



HUMAN RIGHTS OF PRISONERS IN INDIA: DIFFICULTIES AND APPROACHES IN THE NEW DECADE

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Abstract

The criminal reforms in India in recent decades have led to one remarkable change in people's attitudes towards the perpetrators. The old concept criminals and convicts have changed radically about crime. The emphasis is now shifted from deterrence to criminal reform. The age-old discriminating and draconian punishments no longer take place in the modern criminal system. A prison serves three purposes today that can be described as custody, care and recovery. A person who is a prisoner cannot seize all his rights the authority, even though he has been convicted of having fundamental rights guaranteed by Article 21 of the Constitution, and protected by the Supreme Court and High courts under Article 32 and Article 226 of the Constitution. A prisoner does not lose all rights when he is imprisoned. They only lose one part of the law that is the necessary consequences of imprisonment and the rest of the rights are preserved. In this background the Prisoners' rights became more important and the study has become a work of research. This research paper discusses the development of rights of prisoners in India

through the international and national instruments & also the judicial chronology of the prisoners' rights as developed by the Indian judiciary through its landmark judgements.

Keywords: Human Rights, Prisoners, Indian Constitution, Indian Judiciary

I. INTRODUCTION

Individuals are judicious beings. Because of their humanity, they have certain essential and inevitable rights. In this way, human rights are the rights to which every individual has the right to be human. Because these rights have a place with them because of their presence, they become employable from birth. According to these lines, human rights, being the claims, are characteristic of each of the people, regardless of their caste, religion, religion, gender and nationality. Because human rights are innate, they cannot live as individuals without them. Because of their immense significance for people: human beings are sometimes also referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.¹ Human rights are rooted in the inherent dignity of the human person. These basic rights are based on shared values such as dignity, fairness, equality, respect and independence. These values are legally established and protected.² All persons deprived of their freedom must at all times be treated with humanity and with respect for the inherent dignity of the human person.³ Article 1 of UDHR says, "Human

¹ Dr. H. O. Agarwal, Human Rights (Allahabad, Cental Law Publications, 2018).

² Equality and Human Rights Commission, "What are Human Rights?", Available at: <https://www.equalityhumanrights.com/en/human-rights/what-are-human-rights#targetText=Human%20rights%20are%20the%20basic,world%2C%20from%20birth%20until%20death.&targetText=These%20basic%20rights%20are%20based,defined%20and%20protected%20by%20law> . (Last Accessed on September 16, 2019)

³ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment [hereinafter "Principles on Detention or



Rights are a generic term and includes civil rights, civil liberties and social, economic and cultural rights.” It is therefore difficult to give an accurate definition of the term “human rights”. As per Maurice Cranston, “These are the rights that nobody can be deprived of without a serious breach of justice.”⁴ The idea of human rights is therefore connected to the idea of human dignity. India’s Supreme Court Judge, J. S. Verma, has rightly stated that “human dignity is the essence of human rights”.⁵ However, dignity has never been determined precisely on the basis of consensus, but roughly corresponds to justice and a good society.⁶ The World Conference on Human Rights held in Vienna in 1993 stated that all human rights are rooted in the dignity and value of human inheritance, and that human beings are the central subject of human rights and basic freedoms. D. D. Basu says “Human rights as the minimum rights that an individual must have over the state or other public authority by being a member of a human family, regardless of all other considerations.”⁷

II. WHO IS A PRISONER?

“In our world, prisons are still laboratories of torture, warehouses where human goods are kept sadistically and where prisoner

spectrums range from driftwood youth to heroic dissidents.” “Convicted persons are not simply denied because of the conviction of all the fundamental rights that they otherwise have.”⁸ The word prisoner means any person detained in custody or prison for having committed an act prohibited by the law of the country. The word “prisoner” means any person who is currently in prison as a result of a requirement imposed by a court or otherwise that he is detained. A prisoner, also known as a prisoner, is anyone who has been deprived of freedom against their will.⁹ The Indian socio-legal is based on nonviolence, mutual respect and human dignity of the individual. By committing a crime, a person does not change his humanity and yet he is endowed with all the aspects that require him to be treated with the human dignity and respect that a person deserves.

III. INTERNATIONAL LEGISLATIONS RELATING TO HUMAN RIGHTS OF PRISONERS

Prisoners and human rights: the relationship has not always been easy. Some people think that if you violate the rules of society by committing a crime, you lose your rights to the protection of society. The principle of the universality of human rights is the

Imprisonment”], Principle 1; Basic Principles for the Treatment of Prisoners [hereinafter “BPT”], Principle 1.

⁴ Maurice Cranston quoted in LJ Macfarlane, “*The Theory And Practice Of Human Rights*” (1985) p.7.

⁵ “The New Universe of Human Rights”, P. 3.

⁶ David P. Forsythe: “*The Internationalization Of Human Rights*”, P. 1.

⁷ ‘Human Rights In Constitutional Law’, (1994), P. 5. According To Bennett “Human Rights Include Those Areas Of Individual Or Group Freedom That Are Immune From Governmental Interference Or That, Because Of Their Basic Contribution To Human

Dignity Or Welfare, Are Subject To Governmental Guarantee, Protections Or Promotions” (‘International Organizations’, Third Edition, P. 258).

⁸ Justice V.R. Krishna Iyer.

⁹ Jayaram Swathy, “Rights of Prisoners”, Available at: <http://www.legalserviceindia.com/legal/article-75-rights-of-prisoners.html#targetText=The%20ICCPR%20remains%20the%20core,liberty%20and%20security%20of%20person.> (Last Accessed on September 20, 2019)



cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration of Human Rights in 1948, has been repeated in numerous international human rights treaties, declarations and resolutions.

INTERNATIONAL BILL OF RIGHTS

UNIVERSAL DECLARATION OF HUMAN RIGHTS

In 1948 a movement was started in the United Nations in the form of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations. This organic document is also called a human rights statement. This important document contains some basic principles of case law. Among the provisions in the document are the following:

- No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment
- Everyone has the right to life, freedom and security of people.
- No one will be subjected to arbitrary arrest, detention or exile.
- Anyone accused of a criminal offense has the right to be deemed innocent until found guilty by law in a public trial in which he has had all the necessary safeguards for his defense.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

- The ICCPR remains the most important instrumental convention on the protection of prisoners' rights. The following relevant provisions of the covenants are:

- No one will be subjected to cruel, inhuman or degrading treatment or punishment.
- Everyone has the right to freedom and security of people. No one will be subjected to arbitrary arrest or detention.
- All persons deprived of their freedom must be treated with humanity and with respect for the inherent dignity of the human person
- No one may be detained solely on the grounds of inability to perform a contractual obligation.

UN CORE CONVENTIONS AND SPECIFIC INSTRUMENTS

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Standard minimum rules for the treatment of prisoners: In 1955 Amnesty International formulated certain standard rules for the treatment of prisoners. Some important relevant rules are:

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- The principle of equality must prevail; there will be no discrimination based on race, gender, color, religion. Political or other opinion, national or social origin, property, birth or other status among prisoners
- Men and women are detained as much as possible in a separate institution;
- Complete separation between civilian prisoners and persons imprisoned for a crime; young prisoners must be kept separate from adult prisoners.
- All types of cruel inhuman degrading punishments are completely prohibited.

IV. INDIAN LEGISLATIONS RELATING TO HUMAN RIGHTS OF PRISONERS

The concept of prison discipline in India has undergone a drastic change in the modern administration of the criminal justice system.



The trend shows a shift from the deterrent aspect to the reforming and rehabilitating aspect. The recommendations of the Jails Committee of 1919-20 have paved the way for the abolition of inhumane penalties for indiscipline. This resulted in a positive enforcement of the discipline. All India Jail Reform Committee 1980-83 has also recommended various prisoner rights and prison discipline.¹⁰ However, it is extremely unfortunate that a humanized nation, like India, has not arranged prisoner privileges. Whatever the case, it cannot be denied that the Hon'ble judiciary has not overlooked them and has observed a significant overview of the privileges of prisoners and all of them specialists must pursue these bearings without determination. In any case, for all intentions and purposes, these rights take place without determination only on the paper with hardly any power from prison. A conviction for a crime does not limit the person to a non-person whose rights depend on the whims of the prison administration and therefore the imposition of a severe punishment within the prison system depends on the lack of procedural guarantees.¹¹

INDIAN CONSTITUTION

Article 14 says that the state will not deny anyone equality before the law or the equal protection of laws in the territory of India. Article 19 guarantees six freedoms for all citizens of India. Among these freedoms, certain freedoms cannot be enjoyed by prisoners, except “freedom of expression

and expression” and “freedom to join an association.” Article 21 states that no one may be deprived of his life or personal freedom, except according to the legally established procedure. Article 22 (1) provides that no person arrested is denied the right to consult a lawyer of his choice. The constitution gives a suspect the right to a speedy trial.

CRIMINAL PROCEDURE CODE, 1973

According to Article 50 (1) Cr.P.C. “Any police officer or other person arresting a person without a warrant must immediately inform him of the details of the offense for which he was arrested or other grounds for such an arrest.” Section 50 (2) Cr.P.C. states that “when a police officer without justification arrests a person other than a person accused of a non-available crime, he will inform the arrested person that he has the right to be released on bail to be able to provide his securities.” Sections 56 and 76 Cr.P.C. provides that, “irrespective of whether the arrest is made without justification by a police officer, or whether the arrest is carried out by a person by a person, the person carrying out the arrest must bring the arrested person to a bailiff without undue delay.” It is also stipulated that “the arrested person may not be detained in a place other than a police station before being taken to the magistrate.” The Code of Criminal Procedure stipulates that a fair trial must be an open legal process.

¹⁰ Shodhganga, chapter 4: “Rights Of The Prisoners And The Duties Of Prison Officials”, Available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/46512/12/12_chapter%204.pdf (Last Accessed on September 20, 2019)

¹¹ Charles Wolff v. McDonnell, (1974) 41 Law Ed 2nd 935, DBM Patnaik v State of Andhra Pradesh, AIR 1974 SC 2092, Sunil Batra v. Delhi Administration, AIR 1978 SC 1675, and Sunil Batra v. Delhi Administration, AIR 1980 Cr.LJ 1099



<u>INDIAN EVIDENCE ACT, 1872</u>	S. No	Rights Prisoners	Of	Provisions
<p>The suspect even has the right to testify in his defense in case of a police report or private defense. Confessions of allegations to the police are absolutely excluded on the basis of Article 25 of the Evidence Act.</p>	1	Right Fundamental Rights	To	1. Article 21 read with Article 19 (1) (d) and (5). Fair procedure is the essence of Article 21. Reasonableness of the limitation is the essence of Article 19 (5) and sweeping discretion that degenerates into arbitrary discrimination an anathema for article 14.
<p><u>THE PRISONS ACT, 1894</u> This law is the first legislation regarding prison regulation in India.</p> <ul style="list-style-type: none"> • Accommodation and sanitary conditions for prisoners. • Provisions regarding the mental and physical condition of prisoners. • Investigation of prisoners by a qualified doctor. • Separation of prisoners for male, female, criminal, civil, convicted and tried prisoners. 				2. The Supreme Court ruled that detention conditions cannot be extended to the deprivation of fundamental rights. ¹²
<p><u>THE PRISONERS ACT, 1990</u></p> <ul style="list-style-type: none"> • It is the duty of the government to remove prisoners who have been detained on the basis of an order or punishment from a court that is not wise for a madhouse and another place where he will receive proper treatment. • Any court that is a high court may, in the case where it has recommended to grant the government a free pardon to a prisoner, allow him to be free on his own knowledge. 				3. Prisoners retain all the rights that free citizens enjoy, except those that have necessarily been lost as a detention incident. Moreover, the rights enjoyed
<p>V. <u>JUDICIAL ATTITUDE TOWARDS RIGHTS OF PRISONERS</u></p>				

¹² State of Maharashtra v Prabhakar Pandurang Sanzgir, AIR 1966 SC 424 104



		by prisoners under Articles 14, 19 and 21, although limited, are not static and will rise to human heights when a situation arises. ¹³	3	Right To Health And Medical Treatment	1. Denial of a government hospital to an injured person on the grounds of the unavailability of a bed amounts to a violation of the "right to life" under Article 21. The preservation of human life is of the utmost importance. ¹⁶ 2. The right to medical treatment is the fundamental human right. The Supreme Court of Gujarat has ordered the prison authorities to treat sick prisoners well. ¹⁷
2	Right To Live With Human Dignity	1. In a new dimension of Article 21, the Supreme Court ruled that "right to live" does not only mean limitation to physical existence, but includes the right to live with human dignity. ¹⁴ 2. A prisoner does not cease to be human, even when he is put in prison; he continues to enjoy all his fundamental rights, including the right to life. ¹⁵			
			4	Right To Speedy Trial	The Supreme Court ruled that the right to a rapid trial resulting from Article 21 is available to the

¹³ Charles Sobaraj v. Supdt Central Jail Tihar, AIR 1978 SC 1514

¹⁴ Maneka Gandhi v. Union of India, AIR 1978 SC 597, and followed in Francis Coralie v. Delhi Administration, AIR 1981 SC 746

¹⁵ State of Andhra Pradesh v. Challa Ramkrishna Reddy, AIR 2000 SC 2083

¹⁶ Paschim Bengal Khet Mazdoor Samiti v. State of West Bengal, AIR 1996 SC 2426 : (1996) 4 SCC 37

¹⁷ Rasikbhai Ramsing Rana v. State of Gujarat, (DB) 1997 Cr LR (Guj) 442



		accused in all phases, namely the investigation, trial, appeal, review and re-investigation phase. In the interest of natural justice, the court concludes that if the right to a speedy trial is violated against a suspect, the accusations of the conviction are set aside. ¹⁸			cannot be considered fair and reasonable, which denies him legal advice and representation at this stage. ²⁰
5	Right To Free Legal Aid	<p>1. The Supreme Court ruled that free legal aid at the expense of the state is a fundamental right of a person accused of a crime that could endanger his life or personal freedom.¹⁹</p> <p>2. The stage where an accused person needs competent legal advice and representation and there is no procedure,</p>		<p>6 Protection Against Instruments Of Restraint</p> <p>a. Handcuffing Of Under Trial Prisoner</p> <p>b. No Need Of Handcuffing, While Escorting The Voluntary Surrendered Person</p> <p>c. Under Trial Prisoner Cannot Be Kept In "Leg Irons"</p>	<p>a. Any undertrial accused of a non-bailable offense that was punishable by a prison sentence of more than three years if, enthralled, it was in violation of Articles 14, 19 and 21 of the Constitution of India. That is why they were held unconstitutional.²¹</p> <p>b. The court instructed the government to take appropriate measures against the erring escort party because</p>

¹⁸ AR Antulay v. RS Nayak, AIR 1984 SC 1630, again some directions were passed by SC in the case of Common Cause Society v. Union of India, AIR 1996 SC 1619.

¹⁹ Sukdas v. Arunachal Pradesh, AIR 1986 SC 991

²⁰ Khatri v State of Bihar, AIR 1981 SC 928

²¹ Prem Shankar v. Delhi Administration, AIR 1980 SC 1535



		of the unjust and unreasonable handcuff of the petitioner. ²² c. In the case of Kadra Pehadiya, the Supreme Court held that prisoners awaiting trial could not be held in leg irons. The court also ruled that no convicted or undertrial prisoner should be held in leg irons, except in accordance with the proportion of the decision of the Sunil Batra case. ²³	8	Right To Education	The Hon'ble Supreme Court has instructed the state government that well-trained prisoners should be engaged in some mental-cum-manual productive work. ²⁵
			9	Right To Reasonable Wages For Work	The court ruled that when prisoners are put to work, a small amount can be paid as wages and must be paid, so that the healing effect on their mind is fully felt. ²⁶
7	Protection Of Custodial Torture And Mal-Treatment In Prisons	The Supreme Court has determined that those helpless victims of injustice must receive legal assistance at the expense of the state and must be protected against torture and ill-treatment. ²⁴	10	Special Rights For Female Prisoners a. Right To Female Security Guard For Female Safety b. Rights To Pregnant Prisoners c. Rights For Mother Prisoners	a. The Hon'ble Supreme Court has given the relevant authority, detailed instructions for providing security and safety in police detention and in particular women suspects. ²⁷ b. The Hon'ble Supreme Court ruled that, before a pregnant

²² Sunil Gupta v. State of MP, (1990) 3 SCC 119

²³ Sunil Batra v Delhi Administration, (1978) 4 SCC 494

²⁴ Sheela Basre v. State of Maharashtra, AIR 1983 SC 378

²⁵ Mohammad Giasuddin v State of AP, AIR 1977 SC 1926

²⁶ Dharambir v. State of UP, AIR 1979 SC 1595

²⁷ Sheela Basre v. State of Maharashtra, AIR 1983 SC 378



		<p>woman is sent to prison, the authorities involved must ensure that the prison in question has the basic minimum facilities for childbirth and for pre- and postnatal care for both, the mother and the mother.²⁸</p> <p>c. The Hon'ble Supreme Court ruled that female prisoners are allowed to keep their children in prison until they reach the age of 12.²⁹</p>		<p>The Event Of Death In Custody</p> <p>c. Right To Compensation In The Event Of 'Illegal Detention'</p>	<p>violation of the fundamental right to life of citizens by officials and the state that is indirectly liable for their act".³⁰</p> <p>b. The Hon'ble Supreme Court ruled that it was the duty of the prison authorities to protect the prisoner's life in prison.³¹</p> <p>c. When a person has been convicted of a criminal offense by a final decision and subsequently his conviction is reversed or pardoned on the grounds that new or newly discovered offense conclusively demonstrates that there has been a judicial error, the person who is punished</p>
11	<p>Right To Compensation In The Event Of Judicial Error</p> <p>a. Right To Compensation In The Event Of Deprivation Of Liberty</p> <p>b. Right To Compensation In</p>	<p>a. "Monetary or monetary remedies are an appropriate and indeed effective and sometimes the only suitable remedy for an established</p>			

²⁸ RD Upadhyay v. State of AP, AIR 2006 SC 1946

²⁹ *Ibid*

³⁰ D K Basu v. State of West Bengal, AIR 1997 SC

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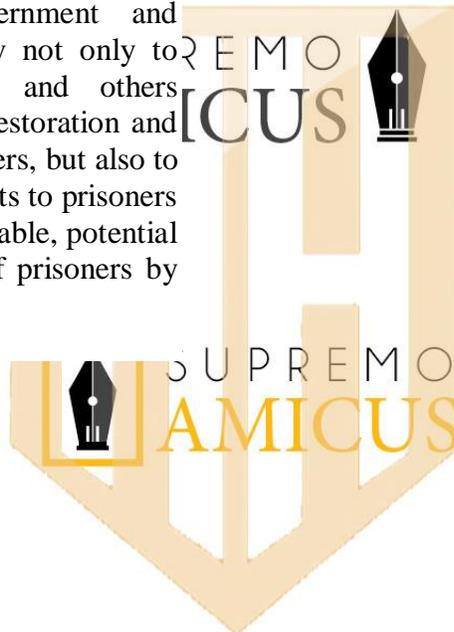
³¹ Murti Devi v. Delhi Administration, (1998) 9 SCC 604



		suffered as a result of such a conviction, will be reimbursed by law. ³²
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VI. CONCLUSION

Prisoners do not cease to be human and the Supreme Court has broadly reiterated this situation and has experienced prisoners' privileges, with the aim of superior rehabilitation offered to them, to improve and prove them to be a better person during the prison sentence. The government and administrations have the duty not only to provide framework, labour and others conscious conditions for the restoration and legitimate endurance of prisoners, but also to provide information about rights to prisoners at the perfect moment, conceivable, potential and about top mistreatment of prisoners by being amazing in prisons.



³² Article 14 (6) of ICCPR, 1966