



PRISON REFORMS IN INDIA – IS IT A CONSTITUTIONAL MANDATE?

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Abstract

It is myth to think of a crimeless society. In fact, there can be no society without the problem of crime and criminals. The concept of crime is essentially concerned with the social order. This means that if there are crimes in the society, then obviously there will be offenders. In order to punish the offenders there are different form of punishments as enshrined under the Indian legislation. Our major penal law which is, The Indian Penal Code, 1860 (Act No. 45 Of 1860) under section 53 makes provisions for different types of punishments to which offenders are liable. This section says, "the punishments to which offenders are liable under the provisions of this Code are: First.-Death; Secondly.-Imprisonment for life; Fourthly.-Imprisonment, which is of two descriptions, namely:- (1) Rigorous, that is with hard labour, (2) Simple; Fifthly.-Forfeiture of property; and Sixthly.-Fine." Now for the purpose of imprisonment it is without suspicion that we have to make "prison cells" with proper legislation and constitutional safeguards. There is no dearth of special legislations, besides Constitution which deals with the rights of prisoners in the nature of reformation to provide proper treatment, reformation and rehabilitation to

prisoners. There are several law, rules, etc. in our country that have been made for the purpose of prisons - prisoners and their reforms. They are: The Prisons Act, 1894; The Transfer of Prisoners Act, 1950; The Repatriation of Prisoners Act, 2003; The Repatriation of Prisoners Rules, 2004; Model Prison Manual 2016; Government Advisories; Government Guidelines and Report of All India Committee on Jail Reforms (Mulla Committee). It is pertinent to mention here that the basic purpose of prisons is to reduce the chance that offenders would repeat their unlawful activities and will change their attitude towards society providing them proper opportunity so that they may rehabilitate in the society again.

Introduction

Indian Constitution sanctioned positive discrimination towards prisoners. Constitution permitted the state to make special laws to the persons who are behind the bar or in custody. However, there are certain existing laws like Indian Penal Code, 1860 and Criminal Procedure Code, 1973 and Prison Legislations, which protect the persons against any type of violations and to provide adequate protection to this category. But Constitution being supreme law of the land an attempt has been made to find out whether the existing Constitutional provisions are really adequate to protect the interests of prisoners through prison reforms. Thus, it's become important to understand how does the Constitution of India being the supreme law of the land protects and upholds the basic rights of prisoners and supports the prison reforms.

Constitutional Perspective on Prison Reforms and Rights



Human right that necessarily includes prison rights and their reforms are the basic rights which are inherent and inalienable and are essential for the human beings in the society. It is the duty and responsibility of the welfare state to protect these rights. The national charter i.e. Constitution tries to protect these basic human rights. Almost in all the countries of the world the constitution provides directly or indirectly provisions against any type of violation of these rights. In a very wide spectrum, even the international community through various international instruments, also provide various Conventions and Declarations to protect the prison rights. Ironically, human rights are always for the human beings who live in the civilized society. But it's not only the citizens about whom the whole of human rights jurisprudence is dealing with. In fact large number of persons who are called as accused, suspects, criminals, wrongdoers and prisoners also form irreparable part of our society, where it is responsibility of the state to protect their rights and reform the prisons of our country. Constitution also provides equal concern for this category also because merely being behind the bar does not reduce their status as animals. Various international instruments and documents on prison justices like Universal Declaration of Human Rights, Declaration on Protection from Torture, Standard Minimum Rules for Treatment of Prisoners, and The European Convention on Human Rights at global level deals with prisoners' rights and prisons as well.

In the light of work in hand, an attempt has been made to find out how the prisoners through prison reforms in India. However, 'prisoners' / 'persons detained therein is a

State subject under Entry 4 of List II of the Seventh Schedule to the Constitution of India. Administration and management of prisons is the responsibility of respective State Governments. However, the Ministry of Home Affairs provides regular guidance and advice to States and UTs on various issues concerning prisons and prison inmates.¹ The data available with the National Crime Records Bureau (NCRB) for the year 2018 presented below aptly clears the need for prison reforms in India:

As per the data provided by States/UTs, the total "Available Capacity" for inmates in prisons across India is 3,96,223 (Males - 3,68,962 and Females 27,261) against the actual "Inmate Population" of inmates in prisons across India 4,66,084 (Males-4,46,842 and Females - 19,242), that clearly shows a surplus of 69,861 inmates are in different prisons of country. A brief analysis of data on the basis of above chart indicates that our prison cells are over populated and that makes the issue of prison reforms in India very important. Therefore, it is very important to mention here that there are various provisions of the Constitution of India that though not directly, provides certain rights to the prisoners are especially helpful for the prison reforms. However, there are special legislations as well which are specially meant for the prisons and prisoners. There are no specific provisions of prisoner's right in the Constitution of India, but certain rights which have been guaranteed in our Constitution are also available to the prisoners because a prisoner be treated as a 'person' in the eyes of law.

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https://www.mha.gov.in/Division_of_MHA/Women

[_Safety_Division/prison-reforms](https://www.mha.gov.in/Safety_Division/prison-reforms) (Visited on November 25, 2021)



1. PREAMBLE TO CONSTITUTION-

The Preamble opens with words "WE, THE PEOPLE OF INDIA" which signifies the source from which the Constitution comes i.e. the common people of India. Moreover, the preamble emphasizes on Justice- social, economic and political. Thus the preamble plays more attention to the social concern as compared to individual concerns. It simply means that if there is any type of violation, it is the duty and responsibility of the welfare state to protect all its citizens, even though some of them are behind the bars.

The significance of the preamble has been pointed out by the Hon'ble Supreme Court in various cases and it is treated as the, "key the makers".² Considering the preamble's commitment the Hon'ble Supreme Court open the minds of observed that, "the Preamble of Indian Constitution is of extreme importance and it should be read and interpreted in the light of great and noble vision expressed in the preamble"³ Preamble generally sets the ideals and goals which the makers of the Constitution intend to achieve through the Constitution. Therefore, it is regarded as a key to open the mind of makers of the Constitution. For that reason the preamble is also a legitimate aid for the interpretation of the Constitution.

The recognition of the preamble as an integral part of the Constitution makes the preamble a valuable aid in the construction of the provisions of the Constitution because unlike the preamble to an Act, the preamble of the Constitution occupies the same position as other enacting words or provisions of the Constitution.⁴ The framers

of the Constitution of India, sought to secure to citizens of India including prisoners certain goals. Although certain expressions like, 'Justice', 'Liberty', 'Equality' and 'Fraternity', may not be susceptible to exact definitions, yet they are not mere platitudes. They are given content by the enacting provisions of the Constitution particularly by Part III, the Fundamental Rights and Part IV, the Directive Principles of State Policy.

Thus, the prisoners are also entitled for second part of preamble and it is clearly laid down by the Apex Court in the case of *Sunil Batra v. Delhi Administration*⁵ that prisoners are entitled to all fundamental rights which are consistent with their incarceration.

II. CONSTITUTION vis à vis PRISON REFORMS-

It is pertinent to mention here that the Constitution of India provides person protection from any type of discrimination against the state that also includes those people that are behind the bars. It is simply because merely being behind the bars doesn't reduce the status of prisoners or accused as animals. There are number of cases where the judges also try to protect the prisoners who are behind the bars. Various "Public Interest Litigations" plays a great role for the protection and preservation of rights of persons who are behind the bars. In the case, *State of West Bengal v. Subhodh Gopal Bose*⁶, Patanjali Sastri, C. J., said, "the whole object of Part III of the constitution is to provide protection for the freedoms and rights mentioned therein against arbitrary invasion by the state".

² *In Re. Berubari case*, AIR 1960 SC 845

³ *Keshavananada Bharati vs. State of Kerala*, AIR 1973 SC 1461

⁴ *Charan Lal Sahu vs. Union of India*, (1990) 1 SCC 613

⁵ AIR 1978 SC 1675

⁶ AIR 1954 SC 92



Moreover, some fundamental rights are expressly guaranteed against the state. However, the meaning of State cannot and should not be used for restricting the application of a fundamental right only against the State. Fundamental Rights may also be violated by the State as much directly as indirectly. State cannot escape its responsibility or liability towards the protection of fundamental rights on the plea that they are the actions of private individuals and not of the state. In several cases the Courts have, therefore, given relief to prisoners without going into the question whether the fundamental rights were violated by the State. This has happened particularly about the right under Article 21, but it may also happen with respect to other fundamental rights too. This development is consistent with the expansion of the rights in general and also covers those fundamental rights for which the prisoners are also entitled. Besides, the Supreme Court in many cases has clearly laid down that the prisoners are also entitled for the fundamental rights with the philosophy and spirit of the Indian Constitution in particular, that has strongly opened the doors for the prison reforms in India.

A. Right to Equality- Article 14 of the Constitution of India guarantees to every person "equality before the law or the equal protection of the laws". The first expression, "equality before the law" is taken from the English common law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual including prisoners. The second expression, "the equal protection of the laws" which is based on the last clause of the first section of the 14th Amendment to the American Constitution, directs that equal protection

shall be given to all persons in the enjoyment of their rights and privileges without any discrimination. It is a pledge of protection or guarantee to prisoners as well.

Thus this Article is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classification with categories of prisoners relating to the nature of offences committed by them. In addition to this, the question of treatment to prisoners is also dealt with, specifically by the Prisons Act 1894, and Code of Criminal Procedure, 1973. Moreover, the Indian judiciary particularly, the Supreme Court of India, in the recent past has been very vigilant regarding the reformation or protection of human rights of the prisoners by virtue of Article 14. Thus, for the purpose of prison reformation and rehabilitation, the judicial attitude through pronouncements has also played a significant role for efficient artistic conceptualization of prisons like, open air prisons as one of the components of present prison reforms in India apart from Article 14.

B. Right to Life and Personal Liberty- Article 21, though expressed in negative language, confers on every person the fundamental right to "life and personal liberty". The foreigners are as much entitled to these rights as the citizens are. These two rights have been given paramount position by Indian Judiciary. The right to life is the most fundamental and widest of all, is also the most difficult to define. In view of the global developments in the sphere of prison reforms many of judicial decisions are a stronger pointer towards the recognition of affirmative rights to basic necessities of prisoners under Article 21. In *Maneka Gandhi v. Union of*



*India*⁷, the court observed "the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19". The word "man" used in the above judgment certainly includes the "prisoners" as well. The Supreme Court has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of prisoners and for effecting prison reforms. Convicts are also human beings and until they are hanged or complete their sentence they are entitled to live in jail as human beings and not as slaves. Inhuman and barbarous treatment with prisoners is a constitutional prohibition. So, it has been held that the punishment of solitary confinement, hand-cuffing, harsh labour, degrading jobs and punishments in jail without judicial approval violate the mandate of Article 21 of the constitution. Speedy trial and legal aid to poor prisoners are constitutional rights available to them and does not depend upon the mercy of the State. There is many more expansion of Article 21 in different directions that have been mentioned below:

(i) Right of Prisoners- A prisoner is entitled to all fundamental rights, unless his freedom has been constitutionally curtailed by the Court. Therefore, any imposition of a major punishment within the prison is conditional upon the observance of the procedural

safeguards as enshrined under Article 21, even though he is not in a position to enjoy the full panoply of fundamental rights. In *Sunil Batra v. Delhi Administration*, the solitary confinement of a prisoner, who was awarded the capital sentence for having committed the offence of murder, was held bad as it was imposed not as a consequence of the violation of the prison discipline but on the ground that the prisoner was one under sentence of death.

Moreover, in several cases courts have issued appropriate directions to prisons, its officials and police authorities for safeguarding the rights of the prisoners and persons in police lockup particularly of women and children against several abuses and for their early trials.⁸ Handcuffing of under trials without adequate reasons in writing have also been found against Article 21,⁹ and the court has directed the Union of India to issue appropriate guidelines in this regard.¹⁰ A right to be released on bail has not yet been recognized under Article 21 and it has been held that insofar under special laws like, The Scheduled Caste (Prevention of Atrocities) Act, 1989 which prohibits anticipatory bail for offences under that Act, it is not violative of Article 21.¹¹ Denial of permission to detainee to get his book published has been held as an infringement of his personal liberty as the restriction was not authorized by the Preventive Detention Act.¹² Arrest and detention of an honest judgment-debtor in civil prison, who has no means to pay debt in absence of mala fide, violate Article 21.¹³ One important thing also to note that person

⁷ AIR 1978 SC 597

⁸ *Munna vs. State of U.P.*, AIR 1982 SC 806

⁹ *Prem Shankar vs. Delhi Administration*, AIR 1980 SC 1535

¹⁰ *Aeltemesh Rein vs. Union of India*, (1988) 4 SCC 54

¹¹ *State of M.P. vs. Ram Krsishan Balothia*, AIR 1995 SC 1198

¹² *State of Maharashtra vs. Prabhakar Pandurang*, AIR 1986 SC 424

¹³ *Jolly George Varghese vs. Bank of Cochin*, AIR 1980 SC 470



in prisons or detenu's right to have interview with his lawyer and family is part of his "personal liberty" guaranteed by Article 21.¹⁴ In this way no doubt Indian judiciary taking advantage of Article 21 has incorporated various rights, fundamental in nature in its nomenclature to provide protection to the persons who are behind the bars and to promote prison reforms.

(ii) Rights of Inmates of Protective Homes-

The right to live with human dignity is the fundamental right of every citizen including prisoners and the State is under duty to provide at least the minimum conditions ensuring human dignity. In the light of this the apex Court in, *Vikram Deo Singh Tomar v. State of Bihar*¹⁵ directed the State to take immediate steps for the welfare of inmates of "Care Home Patna" and provide sufficient amenities. In another case appropriate directions have been given by the Court for the inmates of protective and remand homes of women and children for providing suitable human conditions in the homes and for providing appropriate machinery for effective safeguard of their interest.¹⁶

(iii) Right to Free Legal Aid- Right to free legal aid is a guaranteed fundamental right for accused and person in prison and plays an important part in prison reforms. Right to free legal aid at the cost of state to an accused who cannot afford legal services for reason of poverty, indigence or in communicate situation is part of fair, just and reasonable procedure under Article 21.¹⁷ Further not only that, the trial court is under an obligation to tell an accused who fails to afford legal

representation that he is entitled to be represented by a lawyer at the cost of the state¹⁸ in case an accused is not told of this right and therefore, he remains unrepresented by a lawyer, his trial is vitiated by constitutional infirmity and any conviction as a rural of such trial is liable to be set aside.¹⁹ In fact, for purpose of prison reforms through Article 21, the Court has declared, "this is the State's duty and not Government charity." For prisoner's legal assistance, there is implicit in the Court, under Article 142, read with Article 21 and 39-A, the power to assign counsel to the prisoner provided he does not object to the lawyer named by the Court.

(iv) Right To Education For Prisoners-

Article 21-A declares "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine", inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, Article 21-A makes education a fundamental right. As this right is only meant for 6 to 14 years, it does not cover the prisoners of all age groups. However, according to various international conventions and due to reformative approach in India the trend is changing and now a detained and imprisoned person in prison shall also have right to get education which can be availed, subject to the maintenance of security and public order Expressed provisions should be made for education facility of prisoners in prison especially for woman and young offenders so that they can improve as human beings behind the bars and may join the mainstream society soon after

¹⁴ Francis Coralie vs. Union Territory of Delhi, AIR 1981 SC 746

¹⁵ AIR 1988 SC 1782

¹⁶ Upendra Baxi vs. State of U.P., (1983) 2 SCC 308

¹⁷ Husainnara Khatoon vs. State of Bihar, AIR 1979 SC 1369

¹⁸ Khatri vs. State of Bihar, (1981) 1 SCC 635

¹⁹ Suk Das vs. Union Territory of Arunachal Pradesh, AIR 1986 SC 991



their release. State must setup educational infrastructure within the walls of prisons along with the competent faculty members so that prisoners' education can continue without any hindrances. Also the education of young prisoners should be made compulsory. All this is so necessary because, "a man without education equal to animal"

(v) Right to Speedy Trial- Speedy and fair trial is the heart of criminal jurisprudence guaranteed by Article 21. This right came up in a series of cases, inviting under trials, which were in jail for a period longer than the maximum sentence that could be imposed on conviction. In *Hussainara Khatoon v. Home Secretary, State of Bihar*, it was held that, "right to speedy trial, a fundamental right implicit in the Article 21 of the Constitution and it is an essence of criminal justice" Bhagwati, J., observed that, "although the right to speedy trial is not specifically mentioned as a fundamental right, it is implicit in the broad sweep and content of Article 21". Dissatisfied with the compliance of its earlier directions, the Court has also ordered on many occasions release of under trials held for period more than the maximum term imposable on them if they are convicted. It was necessary to do so as continuance of such obtrusion is clearly illegal and in violation of that fundamental right under Article 21. The Court went one step further and after making a reference to the Hoskot case, recognized the right to free legal services to poor and needy prisoners as an essential ingredient of reasonable, fair and just procedure for speedy trial implicit in Article 21, and directed the state to provide a lawyer at its own cost for making a bail application to under trial: (i) charged with bailable offence on the next remand date, or (ii) held for non-bailable offence after having

spent half the term of maximum sentence imposable on him where he convicted.

(vi) Right against Cruel Punishment and Inhumane Treatment. Krishna Iyer, J., once said, "Human dignity is a clear value of our Constitution na to be bartered away for mere apprehension entertained by jail officials." In *Jagmohan Singh v. State of U.P.*, the constitutionality of death sentence was challenged. The Supreme Court held that, "if the entire procedure for criminal trial under the Criminal Procedure Code for arriving at a sentence of death is valid than the imposition of death sentence in accordance with the procedure established by law cannot be said to be unconstitutional." In *Bachan Singh v. State of Punjab*, it was argued that the Supreme Court in the *Maneka Gandhi* case has given a new interpretative dimension to the provisions of Articles 21, 19 and 14, and their inter-relationship in every law of punitive detention both in its procedural and substantive aspects must pass the test of all the three Articles. This argument was not accepted by the Court. It was observed that death penalty either per se or because of its execution by hanging by rope does not constitute an unreasonable, cruel or unusual punishment. Constitutional bench of Supreme Court in *Triveniben v. State of Gujrat*, 26 held that "it may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. In calculating the delay, time taken in the disposal of mercy petition should also be taken into account. A period of two years delay in such disposal has been found enough to convert death sentence into life imprisonment." In *Sunil Batra v. Delhi Administration* Court held, "Section 30 of The Prison Act did not empower the prison



authorities to impose solitary confinement upon a prisoner under sentence of death".

Regarding inhumane treatment, Supreme Court in *Kishore Singh v. State of Rajasthan* held that, "use of third degree method by police is violative of Article 21". In *Prem Shankar v. Delhi Administration*, Krishna Iyer, J., delivering the majority judgment held, "handcuffing should be resorted to only when there is 'clear and present danger of escape' breaking out the police control and for this there must be clear material, not merely an assumption". Further solitary confinement long period from 8 to 11 months and putting bar fetters on the prisoners in jail for several days on flimsy ground like, loitering in jail, insolent behavior, uncivilized manner and tearing of history tickets has been regarded as barbarous and inhumane treatment hence violative of Article 21.

CONCLUSION AND FINDINGS

The different rights guaranteed under the Constitution are not absolute and reasonable restrictions have been imposed on them. When a person is convicted and put in the prison his status is different from that of an ordinary person. A prisoner cannot claim all the fundamental rights that are available for an ordinary person, because he is no more an active "social" part of a society. But that does not also means that he ceases to be a "human being" or "non-citizen". This is the reason that protection of the Constitution are available to the prisoners also because a prisoner remains a "person" inside the prison. As stated earlier, "prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions" comes under the "State List" and is a State subject under Entry 4 of the List II of the Seventh Schedule

to the Constitution of India. Thus, administration and management of prisons is the responsibility of respective State Governments and there are no specific provisions of prisoner's right and prison reforms in the Constitution of India, but undoubtedly protection of our Constitution is available to the prisoners that has been very helpful for institution of "prison reforms in India. To mention Preamble, Article 14 and particularly Article 21 is the most important provision that has to a large extent protected and reformed the prisons and prisoners right.

A prison reform in our country is the "basis" which is inherent, inalienable, basic fundamental right which is essential for the prisoners in the society. The national charter like, our Constitution tries to protect this "basis" of prisoners that has paved a way for the Indian judiciary to kick start the process of prison reforms. The whole of human rights jurisprudence deals with large number of different persons who are sometimes also categorized as accused, suspects, criminals; wrongdoers; or prisoners and who are also irreparable part of our society. The purpose of imprisonment is not to give punishment rather it is an opportunity to change the progressive outlook or psychology of prisoner or to strengthen the character of inmates against deterioration which renders the person towards the wrong way. Whole of this process of prisons' reformation and rehabilitation needs time, energy, money, conducive infrastructure and most importantly judicial attention in our country. Majority of the thinkers, social scientists, legal luminaries, jurists and judges are of the opinion that these types of positive initiatives will definitely change the outlook of these inmates, minimize the stereotype of society and particularly initialize the much needed "prison reforms" in India. Justice of the



Supreme Court of the United States (1967-1991) Thurgood Marshall has rightly observed with regard to prison life of a prisoner in the following words:

"When the prison gets slum behind an inmate, it does not lose his human quality, his mind does not become close to ideas, his intellect does not cease to feeds on a free and open interchange of opinions, his yearning for self-respect does not end; nor is his quest for self-realization concluded."

In India it is unfortunate state of affair that, in spite of various constitutional and legislative provisions, safeguards and after various Supreme Court and High Courts judgments, it is astonishing to find out that there are still custodial cases, reported news of human rights breach, and violation of prisoner's right cases before National Human Right Commission to a worry some numbers. At last, it would be most right and true to say that Indian judiciary over the years alongside Constitutional protection has interpreted the Indian Constitution that has sanctioned, started and established positive and reformative attitude towards prisoners, which has to a large extent in our country institutionalized - "Prison Reforms".
