

Prisoners Rights in India- A Human Rights Perspective

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“Every Saint Has A Past; Every Sinner Has A Future” – Oscar Wilde

A prisoner when being imprisoned donot loses all the rights. They lose only a part of the right which are the necessary consequences of the confinement and the rest of the rights are preserved[†]. A Prisoner is a person who is deprived of liberty against their will. The prisoner can be by confinement, captivity, or by forcible restraint. The term applies particularly to the on trial or serving a prison sentence.[‡] The rights of civil and military prisoners are governed by both national and international law.

International conventions include the International Covenant on Civil and Political Rights; the United Nations Minimum Rules for the Treatment of Prisoners, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[§] and the Convention on the Rights of Persons with Disabilities. The prisoners are protected by the rights guaranteed by the International Conventions and Constitution of India, enacted by the legislatures like The Prisons Act, 1894, The Prisoners Act, 1900. The rights are also protected and interpreted by the Judiciary like an inmate is not ceased as a human being or cannot be treated as a slave or bounded labour, even though the person is in prison, all protections and rights are guaranteed.

The principle behind the prisoner's rights movement is that even though they are deprived of liberty, they are entitled to basic human rights. Despite the imprisonment, prisoners retain certain basic rights provided under Articles 14, 19 and 21 of the Constitution. The rights of access to the Courts for respect for one's bodily integrity that is, not to be assaulted—are such fundamental rights.

Prisoners lose only those civil rights that are taken away expressly by an Act of Parliament or by necessary implication. The test in every case is whether the right is fundamental and whether there is anything in the Prison Act, 1952; the Prison Rules, 1999 or elsewhere which authorises the prison authorities to limit such a right.

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† A.K.Roy Vs Union of India and anothers, AIR 1982 SC 710

‡ www. Merriam-webster.com, Retrieved 2019-04-19

§ . Howard Davis (2003), "Prisoners' rights", Human rights and civil liberties, Taylor & Francis, p. 157, ISBN 978-1-84392-008-3

The State is also allowed to place limits on prisoner's rights if it is considered necessary for the prevention of crime, to protect the safety of the prisoners or others. In spite of detailed prison rules, transparency has always been lacking. Secure management has slipped into obscure management and once transparency is reduced, accountability becomes a farce.

Prisoners are often deprived of very basic human rights like their right to sue prison officials or government for maltreatment, not providing hygienic atmosphere to the prisoners, blockading inmates of freedom of religion etc.

National Human Rights Commission has been receiving complaints from and on behalf of convicts undergoing life imprisonment about non-consideration of their cases for premature release even after they had undergone the imprisonment for over 10 to 20 years.

After closer study, the Commission noticed that although the said power of premature release is to be exercised by the State Government, under section 432 of the Code of Criminal Procedure, the procedure and practice followed by State Government is not uniform.

Right to speedy trial is a facet of fair procedure guaranteed in Article 21 of the Constitution. Needless or prolonged detention not only violates very basic right, but also amounts to blatant denial of human rights of freedom of movement to these vulnerable segments of the society who need the protection; care and consideration of law and criminal justice dispensation system.

Handcuffing, use of third degree methods are often used on prisoners which is an illegal act. To overcome these menace, the government must re-educate the police out of their sadistic arts and inculcate a respect for the human person, a process which must begin more by example than by exhortations.

Jail manuals and Acts should be affordable and easily available to them. Opening prisons to civil society may be one of the most important means of attending to numerous problems faced by prisoners secluded from society and this is where the role of N.G.Os and other welfare organisation can be appreciated and utilised

While the Supreme Court is seized with the matter concerning inhuman conditions of prisoners in prisons in India, primarily due to overcrowding of prisons, lack of training, personnel and infrastructure and is deliberating with the governments of states and centre

to improve such conditions; treatment of prisoners in India is grim and secretly violative of fundamental as well as statutory rights of an individual. For this condition to improve, the rights of prisoners should be put in a two-page bullet pointed manual and compulsorily circulated to arrestees and prisoners, at the time of their arrest or production before a magistrate and again at the time of lodging in the prisons. Such rights, unless they are propagated and implemented in each corner and entire perimetre of the prism, are a nullity and betrayal of human faith on the criminal justice delivery system.

In the case of famed Charles Sobraj through Marie Andre'o vs. The Superintendent, Central Jail, Tihar, New Delhi (1978), Supreme Court Justice Krishna Aiyer held, "...imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, Courts will refuse to recognise the full panoply of Part III enjoyed by a free citizen". He further held that imprisonment of a prisoner is not merely retribution or deterrence but also rehabilitation. He observed, "Social defence is the *raison d'être* of the Penal Code and bears upon judicial control over prison administration.

If a whole atmosphere of constant fear of violence, frequent torture and denial of opportunity to improve oneself is created or if medical facilities and basic elements of care and comfort necessary to sustain life are refused, then also the humane jurisdiction of the Court will become operational based on Article 19. Other forms of brutal unreasonableness and anti-rehabilitative attitude violative of constitutionality may be thought of in a penal system but we wish to lay down only a broad guideline that where policies, with a 'Zoological touch', which do not serve valid penal objectives are pursued in penitentiaries so as to inflict conditions so unreasonable as to frustrate the ability of inmates to engage in rehabilitation, the Court is not helpless. However, a prison system may make rational distinctions in making assignments to inmates of vocational, educational and work opportunities available, but it is constitutionally impermissible to do so without a functional classification system."

Various fundamental rights under Article, 14, 19, 20, 21 and 22 of the Constitution of India impliedly deal with the rights of prisoners. Article 14 deals with right to equality which provides equality before law and equal protection of law to all persons. Article 21 deals with right to life and personal liberty. Article 20 deals, *inter alia*, with two things, firstly it prohibits double jeopardy, that is, no person should be convicted for same offence twice. Secondly, it prohibits self incrimination, that is, no one can be compelled to be

witness against himself. Article 22 provides that a person must be produced before magistrate within 24 hours of his arrest and must be provided with a counsel of this own choice.

Famous constitutional writer Upendar Baxi has opined that scope of Article 21 is so vast that we do not need any other rights in our Constitution, and in the light of the Supreme Court's 'construction' of the meaning of 'life' under Article 21, whereby all the rights such as right to health, right to food, right to shelter, right to bail, right to speedy trial, right to free legal aid, right against custodial violence and death in police lock-ups or encounters, Right to meet friends and family members, Right to reasonable wage in prison, right against cruel and unusual punishment etc., have been included under it.

In the case of *Kharak Singh v. State of U.P.* (1964), where the Court expounded the connotation of the word 'life' under Article 21, "Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world."

In the case of *AK Gopalan vs State of Madras* (1950) where the petitioner was detained in Madras Jail under the Prevention Detention Act, 1950, Supreme Court upheld the detention and held that it did not violated article 21 as it was done as per 'procedure established by law'. The same position was reiterated by the Court in the case of *ADM Jabalpur vs. Shiv Kant Shukla* (1976) that during emergency the ambit of life and liberty gets suspended. But in the landmark case of *Maneka Gandhi vs. Union of India* (1978) the Apex Court broadened the scope of 'life' under Article 12 and held that any procedure made by the State must be just and reasonable. This case opened the floodgates for the rights of the people and the construction of Article 21 by the courts, whereby every basic right needed for the survival for the human have been included in it.

In the case of *Sheela Barse vs. State of Maharashtra* (1983) where on the application of a journalist the Supreme Court took cognizance of the matter regarding the ill-treatment and poor conditions of the prisoners in the jail and issued certain directions namely:

That interrogation of females should be carried out only in the presence of female police officers/constables.

Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail.

That whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance. The State Government will provide necessary funds to the concerned Legal Aid Committee for carrying out this direction.

That as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest.

That the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has right under section 54 of the Code of Criminal Procedure 1973 to be medically examined.

In the case of *Pramod Kumar Saxena vs. Union of India and Others* (2008), where the petitioner, who was an undertrial prisoner for more than 10 years against whom 48 criminal cases were filed, approached Supreme Court for enforcement of his fundamental rights. The Supreme Court held that he must be released on bail so that he can make arrangements for the repayment of amount and also defend cases registered against him.

Apart from the Constitutional rights there are also Statutory rights available to the prisoners. The Prisons Act, 1894 enacted for the functioning of the prisons, provides certain statutory rights to the prisoners. Section 4 of the Prisons Act provides for accommodation and sanitary conditions for prisoners. Section 7 provides for shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison. Section 24(2) provides for examination of prisoners by qualified medical officers. Section 31 provides for separation of prisoners containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners. Section 33 provides that every civil and unconvicted prisoner, unable to provide himself with sufficient clothing and bedding, shall be supplied with such clothing and bedding. Section 35 provides for treatment of undertrials, civil prisoners, parole and temporary release of prisoners. Section

37 provides that a prisoner must be provided with a medical officer if he is in need or if he appears out of health in mind or body.

In the era of right conscious society where the rights are given much more preferences, the concept of open jails are gaining momentum. Recently, it was brought to the notice of Supreme Court that there are 63 open prisons in different part of the country, but the existing capacity is not being fully utilised. The prisons are no longer seen as a place to create deterrence but are seen as a place of rehabilitation and so the concept of open-jails plays a crucial role. It is based on the idea of socialization of the workers with the outer world so that they can rehabilitate. Such prisoners who are not considered a threat to the society are shifted to such jails.

In open jail, the prisoners live with their families, they are allowed to find employment and can move out of the prison and work and can come back within the stipulated time. The rules of these jails are not stringent as compared to closed jails and are also cheaper to closed jails. Even the United States in 2015 adopted Standard Minimum Rules for treatment of Prisoners (Popularly known as Nelson Mandela Rules) which has recognized, inter alia, the rights of prisoners to have contact the outside world.

Prisoners don't cease to be human beings and Supreme Court has reiterated this position in many cases and have recognised rights of the prisoners, so that they do not suffer and a better rehabilitative surrounding be given to them to improve and become better human being during the course of jail term. The governments of state and centre have the responsibility to not only provide infrastructure, man-power and humane conditions for rehabilitation and rightful survival of prisoners, but also to provide information of rights to prisoners at the right time, to avoid possible, potential and excessive abuse of prisoners by powerful inside the prisons. The recent murder of Munna Bajrangi in Varanasi Jail is only the tip of iceberg providing the glimpse of violations prisoners' rights in India. Thousands of cases concerning violations of prisoners inside jails go unnoticed in India. I would conclude by saying that circulation of rights' information to prisoners, vast publicity of prisoner's right in media and corner to corner surveillance in prisons could be the keys for upholding prisoners' rights in India.
