

A Study on Legal and Constitutional Right of Prisoner's in India

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ABSTRACT

The triad of the criminal justice system comprises police administration, the judiciary, and prisoner administration. This chapter delves into the examination of prisoners' rights, instances of infringement, and corrective actions outlined by the Indian constitution domestically, as well as by international organizations globally. Both international laws and the Indian constitution have articulated comprehensive regulations safeguarding the well-being of prisoners. Despite being marginalized in society, it is imperative to address their needs by ensuring a safe and secure living environment.

KEYWORDS: Indian Constitution, International Organization, Prisoner, Rights, Violation and Remedial Measures, Human Rights, UDHR.

INTRODUCTION

The issue of prisoners' rights is a serious concern. Despite being human beings, prisoners often do not receive humane treatment. The recent intervention by the Supreme Court addresses the challenges faced by prisoners, including inhumane conditions prevalent in Indian prisons. These conditions encompass mistreatment, numerous fire hazards, inadequate food, insufficient healthcare, and a lack of proper facilities such as functioning toilets and sanitation. The deficiencies in prison administration lead to the violation of both prisoners' human rights and their fundamental rights, contributing to issues like custodial torture and deaths. There is a requirement to overhaul the justice delivery system, emphasizing a tangible shift towards the rehabilitative approach. Prisons play a crucial role in the criminal justice delivery system, serving as places where accused individuals or prisoners are held. However, there exists a disparity in the treatment of rights, with individuals from economically disadvantaged backgrounds facing discrimination in access to certain rights, unlike their counterparts from the affluent sections of society who enjoy the same rights.

This chapter explores the notion of individuals in confinement, addressing their status as prisoners, examining their rights under the constitution and human rights frameworks. It delves into the infringements upon their rights, discussing legislative acts designed to safeguard them, including The Prisoners Act of 1894 and the Transfer of Prisoners Act of 1950. Additionally, it examines relevant Supreme Court judgments concerning the rights of prisoners.

WHO ARE PRISONERS?

A prisoner refers to an individual who is denied freedom and liberty, being held in restraint, confinement, or custody by the authority of a court of law. This status can apply to someone undergoing a trial until proven innocent or serving a sentence in prison. Specifically, it pertains to a person who has

committed an offense prohibited by the state's laws, has been found guilty, or is in the process of trial for the offense. Such individuals are held in a facility known as jail or prison, and they are commonly referred to 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

The conviction of a person does not diminish their humanity; they remain human and deserve to be treated accordingly. Like all human beings, individuals, even if convicted, possess inherent human rights and fundamental rights granted by the constitution. While certain freedoms may be restricted due to incarceration, essential rights such as the right to food and the right to equality persist for prisoners.

Prisoners are entitled to certain fundamental rights that are inviolable. In instances where these rights are violated, prisoners have the option to seek recourse through the high court or the Apex court to address the infringement. These rights encompass both human rights and constitutional rights.

INTERNATIONAL RIGHTS OF PRISONER’S¹

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 represent the essential entitlements of every human being, and prisoners, likewise, are granted these rights. The Supreme Court has explicitly asserted that imprisonment does not nullify fundamental rights. The court has affirmed that prisoners retain enforceable fundamental rights, and their imprisonment does not curtail these rights

DBM Patnaik v. State of Andhra Pradesh² In this particular case, the court emphasized the recognition that a prisoner is not only a human being but also a natural or legal person. Even when convicted of a crime, this status does not strip them of personhood, and their rights remain intact. The court underscored that neither anyone else nor the prison authorities have the authority to deprive them of their rights.

Prisoners are no longer regarded as mere subjects of the nation destined to live out their lives in prison, facing a civil death. Committing an offense and undergoing imprisonment does not disqualify a person

¹<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners>

² 1974 AIR 2092 1975 SCR (2) 24

from retaining their status as a human being.

In **Charles Shobraj v. Superintendent**³ The court determined that the rights afforded to prisoners under Article 14, 19, and 21 of the Indian Constitution are not absolute but can evolve and are not fixed in a static manner.

RIGHT TO EQUALITY⁴

Article 14 of the Indian Constitution asserts the principle of equality before the law and equal protection of laws for all individuals within the territory of India, including prisoners. While reasonable classifications among prisoners may exist, there should be no discrimination based on religion, caste, sex, color, or status. The aim is to ensure that all prisoners are treated fairly and without prejudice Article 19 (Six freedoms to the citizens of our nation)⁵

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**⁶ 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

Right To Life And Personal Liberty⁷

In **Kharak Singh v State of U.P**⁸ 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.

³ AIR 1978 SC 1514

⁴ INDIAN CONSTITUTION (ART 14)

⁵ INDIAN CONSTITUTION (ART 19)

⁶ AIR 1950 SC 27

⁷ INDIAN CONSTITUTION (ART 21)

⁸ 1963 AIR 1295

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**⁹ 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**¹⁰ 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 **A.R Antulay v. R.S. Nayak**¹¹ 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(M.H.) Hoskot v. The state of Maharashtra**¹² the court held that Article 21 and Article 39A along with Article 142 and Section 304 of Cr.P.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**¹³ 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.

⁹ AIR 2000 SC 2083

¹⁰ AIR 1992 SC 1042

¹¹ AIR 1986 SC 2045

¹² AIR 1986 SC 2045

¹³ AIR 1978 4 SCC 409

The Prisoners Act 1894¹⁴

This legislation was passed on March 22nd and implemented on July 1st, 1894. The act specifically addresses the comprehensive management of prisoners within facilities maintained by the state government. It pertains to both criminal and civil prisoners and comprises twelve chapters with a total of 62 sections delineating various aspects of its provisions.

- This act addresses the appointment of various staff members, including the superintendent, medical officer, jailer, and inspectors. It mandates that state authorities must take necessary actions in a proper and suitable manner concerning the staffing of these roles.
- Additionally, this act explicitly outlines the responsibilities of the superintendent, who is tasked with implementing orders and overseeing various aspects of prisoners' lives, including their labor, punishment, and overall well-being, particularly in terms of sanitation. Jailers, too, have specific duties outlined in the act, which include restrictions on leaving the prison premises.
- 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 their transfer should be done. And all of this should get recorded.
- The Act also addresses the employment of prisoners, allowing them to work under the guidance of the superintendent. However, specific provisions state that a criminal prisoner is limited to working for nine hours a day, and such work is only permissible in cases of emergencies.
- The primary focus on the health of prisoners aligns with the central objective of this Act, and human rights principles also advocate for the maintenance of health records. Consequently, the Act includes provisions for providing medical care to prisoners.
- In the event that a prisoner is identified as a habitual offender, the Act stipulates that they should be referred to the District Magistrate. Moreover, the Act contains explicit provisions outlining punishments for prisoners who engage in disobedience or commit offenses against their subordinates.

While designed to address the rights of prisoners, this Act is criticized for its colonial approach, which contradicts the modern perspective favoring the reformation of prisoners on humanitarian grounds. The inherent colonial nature of the Act is considered inconsistent with contemporary principles of prisoner rehabilitation.

The Transfer Of Prisoner Act 1950¹⁵

The legislation was enacted with the intention of facilitating the inter-state transfer of prisoners in India. This was aimed at providing vocational training and ensuring the fulfillment of their fundamental rights related to basic necessities.

The parliament passed this Act with specific conditions and restricted grounds for prisoner transfers. The initiation of such transfers is limited to particular circumstances and is carried out by the relevant government. Consequently, this legislation represents a departure from the previous one in its approach to handling prisoner-related matters

- **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**

¹⁴ https://www.mha.gov.in/sites/default/files/2023-03/Prisons_act1894_0%5B1%5D%5B1%5D.

¹⁵ https://www.indiacode.nic.in/bitstream/123456789/11085/1/the_transfer_of_prisoners_act%2C_1950

Sarkar v. Rajesh Ranjan and Pappu Yadav and Another¹⁶ 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**¹⁷ 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?

In the case of **Asha Ranjan And Another V. State Of Bihar And Another**¹⁸ the victim sought the transfer of the case from Bihar jail to another District Jail. This request was based on the allegation that Shahabuddin was conducting certain activities within the jail. However, the court deemed it unrelated to the Transfer of Prisoners Act 1990 and consequently denied the transfer¹⁹

The Prisoners (Americans With Disabilities) Act 1990

This Act advocates for the rights of all disabled prisoners who have been categorized as such. It stipulates that if the state government determines that an individual detained or imprisoned under any court order is of unsound mind, the government is empowered to issue a warrant outlining the grounds for this belief. The purpose of such a warrant is to facilitate the removal of the person to a lunatic asylum or another secure location.

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

In case **M.H. Hoskat v. State of Maharashtra**²⁰ 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**²¹ 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 1955²²

The primary objective of this Act is to ensure the presence of individuals confined in prisons during court proceedings for the purpose of presenting evidence or responding to criminal charges. The fundamental rationale behind incarcerating a prisoner is to detain the perpetrator of a crime until the completion of the final punishment. This approach is motivated by the belief that it is not in the best interest of society to have individuals who have committed crimes freely interacting with the general population.

The issue of prisoners and their rights is a significant and debated topic globally. While some advocate for their rights, others oppose such measures. Personally, I believe it is crucial to have laws addressing prisoners' rights because upholding humanity should take precedence. Internationally, there are established rules and laws regarding prisoners, as prescribed by the United Nations (UN).

¹⁶ <https://indiankanoon.org/doc/932761/>

¹⁷ AIR 2 November, 2012

¹⁸ AIR 2017

¹⁹ <https://legalvidhiya.com/asha-ranjan-v-state-of-bihar-and-ors-2017-2-scale-709/>

²⁰ AIR 1987SC 1548

²¹ AIR 1988

²² https://www.indiacode.nic.in/bitstream/123456789/18665/1/the_prisoners__attendance_in_courts__act

UN CHARTER WITH RULES AND LEGISLATIONS²³

The charter was signed on June 26, 1945, in San Francisco, following discussions at the United Nations Conference. Within this charter, certain principles were established specifically addressing the rights and treatment of prisoners.

1. Humanity is something which is the first requirement to make the world happy. So every prisoner should be treated with dignity and respect
2. There should be no discrimination on the ground of sex, religion, caste, language, colour, political and social origin etc.
3. Every prisoner comes from a different background with different opinion of religious beliefs. So, they all should be treated equally with respect.
4. 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.
5. 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.
6. 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
7. There should be no encouragement to the solitary confinement. It should get abolished as a punishment.
8. 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.
9. There should be proper health services in the Jails for the prisoners. No discrimination should be done on any ground.
10. If the community allows and social institutions permit then only ex-prisoners can reintegrate with the society with the help of conditions.
11. 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 RIGHTS²⁴

- 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.

CONCLUSION

Prisoners possess rights granted by both international law and the Indian constitution, albeit with certain restrictions due to their incarcerated status. While they may not enjoy every right, it is imperative that they are not subjected to ill-treatment. There are specific laws safeguarding their rights, safety, and well-being. Universal declarations support the provision of a safe and healthy environment for prisoners. Though the widespread implementation of these rules and laws may be limited, in India, the authorities

²³ <https://www.un.org/en/about-us/un-charter>

²⁴ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>



overseeing execution are actively monitoring and working towards progress in this regard, indicating a potential for greater advancements over time