prabhakar Panduranga**, 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 detenu its denial without the authority of law violated Article 21.'⁹

According to the view point of a famous constitutional writer 'Upendar Baxi' the meaning of Article 21 is so vast that it almost covers various types of rights such as right to bail, right to food, right to shelter, right to speedy trial, right against custodial violence etc.

Right to speedy trial-

Right to speedy trial is a fundamental right which has been inferred into our Constitution under Article 21 for the rights of prisoners.

³ <https://legaldesire.com/rights-prisoners-indian-law/>

⁴ <https://indiankanoon.org/doc/367586/>

⁵ AIR 1983 SC 361 : (1983) 2 SCC 68

⁶ <https://legaldesire.com/rights-prisoners-indian-law/>

⁷ <https://indiankanoon.org/doc/1199182/>

⁸ https://shodhganga.inflibnet.ac.in/bitstream/10603/46512/12/12_chapter%204.pdf

⁹ <http://www.legalserviceindia.com/articles/po.htm>



Every person is presumed to be innocent until proven guilty. If once a case has been brought before the court then the trial has to be conducted rapidly in order to punish the guilty and to relieve the innocent. Therefore, it is obligatory for the courts to punish the guilty person as soon as possible so that the accused person is not being harassed over the time and justice is not delayed. Because if there would be a delay in trial then the justice would be denied.

In **Kadra Pahadiya v State of Bihar, AIR 1983 SC 1167** the Supreme Court held that 'right to speedy trial is a part of the fundamental right envisaged under Article 21 of the Constitution. Delay in disposal of cases is denial of justice, so the court is expected to adopt necessary steps for expeditious trial and quick disposal of cases.'¹⁰

The Supreme Court held that 'No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair and just.'¹¹

Right to Legal Aid-

Providing legal aid is one of the constitutional rights and its philosophy is that it should be provided easily to the person in need by the legal machinery who is not able to acquire it by itself.

Through the 42nd Amendment Act, 1976 free legal aid has been inserted as one of the Directive Principles of State Policy under Article 39A of the Constitution. Since this Article is placed under part-IV of the constitution among the Directive Principle of State Policy therefore, it is not enforceable by

the courts. But it is an important right which has been included into our Constitution.

'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.'¹²

In '**Sukdas v. Arunachal Pradesh, AIR 1986 SC 991** the Supreme Court held that a 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.'¹³

Right against Solitary Confinement, Handcuffing & Bar Fetters:

'Solitary confinement' means the separate imprisonment of a prisoner or to isolate a prisoner in a separate cell in the form of punishment and is occasionally allowed to meet or access of any other person if the jail authority permits so. Basically solitary confinement means segregation of the prisoner completely from all human society.

Right against handcuffing means that if any person is arrested and if there is absence of solid proof against that person then he/ she is not subject to be handcuffed. For example- If any person selflessly providing its service for any public cause which is right and just and is convicted for bailable offence then in this case it is not necessary to handcuff that person to take from prison to the court.

'In the case of **Prem Shanker Shukla v. Delhi Administration**, the petitioner was an under-trial prisoner in Tihar jail. He was required to be taken from jail to magistrate

¹⁰ Kadra Pahadiya v State of Bihar, AIR 1983 SC 1167

¹¹ Hussainara Khatoun v. State of Bihar, AIR 1979 SC 1360

¹²<http://www.legalserviceindia.com/articles/po.htm>

¹³https://shodhganga.inflibnet.ac.in/bitstream/10603/46512/12/12_chapter%204.pdf



court and back periodically in connection with certain cases pending against him. The trial court has directed the concerned officer that while escorting him to the court and back handcuffing should not be done unless it was so warranted. But handcuffing was forced on him by the escorts. He therefore sent a telegram to one of the judges of Supreme Court on the basis of which the present habeas corpus petition has been admitted by the court.¹⁴

In another case of **Sunil Batra v. Delhi Administration and Ors.**, the Supreme Court examined the validity of solitary confinement and also observed that constantly or continuously putting bar fetters to the prisoners day and night diminish the prisoner from being a human being to an animal and considered this type of treatment brutal and abnormal and held that it is also against the principles of the Constitution of India.

Right against Protection from Torture-

The prisoners have also the right to get protection against torture which is done by the police officers or the investigating officers. As sometimes police officers who are supposed to protect the citizens and their rights they end up violating the rights of citizens. It should be the responsibility of the police to prevent ill-treatment against the prisoners and treat them as a normal human being.

In case of **Ajab Singh & Anr. v. State of Uttar Pradesh & Ors.**, the court held that- The death of any person under judicial custody is not appreciated and if such death

occurs then such holding custody is not only responsible to give answers to the public at large but also to the court that under whose custody such incident occurred.

Right to consult lawyer and meet friends-

Now a days prison are not treated to give prisoner relief from physical torture but to also provide mental support. In a case of **Sunil Batra (II) v. Delhi Administration** Supreme Court observed that prisoners have the right to meet their friends and relatives and mentioned that the visit of the friends or relatives should be searched properly and other security criterion should be maintained.

In another case of **Joginder Kumar v. State of U.P. and others** it was held by the court that if a public servant is arrested then that matter should be proclaimed to the superior officer before the arrest or if possible immediately after the arrest.

As the person who is arrested have the right to inform someone. And by requesting can consult privately with a lawyer according to section 56(1) of The Police and Criminal Evidence Act, 1984. This section says that- "Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there."¹⁵

Right to reasonable wages in prison-

¹⁴<http://www.legalserviceindia.com/articles/po.htm>

¹⁵<http://www.legislation.gov.uk/ukpga/1984/60/section/56>



A person whether in a prison or a freeman have the right to get remuneration for the services rendered. If the payment is not analogous to the services rendered then it would be categorized as 'forced labour'. Therefore, the prisoners who are made to do work in the prison must be paid reasonable wages.

In the case of **People's Union for Democratic Rights v. Union of India** the Supreme Court held that when a person is providing services and if the remuneration is less than the minimum wage then this service or labour provided by the person would fall within the scope of 'forced labour' as mentioned under Article 23 of the Constitution.

In another case of **Mahammad Giasuddin v. State of A.P.**, the court directed the state that the remuneration should be paid on a reasonable rate which means that it should not be less than the minimum wages.

The work which is done by the prisoners is not only a part of the punishment but also a rehabilitation for the prisoners. They are provided with training for their work in order to prevent them from idleness, depression etc. The kind of work which would be regarded to every prisoner is determined by the medical examination by keeping in mind their mental and physical being.

Prisoner's Rights under the Prisons Act, 1894-

Prisons Act, 1894 is the first Act legislated regarding prisons regulation in India. The main objective of the Act is to provide rehabilitation of prisoners in association with

the prisoner's rights. Sections which are related to the rehabilitation and reformation of the prisoners are-

- Section 4 of the Prisons Act, 1894- Accommodation for prisoners:

It says that- 'The State Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners.'¹⁶

- Section 7 of the Prisons Act, 1894- Temporary accommodation for prisoners:

It says that- 'Whenever it appears to the Inspector General that the number of prisoners in any prison is greater than can conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other prison, or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners, provision shall be made, by such officer and in such manner as the State Government may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.'¹⁷

- Section 24(2) of the Prisons Act, 1894- Prisoners to be examined on admission:

It says that- 'Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of the

¹⁶ <https://indiankanoon.org/doc/432764/>

¹⁷ https://indiacode.nic.in/handle/123456789/2325?view_type=browse&sam_handle=123456789/1362



prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.'¹⁸

- Section 27 of the Prisons Act, 1894- Separation of prisoners:

'The requisitions of this Act with respect to the separation of prisoners are as follows-

(1) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners ;

(2) in a prison where male prisoners under the age of 1[twenty-one] are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not;

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners ; and

(4) civil prisoners shall be kept apart from criminal prisoners.'¹⁹

In 2016 the Parliament has passed the Prisons (Amendment) Bill, 2016 to amend the Prisons Act, 1894 in order to provide better protection and welfare to the prisoners.

Conclusion-

Judiciary plays an important role in the protection of rights of prisoners and have been acting as a saviour for the prisoners in cases where legislative and executive are not able to provide perfect solution to them. And the prisoners are also not deprived of their

fundamental rights while they are behind the bars as Article 14, 19, 21 implicitly guarantees the rights of the prisoners.

Since in many cases Supreme Court has held that the prisoner is also a human being and a natural person and should be treated likewise. Committing a crime does not reduce that person into a non person but punishment should also be provided in order to safeguard the society and let other person beware of doing such acts.

¹⁸https://indiacode.nic.in/handle/123456789/2325?view_type=browse&sam_handle=123456789/1362

¹⁹https://indiacode.nic.in/handle/123456789/2325?view_type=browse&sam_handle=123456789/1362