



Research Paper

## An Analysis Of Prisoner's Rights In India

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### ABSTRACT

Criminal justice system have three pillars first is police administration, second is judiciary and third is prisoner administration. With the help of this research papers we focus on the rights of prisoners and their violation and remedial measures provided by Indian constitution at national level and by international organizations at international level. International laws and Indian constitution has given best laws in regard with the prisoner's life. Prisoners are the unaccepted part of society but from the prospective we have to take care of them by providing safe environment and secure life.

### Key words

Indian constitution, International Organization, Prisoner, Rights, violation and remedial measures.

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### I. INTRODUCTION

Prisoners Right is a grave matter to look upon. Prisoners are also human beings but they are not getting treatment like human being. Recently Supreme Court takes a hold to the matter concerning to prisoners the wrong which is being faced by them. Inhuman conditions are faced by prisoners in India. Such inhuman conditions are ill treatment, multiple fire hazards, not proper food, not proper health and medical facilities and lack of functioning toilets, sanitation, custodial torture, deaths etc. The prison administration is not in proper governance that results to violation of prisoner's human rights as well as their fundamental rights. There is a need to reform the justice delivery system and a practical move towards the reformatory theory. Prison is an important part of criminal justice delivery system. It is where the accused or prisoners are being kept separately so they are subject to the discrimination of some rights which are not available to the accused belonging to the poor section of society but same rights are available to the person belonging to the elite section of the society.

This paper deals with the concept of who are prisoners, rights of prisoners, constitutional rights, and human rights, how their rights are being infringed, certain acts to protect their rights like- The prisoners Act 1894, and the transfer of prisoners Act 1950 and with the judgment of Supreme Court regarding the Rights of Prisoners.

### WHO ARE PRISONERS?

Prisoners mean a person who is deprived from freedom and liberty and kept in restraint, Confinement or custody by the order of court of law. A person can be a prisoner in trial until he proved innocent or can be serving a sentence in prison. Particularly we can say that the person who has committed any offence which is prohibited by the law of the state and found guilty for the offence or is in the trial of the offence will be kept in custody that is known as jail or prison where such person are kept and these persons are known as prisoners.

As per section 1 of the Prison Security Act 1992, defines 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."

### RIGHTS GRANTED TO PRISONER'S

If the human is convicted, it does not mean that he is not human anymore. He is human and should be treated like human being. As all the human beings have the natural granted human rights and fundamental rights granted by the constitution. These rights are also available to prisoners right to freely move is restricted as his freedom is subject to certain restrictions but basic rights are available like Right to food, Right to equality etc. There are the basic rights which are granted to the prisoners which can't be taken away. Whenever these rights

are being infringed prisoners have the remedy to approach the high court or Apex court to fight for the violation of their rights. These rights comprises of human rights as well as constitutional rights.

### **INTERNATIONAL RIGHTS OF PRISONER'S**

There are certain rights which are adopted in UN Charter to improve the condition of the prisoners and to save them from ill treatment and allow good treatment.

These principles are as stated under:-

1. Prisoners should be treated with the dignity and valued as human beings means they should be treated like normal human beings.
2. There should not be any kind of discrimination on the grounds of race, sex, colour, religion, language, political nation, birth or status of any person.
3. The prisoners should be kept in prison to complete their sentence granted by law but it's the fundamental duty to promote the well-being and development of the prisoners to reform them.
4. All the prisoners shall have the human rights and fundamental freedom set out in UDHR, ICESCR, ICCPR and other rights which are under in other United Nations Covenants.

### **RIGHTS GRANTED BY INDIAN CONSTITUTION**

Fundamental rights are the core rights of Human being. Likewise prisoners are also entitled to these rights. Supreme Court stated that "Imprisonment does not create a spell to waive off the fundamental rights". The court has declared that fundamental rights are enforceable in the case of Prisoners as well their rights are not restricted by their imprisonment.

*DBM Patnaik v. State of Andhra Pradesh*<sup>1</sup> in this case the court stated that it must be realized that a prisoner is a human being as well as the natural person or legal person. If such person gets convicted for a crime, it does not make him a non-person his rights are also attached to him and it cannot be taken away by anyone or not by the prison authorities as well.

The Prisoners are no longer considered as a slave of the nation who would leave at the prison and convicted to the civil death and it does not disqualify a person to be a person just because he did an offence and going through the imprisonment.

In *Charles Shobraj v. Superintendent*<sup>2</sup> the court held that the rights available to the prisoners under Article 14, 19, and 21 of the Indian Constitution are limited but cannot be static.

#### **Article 14 (Equal Treatment)**

Article 14 of Indian constitution states that all prisoners should be treated alike it talks about equality before law or equal protection of laws within the territory of India. There can be a reasonable classification between the prisoners but there should not be any kind of discrimination between the prisoners on the basis of their religion, caste, sex, colour or status.

#### **Article 19 (Six freedoms to the citizens of our nation)**

Article 19 Guarantees six freedoms to all citizens of India which are stated as under:-

1. Freedom of speech and expression.
2. Freedom to assemble peacefully without any arms.
3. Freedom to form associations or unions.
4. Freedom to move throughout the territory of India.
5. Freedom to reside and settle in any part of the India.
6. Freedom to practice any profession, or to carry on any occupation, trade or business.

In these freedoms, certain freedom are restricted like freedom of speech and expression, freedom to move freely or freedom to become member of any association as it cannot be enjoyed by the prisoners because of the nature of these rights.

#### **Article 21 (Right to life and personal liberty)**

Article 21 states that no person shall be deprived of his life and personal liberty except according to the procedure established by the law.

It states two rights that is right to life and right to personal liberty and it also involves right to live a life with dignity and the right granted under this article is not only for free person but for prisoners as well.

In *A.K. Gopalan's*<sup>3</sup> case the court stated the ambit of personal liberty by Article 21 of the constitution is wide and complete. It includes both substantive rights to Personal Liberty and The procedure prescribed for their deprivation.

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<sup>1</sup> 1974 AIR 2092 1975 SCR (2) 24

<sup>2</sup> AIR 1978 SC 1514

<sup>3</sup> AIR 1950 SC 27

### **Right to life and personal Liberty**

In *Kharak Singh v State of U.P*<sup>4</sup> the court held that the term life carries meaning just more than existence like that of an animal. Here right to live is not just restricted to mere existence or physical survival it has wide scope.

### **Right to live with human dignity**

The right to live with dignity is protected by the constitution. This is a concept which states every person's life is precious and should have right to live his life with dignity.

In *State of Andhra Pradesh v. Challa Ramakrishna Reddy*<sup>5</sup> the court held that right to life is a basic human right granted to every citizen and any authority cannot violate this right. A prisoner does not stop being a human if he is under prison he continues to be human and entitled to enjoy these rights.

### **Right to health and medical treatment**

Right to health is a basic fundamental right which is guaranteed to every individual to maintain the standard of physical and mental health.

In *Rasikbhai Ram Singh Rana v. State of Gujarat*<sup>6</sup> the court held that right to medical treatment is one of the basic human rights that should be made available to each and every person. The court guided the jail authorities to provide the proper physical and mental health care facilities to prisoners who are suffering from any disease.

### **Right to Speedy trial**

Every prisoner has the right to speedy trial irrespective of the crime he has committed to get the justice. As justice delayed is justice denied, so not to delay the justice. Speedy trial should be granted to the prisoners.

In the case of *AR Antulay v. RS Nayak*<sup>7</sup> the court held that the right to speedy trial flows from article 21 and it includes inquiry, trial, appeal and revision as well. The accused cannot be denied the right on the ground that he did not demand for it.

### **Right to legal Aid**

It is the duty of the court to provide legal aid to the accused if accused is not able to get any counsel to represent him because of lack of money then it is the responsibility of the state to provide the counsel to him and to make him updated about the matter in the court at every stage.

In the case of *Madhav Hayawadanaro Hoskot v. The state of Maharashtra*<sup>8</sup> the court held that Article 21 and Article 39 A along with Article 142 and Section 304 of CrP.C together emphasized that the government of the country has a duty to provide legal aid and legal services to the accused.

### **Right against Solitary Confinement**

The prisoners have the right against the solitary confinement it is an imprisonment in which the convict or prisoner is kept in a different cell and strict monitoring is done.

In the case of *Sunil Batra v. Delhi Administration*<sup>9</sup> the court held that prison authorities cannot treat prisoner like an animal. They are also human beings the highly dehumanizing or derogatory act against the nature cannot be done to a prisoner. This is against the law.

The other rights which are available to prisoners are Right to Privacy, right against Inhuman Treatment, Right to Education, Right to receive books, Right to Publication etc.

### **The Prisoners Act 1894**

This act was enacted on 22<sup>nd</sup> March and enforced on 1<sup>st</sup> July 1894. The act clearly focuses on the prisoners inclusively as buildings maintained by the state government with the purpose to detain and to deal with the prisoners. This act also focused on the criminal and civil prisoners. There were XII chapters and has 62 sections in that Act.

➤ This act talks about the appointment of staff which includes the superintendent, medical officer, jailer and officers like inspectors. The state authorities are bound to take action in the appropriate manner.

➤ Further this act clearly defines the duties of superintendent who are there to comply the orders and to look after the prisoners in matters of their labor work, punishment etc. they are completely responsible for their sanitary issues. The jailer has some certain responsibilities where they are not allowed to leave the prison.

➤ The admission, removal and discharge of the prisoners are done by this act. Their custody timing, their belongings everything should get recorded. Their report if someone is suffering from an acute disease then there transfer should be done. And all of this should get recorded.

➤ Employment of prisoners also covered by this Act. They are permitted to work under the direction of superintendent. But there were some provisions that a criminal prisoner will only work for 9 hours of the day and only in the case of emergency.

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<sup>4</sup>1963 AIR 1295, 1964 SCR (1) 332

<sup>5</sup>AIR 2000 SC 2083

<sup>6</sup>AIR 1992 SC 1042

<sup>7</sup>AIR 1986 SC 2045

<sup>8</sup>1978 AIR 1548 1979 SCR (1) 192

<sup>9</sup>AIR 1978 4 SCC 409

➤ Health of prisoners has always been the main motto and human rights also suggest some ways to keep a record of their health. So for that this Act provided the medical care to the prisoners.

➤ If the prisoner is a habitual offender then in that case he should get forwarded to the District Magistrate. And there are clearly punishment provisions in case prisoners commit any disobedience or offence against the subordinate.

Overall this Act was for the prisoners and for their rights but this Act has a colonial approach which defects the contemporary ideology of reformation of Prisoners on the humanitarian ground.

### **The Transfer of Prisoner Act 1950**

The Act came with an Aim that the prisoners can be transferred between the states of India with the Purpose of training of their vocational point of view and to maintain their basic necessity rights.

The parliament enacted this Act for the Limited grounds for transfer and in the particular circumstances and can be initiated by the appropriate government. Therefore, this Act is something new with the previous one in respect of the prisoners.

➤ Transfer of under trials and balancing act

There is issue regarding the transfer of which cases at what time etc. for that in *Kalyan Chandra Sarkar v. Rajesh Ranjan and Pappu Yadav and Another*

The Supreme Court held that application seeking for the transfer for an under trial. The court agreed with the point that there was no court provided by the statute which is asked by the prisoner.

In case *State of Maharashtra and other v. saeed Sohail Sheikh*

The Supreme Court held that there was no opportunity for the accused for hearing. The factual backdrop suggested that the state of Maharashtra decided to transfer the case from Mumbai to different Jail and of other District. The court heard the communication both ways and then decided to transfer the case under the provisions of Transfer of Prisoners Act.

Then there was question that how can the rights of the interest of accused be balance with the right of the victim?

So in case *Asha Ranjan and another v. State of Bihar and another* The victim asked for the transfer of case from Bihar jail to some other District Jail because of the allegation that Shahabuddin was running some sort of work in the Jail. So the court found it unrelated with the Transfer of Prisoners Act 1990 and didn't allow the transfer.

### **The Prisoners (Americans with Disabilities) Act 1990**

This Act took the stand for all the disable prisoners who have been classified where it appears that state government that any person detained or imprisoned under any order or sentence of any court is of unsound mind and the state government has power that by a warrant setting forth the grounds of belief that the person is of unsound mind and there is a need to remove the lunatic asylum or to other safe place.

This act enacted with an extended point of view in favours of the prisoners.

In case *M.H. Hoskat v. State of Maharashtra AIR 1987SC 1548* The Supreme Court held that the free legal aid should be provided to accused by the state in case the accused is not able to make it by own.

In case *Sheela Barse v. State of Maharashtra JT 1988(3) 15* The court raised the point of ill treatment with the prisoner and held that if a person is arrested without the warrant he must immediately informed of all the grounds and then all the procedure should be done accordingly which are there for the prisoners.

### **The Prisoners Act 1955**

The main aim of this Act is to provide the attendance in the Courts of persons confined in the Prisons for obtaining the evidence or for answering the criminal charges. The main of keeping a prisoner in jail is about that the perpetrator of a crime should be detained until the final punishment carried out. Because it's definitely not good for the society to deal with such people in general.

Prisoners and their rights is a big concerned topic among the world. Some came in their support while few refused. Personally I feel it's necessary that we have laws regarding the prisoners because humanity is above everything else and this is much needed. So we talk internationally there are rules, laws regarding the prisoners which are prescribed by the UN.

### **UN Charter with Rules and Legislations**

This charter was signed on 26 June in 1945 in San Francisco after the discussing in the united nation conference. There were some principles which are set for the prisoners. These are the following:

➤ Humanity is something which is the first requirement to make the world happy. So every prisoner should be treated with dignity and respect.

➤ There should be no discrimination on the ground of sex, religion, caste, language, colour, political and social origin etc.

➤ Every prisoner comes from a different background with different opinion of religious beliefs. So, they all should be treated equally with respect.

- Security of prisoners is very essential for the development of nation. So each of them should be protected with proper care and promote wellbeing among all of them.
- There are rights of prisoners which we discussed. So every prisoner should be aware of such rights. The rights were set out in UDHR, ICESCR and ICCPR.
- Development of every person is the basic requirement. So if prisoners demanding education, participation in cultural activities that definitely should get provided to them. It's a worthy step to get them educated in the society.
- There should be no encouragement to the solitary confinement. It should get abolished as a punishment.
- There should be work for the prisoners for their financial support. This will help in country economy as well. They should work for their families too.
- There should be proper health services in the Jails for the prisoners. No discrimination should be done on any ground.
- If the community allows and social institutions permit then only ex-prisoners can reintegrate with the society with the help of conditions.
- There should be no if and but related to these principals these are provided by the UN and these should be follow accordingly.

#### **Universal Declaration of Human Rights**

- There should be nothing cruel to any person and abolishment of everything is required such as torture, inhuman activities, degrading activities and punishment etc.
- Everyone have the Right to life, liberty and security of person.
- There should not be any arbitrary, arrest, detention or exile.
- Innocent until proven guilty, should be followed in every penal offence.

#### **UN Conventions and Specific Instruments**

- There are some important rules for the treatment of prisoners.
- Principal of equity should be followed for everyone; no one should get discriminated on the ground of sex, religion, caste, or sex etc.
- There should be separate institution for the detention for men and women.
- Young prisoners should be kept away from the adults. And there should be a difference between the civil and criminal prisoners.
- All punishments physically which are against the humanity should get prohibited.
- There should be one medical qualified facility for the prisoners in the jails.
- State parties' should take all justified measures to prevent acts of torture etc.

## **II. CONCLUSION**

Prisoners have all the rights which are granted by International law as well as Indian constitution only some rights are subject to the restriction as they are prisoners. They cannot enjoy each and every right but that does not mean they should be ill-treated. They have laws regarding their rights, safety and everything. Universal declarations are there to support them and provide them an environment which is safe and healthy for them. Although in general there are applicability of these rules and laws is mere in numbers but in India the execution authorities are keeping their eye on this and definitely after a time it will become more progressive.