

“Rights of Prisoners under Indian Law”

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ABSTRACT

Imprisonment is a feature of the penal system of every country in the modern world, and its use has been growing rapidly over many decades. There are around 10.36 million prisoners across the world today, according to the World Prison Brief database on prisoners and according to the National Crime Records Bureau Ministry of Home Affairs there are 1387 functioning of jails in India, having capacity to house 356,561 prisoners but at the same time 418,536 inmates are in jails across the India in which 2.8 lakh of them are under trials which is equal to the population of a country Barbados. During this research, researcher carried out the case study which is based on the primary and secondary data gathered from various sources, books, journals, newspapers and preliminary proceedings. The paper aims to examine the judicial attitudes towards the Indian Prison system. The purpose of this study is to analyze the rights of prisoners under Indian law. The research covers the historical background, constitutional and statutory provisions of the prisoners which is supported by case laws. Moreover, the rights enjoyed by Prisoners, under Article 14, 19 and 21, though limited, are not static and will rise to human rights when challenging a situation arises. The state of health is also an important issue which needs attention to the prison authorities. The unique characteristics of prisons have important implications for treating clients in this setting. Though by no means exhaustive, this paper highlights the most salient affecting the delivery of effective treatment to a variety of populations within the prison system. Correction is a scientific approach for achieving the positive purpose of punishment. The focus of attention always remains on the prisoners, in order to reformulate his attitude and habits by adopting scientific methods and suitable programmes so that after release, he may lead the life of a law-abiding citizen. The Indian prison system are no better for the reason that economic conditions do not permit to evolve better modes of prison management. Therefore, reconstructing of prisons in India needs prime attention.

Hate the crime and not the criminal

-Mahatma Gandhi

All men are born equal and are endowed by their creator with some basic rights. These rights are mainly right to life and liberty, but if any person doesn't comply with ethics of the society then that person is deprived by these rights with proper punishments. Around 300 years ago, conditions of prisoners was just next to worse, because they were brutally treated and there was no specific provisions for them. After a long struggle society recognized that there are, Rights of Prisoners which should be made available to them. Main objective of prisons is to bring the offenders back to the mainstream of the society. If a person commits any crime, it does not mean that by committing crime, he ceases to be a human being and that he can deprive off those aspects of life which constitutes human dignity.

HISTORICAL BACKGROUND OF PRISON AND PRISONERS

The word 'Prison' doesn't means "to use sudden force" or "to cage". The prison is an old age foundation. Prison is a place, properly arranged for those culprits through legal process are kept for safe custody while in trial or for punishment.

Initially, it was just a place where offenders are kept for trials and ultimate punishment, but their occurred an intermediate point-imprisonment was regarded in itself. ¹Lord Macaulay in his book "Minutes of 1835" said that –"Imprisonment is the punishment to which we must chiefly trust". He was the one who put the idea for the idea for the establishment of such rules and regulations, main aim was to destroy criminal streak among convicted offenders.

If we turn the pages of our past Indian history, there are descriptions of prisoners, ²in Manusmriti it is stated that king should have all the prisons where all the evil and wrongdoers are kept. In the historical writings of Huein-Tsang and Fa-Hein polished treatment of prisoners was unknown during ancient India and also stated about brutal and barbaric punishment of the prisoners.

¹ Jaytialak Guha, Roy Prisons & Society-A study of the Indian Jail System,2,Gian Publishing House,1989.

² Ibid.

The post independence period saw a major change in our prison system. Government took special interest in it³. Around 1951, experts were invited from United Nations to study the prison administration and they were said to suggest some suggestion so as to develop prisoner's rights.

Very shock to know this fact even till now many civilized countries like India, China doesn't have codified rights of the prisoners, but still our Honorable judiciary has recognized a long list of right of prisoners and still government is working for the welfare of the prisoners.

FUNDAMENTAL CONCEPT ABOUT THE TOPIC

All the human beings have their own fundamental rights. Likewise prisoners also entitled to some extent of their fundamental rights. In most of the part of the world the rights of the prisoners get deprived when they are behind bars, which is merely wrong even though he is an offender but still no one can take his human rights.

The aim of this is to take a small step in trying to open up debate for the rights of prisoners. Such an endeavor involves trying to stimulate the recognition and development of a variety of constituencies intimately engaged in and knowledgeable about a range of penal issues, so that the prisoner's rights are put back on political agenda⁴. It helps in opening up of voices and those of their support organizations are heard and their identities and concerned recognized in all their diversity.

In Indian constitution, there was no express provisions related to the rights of prisoners but in the case of **⁵STATE OF ANDHRA PRADESH V. CHALLA RAMKRISHNAN REDDY**, it was held that the prisoners are also a person and they will not lose their basic constitutional rights.

The Supreme Case stated that a "prisoners whether a convict, under- trial or detenu, does not cease to be a being human being and while lodged in jail, he enjoys all his FRs as mentioned by the constitution including Article 21-right to life."

There are various hidden and visual issues of the effective prison system in India. Major problems, issues and trends facing in prisons today are:-

³ A.Mohanty and N.Hazary, Indian Prison System,26.

⁴ David Brown,Prisoners as Citizens: Human Rights, Stimulating Prisoners Voice,21,
https://books.google.co.in/books?id=hY-CDFek7nAC&dq=right+to+prisoners&source=gbs_navlinks_s .

⁵ (2000) 5 SCC 712,AIR 2000 SC 2083.

Overcrowding- In Indian prison system, overcrowding is a dilemma because prisons are highly overcrowded and on other hand prisons are less in number. ⁶As per UN Global Report on Crime and Justice 2010 in the Asian countries studies have revealed that more than 30 % of prisons population consist of under-trial / remand detention and in many Asian countries this figure rose to over 50 %. The report also states that during the year 1997-2007 there is an increase of 52.6 % in prison population. With such high percentage of increase of prisoners in the prisons during the above said time period, there should have been increase in the infrastructure, facilities and staff strength to maintain such big inflow of the prisoners.

Mental Illness- More than half of the population of prisoners have mental health issues. Most inmates have a number of problems along with the substance addiction, anxiety, depression and disorders.⁷ A study carried out by the Government medical college, Amritsar, and MM College, Haryana found that psychiatric illness in 23.8% of the 500 convicts lodged there. This was the report of Central jail, Amritsar and the assumption was made that these facts and figures may be also of the other jails of the country.

Racism- Racism is one the problem in prisons. Prisons are being discriminated on the grounds of age, gender, race, religion and disability. ⁸Verbal abuse was the most common reason for alleging discrimination. Being denied access to the regime; and routine favouritism , where white prisoners were allegedly treated more leniently or given more benefits.

Gang Activity- Common activity in prisons which are a source of safety in a dangerous environment and they regulate social and economic affairs, including the underground economy. People in prisons do this because of their vulnerable feeling and turning to gangs is a way to protect oneself from other inmates.

Inmate Rehabilitation-Rehabilitation is the re-integration into society of a convicted person and the main objective of modern penal policy, to counter habitual offending, also known as criminal recidivism.

⁶ Gurbuneet Singh Randhawa, Dr. D.J Singh, Analysis of Challenges faced by IPS, www.iosrjournals.org.

⁷ Punjab govt finally shuts down Chintpurni Medical College, withdraws essentiality certificate.

⁸ Dr Kimmett Edgar and Khatuna Tsintsadze, Tackling Discrimination in Prison: still not a fair response,10,Prison Reform Trust.

Private Prisons- It's a kind of inequality among elite class and the poor one's of the society. This leads to higher employee turnover and decreased security in the prisons which motivates them to commit offence again and again.

CONSTITUTIONAL AND OTHER STATUTORY PROVISIONS RELATING TO THE RIGHTS OF PRISONERS IN INDIA

According to our article 21 of the constitution which prohibits any inhuman, cruel or degrading treatments to any person (either citizen or non-citizen) will be punished. In the same way, Prisoners Act, 1984 specifically dealt with cruelty of prisoners. If any excesses are committed on a prisoners, the prison official is responsible for that. The Indian judiciary, specially Supreme Court in the recent past years has been very vigilant against encroachments upon the human rights of the prisoners.

Right to Legal Aid- Although our country is having a complex economic structure and hence crisis arise like poverty, destitution and illiteracy, so providing legal machinery itself is expected to deal with that. Legal Aid gives assurance to:

- Equality before law
- Right to Counsel
- Right to fair trial.

Indian judiciary has played a vital role in developing the ⁹concept of legal aid and also widened it's scope so as to give fair justice to the prisoners. In the case of ¹⁰**M.H. WADANRAO HOSKOT V. STATE OF MAHARASHTRA**, the court held that the right to legal aid is one of the ingredients of the procedure.

Right to Speedy Trial - One of the fundamental right of a prisoner mentioned in article 21 of the constitution. It ensures just, fair and reasonable procedure.¹¹ It also ensures that prosecutor may

⁹ <http://www.legalserviceindia.com>

¹⁰ 1978 AIR 1548, 1979 SCR(1) 192.

¹¹ Dr. Durga Das Basu, Introduction to the Constitution of India, 20th ed., 2009, Lexis Nexis, Butterworths Wadwa Publication .

not delay the trial of a criminal suspect arbitrary which serves the social welfare of the state and to give justice to the victims of the crimes.

Initially, right to speedy trial was firstly discussed in the landmark document of English law, the Magna Carta. Right to speedy trial is an abstract idea which deals with the disposal of along with the justice. In the leading landmark case ¹²**HUSSAINARA KHATOON V. HOME SECRETARY, STATE OF BIHAR**, it was held that speedy trial of a accused is his fundamental right under Article 21. If any person who denied his right to speedy trial can directly go to Supreme Court under Article 32 for enforcing such rights.

Right against Solitary Confinement, Handcuffing & Bar Fetters and Protection from Torture-

“Solitary Confinement”, according to Black’s law dictionary, in general sense, means the separate confinement of a prisoner, with only occasional access of any other person, and that too only at the discretion of the jail authorities and in stricter sense, it means the complete isolation of a prisoners from all human society and his confinement in a cell is arranged that he has so no direct intercourse with or sight of no human being or no employment or instruction. In ¹³**SUNIL BATRA V. DELHI ADMINISTRATION** it was held that solitary confinement could be imposed only in exceptional cases where a convict was of such a dangerous character that he must be segregated from other prisoners. Solitary confinement has a degrading and dehumanizing effect on prisoners. Constant and unrelieved isolation of prisoners represents the most destructive abnormal environment. Results of long solitary confinement are disastrous to the physical and mental health of those who subjected to it.

Right to reasonable wages-Whenever during the imprisonment, the prisoners are made to work in the prison, they must be paid at the reasonable rate. The wage rate should not be trivial or below minimum wages. In ¹⁴**MOHAMMAD GIASUDDIN V. STATE OF A.P.**, the court directed the

¹² AIR 1979 SC 1360.

¹³ 1980 AIR 1579, 1980 SCR (2) 557.

¹⁴ 1977 AIR 1926, 1978 SCR (1) 153.

State to take into account this factor, while finalizing the rules for payment of wages to prisoners as well as to give retrospective effect to wage policy.

In the matter of P.R.E. of ¹⁵Wages of Prisoners, the court has held that labour taken from the prisoners, which has not properly remunerated was “forced labour” and hence violative of article 23 of the constitution.

Right to meet friends and their Consult lawyer- Prisoners are not only protected physically but also mentally. It is necessary for individuals to meet for the purpose of information, it’s people’s right. Consult lawyers are their legal representatives, the act done by them directly affects the convict’s case. Visiting of friends and family members give them mental stability to survive in such a worst condition where people are unknown to each other. In **FRANCIS CORALIE MULLIN V. THE ADMINISTRATOR, UNION TERRITORY OF DELHI AND OTHERS**, the Supreme Court held that prisoners can have interview with family members, friends and lawyers without any severe restrictions, and allowed to go outside the jail and could not socialize with persons outside jail.

LEGAL FRAMEWORK OF TOPIC IN BOTH INDIAN AND FOREIGN SCENARIOS

Along with the country many foreign layout are also responsible for a good prison system, discuss in detail below:

➤ **International Human Rights Law**

International Human Rights Law protect from various inequalities like racism, discrimination among poor and elite group of people, torture. According to them, no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Clothing is considered as a component to an adequate standard of living standard. There should be a proper hygiene system where prisons live. All prisoners shall be offered a proper medical examination and treatment as soon as possible after admission. They also recognize the rights of specific groups of people, including women, children and for disable peoples.

¹⁵AIR 1983 Ker.261.

➤ **UN Charter**

Basic principles for the betterment and good treatment of prisoners was adopted and was officially announced by General Assembly resolution on December 14, 1990.¹⁶The principles are as follows-

- Prisoners shall be treated with inherent dignity and valued as human beings.
- No discrimination on the grounds of race, sex, colour, language, religion, political, national, social origin, property, birth, or other status.
- Respect the religious beliefs and cultural perceptions of the group to which the prisoners belong.
- The responsibility of the prisons for the custody of prisoners and for the protection of the society against crime and its fundamental responsibilities for promoting the well-being and development of all members of the society.
- ¹⁷All prisoners shall retain the human rights and fundamental freedoms set out in UDHR, ICESCR, ICCPR and the optional protocol as well as such other rights as are set out under in other United Nations covenants.

➤ **UN Core Conventions And Specific Instruments**

In 1955, Amnesty International prepared certain rules and regulations for the betterment of the prisoners. Some important relevant rules are:

- ¹⁸Perception of equality should be there. There should be no discrimination on grounds of sex, race, color, religion. Political or other opinion, national or social origin, property, birth or other status among prisoners.
- Men and women must be kept in separate institutions.
- There should be a separation of the prisoners for the civil and criminal offence.

¹⁶ United Nations, General Assembly Doc, A/RES/45/111, 14 Dec 1990.

¹⁷ <http://www.legalserviceindia.com>

¹⁸ Standard minimum rules for treatment of prisoners, adopted on Aug. 30, 1955 Rule 6(1).

- Prohibition of cruel inhuman degrading punishments, otherwise it will lead to severe punishment.
- Availability of at least one qualified medical officer with knowledge of psychiatry.
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➤ **Indian Law**

 **Constitution**

There are rights in the Part III of Indian constitution which are made available to the prisoners. Article 14 scrutinized that like should be treated alike, and also given the principle of reasonable classification. Following fundamental rights are not enjoyed by a prison:

- Freedom of movement.
- Freedom of residence and to settle.
- Freedom of Profession.

 **Enactments and Rules**

- **The Prison Act, 1894**

This act is the first legislation regarding prison regulation in India. Following are the provisions of that:

- Accommodation and sanitary conditions of the prisoners.
- Medical officer must be there.
- There are some provisions relating to mental and physical state of prisoners.
- Separation of prisoners for male, female, criminal, civil, convicted and under trials prisoners.

- **The Prisoners Act, 1990**

It is the duty of the government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment.

- **The Transfer of Prisoners Act, 1950.**

This act was passed to avoid over-population in prisons, prisoners are transferred from one state to another for vocational training and to get rid from overcrowding.

CONCLUSION

The days are gone when prisons were dungeons where prisoners were lodged to pass their days in dark cells. The prisons are no more the institutions designed to achieve only the retributive and deterrent aspects of punishment. Prisons are now the places, where the inmates are lodged not as a forgotten or forsaking members of the society but as human beings who have to go out in to their surroundings as well behaving as reformed persons. For a prisoner, the imprisonment itself is a punishment and thus, prisons are expected to be places of rehabilitation, not places where extra punishment is added resulting into the violation of their human rights. In *Manna V. People of Illinois*, U.S. Supreme Court stated that life is not a merely existence. The humans behind the prisons cannot be denied the same. The importance of affirmed rights of every human being need no emphasis and, therefore it is a duty of court of justice to protect the fundamental rights of the prisoners. Recently, the government of Himachal Pradesh had lifted ban on wearing Gandhi cap in jails. Various seminars are organized by jail authorities to enlighten the prisoners on their legal rights, health and sanitation problems, HIV/AIDS and issues of mental health. The open prison system has come as a very modern and effective alternative to the system of closed imprisonment. Such practices are helping in changing the traditional and colonial outlook of the Indian prison system and also help the prisoners to become more responsible, creative and potential citizen. Yet several steps have been taken to improve the conditions of prisons, but much more is required to be done. Central government along with NGO's and prison administration should take adequate steps for effective centralization of prisons.