

# RIGHTS OF PRISONERS IN INDIA: A LEGAL ANALYSIS

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## ABSTRACT

*Our nation is known for its democracy and its rich culture but it is very sad that developing country just like India has no codified and specific legislation for the rights of the prisoners. Though, this fact cannot be rejected that our Honorable judiciary has not ignored the prisoners and recognized various rights for them through their judgments and interpretations; Moreover, the rights related to prisoners experienced a drastic change during the past decades as an increased consciousness about the desperate need of prison reform dawned on the people.*

*The prisoner is an individual who is a restraint to enjoy his liberty and capture under the prison or detention as a punishment of crime. Being a convict or being under trial does not reject the need for human rights for the survivals and protection of life.*

*This paper explains about existing Constitutional and Legal Framework in India to safeguard the prisoners' rights and also elucidates the various executive and judicial guidelines issued from time to time with respect to needs and care of prisoners. There are several international legal instruments that have contributed immensely to the progressive development of human rights of prisoners. This paper examines available instruments and compares them with the laws prevailing in India for providing protections to maintain their human rights and legal rights. The final part of paper submits various suggestions to refine the prevailing status of prisoners in India to acquaint them with the rights they deserve as humans.*

**Keyword:** Prisoners; Rights; Legal Framework; Human Rights; Fundamental Rights; Prison reform

## 1. INTRODUCTION

The Indian socio-legal mechanism is built on non-violence, liberty and dignity of the individual. If a person has conflict of the laws by committing any act which is prohibited under it, it is unfair to say, by committing an act which is prohibited by the law than the person is not rejected as a human being and that he can be deprived of those aspects of life which essential to maintain his human dignity. Being in civilized society availability with the law and a system as such, it is essential for every citizen having human rights. Even if the person is confined because of his crime, he is entitled to their rights unchanged by the punishment for wrongs, simply because if a person under trial, his rights cannot be discarded as a whole. It is a settled system that prisoners go to prison to be confined behind bars as the punishment of their crime and not to get subjected to physical and mental abuse.

Other than the basic human needs, which have now been included in the area of right to life under the Indian constitution due to the judgments of the Supreme Court, right to life also allows a person to avail the guarantee of protection in cases of criminal justice administration.

"The said humanistic approach has not barred to the basic necessities of life like the right to live with dignity, right to education, health, labor welfare etc., but it has also underlined the other essential rights to live a dignified human life. The right to life includes the right to justice which includes a fair trial."

Even though many policies have been formulated to recognize the rights of the prisoners, it is, however, of grave importance that the present deficiency between the framed policies and ones which are actually brought into practice is studied meticulously and acted upon promptly.

## 2. CONSTITUTIONAL STATUS OF PRISONERS AND THEIR RIGHTS

"The prisoners are no longer considered as an object or a slave of the nation, who the law would leave at the prison door and who would be convicted to 'civil death'." It is progressively been established that a person does not disqualify to be a person just because he did an offence and put behind the bars.

In *Charles Shobraj v. Superintendent, Tihar Jail*, Apex Court made it clear that, “except for the fact that the compulsion to live in a prison requires by its own force the lack of certain rights, like the right to move freely or to practice a profession of one’s choice, a prisoner is otherwise eligible to the basic freedoms guaranteed by the Constitution.” And “the convicted persons go to prisons as punishment and not for punishment.”

The Constitutional rights (FR) offered under the Indian Constitution are not absolute in nature and some reasonable restrictions have been imposed. When an individual is convicted and put behind bars, he has a different status from free men. A prisoner cannot demand all the fundamental rights, which are available to free men.

### 3. STATUTORY PROVISIONS

Certain rights that have been mentioned in Part 3rd of the Indian Constitution are offers to the prisoners also because a prisoner remains a “person” inside the prison. The right to personal liberty has now been given a very wide explanation by the Apex Court. This fundamental right is available not only to free men but also even to those who are conflicted with the law. The right to speedy trial; free legal aid service; the right to against torture; the right to against inhuman; and humiliating treatment provided to a person into the prison also.

**Article 14** in which the principle of equality is expressed. The concept of “equal should be treated equally” and the concept of reasonable classification are mentioned in Article 14 that has been a very useful weapon for the courts to examine the category of prisoners and their basis of classification in different classes.

**Article 19** of the Constitution provides 6 freedoms to the citizens of our nation. Among these certain freedoms like “freedom of movement”; “freedom to reside and to settle”; and

“freedom of profession, occupation, trade or business” cannot be enjoyed by the prisoners because these freedoms have some conflict with the concept of prisons and authorities has the power to put reasonable restrictions.

But other fundamental rights like “freedom of speech and expression”, “freedom to become a member of an association”; etc. can be accessed by the prisoners convicted for an offence. But these will be considered as the limitations of prison laws.

**Article 20(1)** provides protection to the persons from ex post facto laws, this clause of article 20 provides to protect a prisoner from being convicted to any punishment. In Article 20 (2) represents the principle of “Double jeopardy”, this clause states the rule of common law of

“*Nemo Debet Vis Vexari*” that is no person should be put behind bars twice in the prison for the same offence.

One of the important safeguards which are useful for under-trials and “detenues” is mentioned in Article 20(3) of the Indian Constitution, the jail authorities or the police authorities can’t force the prisoners to give the testimony.

**Article 21** of the Indian Constitution provides the right to life to a person. It includes the principle of liberty. After *Maneka Gandhi* case, the Supreme Court gave a wide interpretation and provides a right that has been used against any action taken arbitrarily by the executive authorities including the police and prison authority. After that judgment concept of fair and reasonable procedure for the deprivation of the life and personal liberty of the individuals has been established.

In *A.K.Gopalan’s* case, the court mentioned, “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.”

The Court has also held that Article 21 of the Indian Constitution include the concept of a speedy trial which is offered under the right to life.

**Article 22(4)** to (7) provides certain special safeguards for the “detenues” detained under preventive detention laws. Clause (4) of Article 22 provides the maximum period of 2 months for detention for which a detainee can be capture without asking the opinion of the Advisory Board.

- Article 22(4) guarantees two rights to a “detenue”.
- Article 22(6) provides that the authorities can deny the disclosure of certain facts to detainee in public interest.
- Article 22(7) provides that there is a provision for the formation of the Advisory Board.

**Article 39 A** of the Constitution of India empowers the prisoners to secure free Legal Aid. “Just because a person has been penalized to imprisonment doesn’t means his rights can be violated.”

In case court observed that, “the Legal assistance to a poor or accused, arrested and put in danger of his life or personal liberty, is a constitutional requirement not only by Article 39A but also by Articles 14 and 21 of the Constitution.”

**The Articles 72 and 161** of the Indian Constitution provides special powers to the President and the Governors of States, to grant pardon or mercy to the prisoners from the judicial process.

#### **4. COMMITTEE REPORTS FOR PROVIDING RIGHTS TO PRISONERS**

By the orders and decisions of Judiciary, many committees were formed to improve the condition of prisoners; these committees were formed with the basic motive to create prison a better place to spend punishment for both men and women. Few of them include:

##### **PRISON ACT, 1894:**

The Prisons Act, 1894, presents the procedure how jail management and administration work in India. This Act has rarely gone under any significant change. However, the process of the audit of the prison problems in India lasted even after this. In the year 1919-20, the Indian Jail Committee published a report, put major pressure on 'reformation and rehabilitation' of offenders were considered as the object of the prison administration. The need for completely overtaking and strengthening the laws relating to prison has been constantly highlighted.

##### **5. MODEL PRISON MANUAL**

The MPM 1960 is the directing principle to create a base for the present Indian prison management is governed. On the guidelines of the MPM, the Ministry of Home Affairs, Government of India, in 1972, appointed a committee that works on prisons. And made a report and mention the need for a national policy on prisons. They also made an important reference with concern to the organization and treatment of offenders and laid down principles.

The committee gave the following points on which prisoners can make contact with their families and lawyers:

- The no. of letters a prisoner can write in a month shall be restricted by the government under the rules. However, there shall be no limitation on the numbers of letters received to a prisoner.

- Every prisoner shall be permitted to have meetings with their families, relatives, friends and lawyers once a month. However, the number of persons who may interview a prisoner at one time shall ordinarily be restricted to three.
- For the visitors, proper waiting rooms may be constructed in every prison to allow them to await their turn for meetings.
- The maximum time limit of the interview shall be 30 minutes, which can be further extended by permission of the superintendent of prisons.

This committee issued a prescribed manner how the prisoners shall be treated, and they should be permitted to contact their family members and lawyers in a prescribed manner.

##### **6. THE MULLA COMMITTEE**

In the year 1980, the Government of India constitutes a Committee on Jail Reform; appoint Justice A. N. Mulla as a chairman. The prime motive of the Committee was to evaluate the laws; rules; and regulations, keeping in mind that the overall objective was to the protection of society and rehabilitation of offenders.

##### **7. THE KRISHNA IYER COMMITTEE**

This committee was set-up to commence an analysis of the current condition of women prisoners in India. It has suggested an option of more women in the police force in view of their special role in managing women and child offenders. “Women spend their punishments in rigorous conditions than men because of their small numbers. They have faced greater family dislocation than men because there are so fewer prisons to choose as an option for the imprisonment of women. They have been over-classified, or, in any situation, they have been imprisoned in a facility that does not match to their classification. For similar reasons, they have been offered lesser programs than male prisoners, particularly in the situation of women imprisoned under protective custody arrangements, of which there is only a handful. They had no substantial seasonal training opportunities.

##### **8. ROLE OF JUDICIARY IN PROTECTING THE RIGHTS OF THE PRISONERS**

In, India the Judicial system plays an important part as it sets the laws which are to be compulsorily obeyed by the citizens of the country. Judiciary in every nation has an obligation and a Constitutional role to protect Human Rights of citizens. Since every country has judicial

authority for protection of its national citizens, it has obligation to make rules and regulation of prison for the person who is in conflict with the law. But it doesn't mean that the Constitution of a nation will not provide any rights to the prisoners. The prisoners also have their legal and fundamental rights. The Apex Court of India interpreted the ambit of Article 21 of the Indian Constitution and developed human rights jurisprudence for providing protection and rights to maintain prisoners' human dignity. If any individual or any authority violate the rights of prisoners then they will violate the provisions of Article 14 of the Constitution that provide protection for the right to equality and equal protection of the law.

#### **RIGHT TO LEGAL AID:**

The Concept of Legal Aid provides a legal remedy to protect their human rights during trial or conviction for any offence. In the case, *M.H. Wadanrao Hoskot v. State of Maharashtra*, "the Court held that the right to legal aid is one of the components of fair procedure i.e the Supreme Court reading Articles 21 and 39-A, read with Article 142 and section 304 of Cr.PC together acknowledged that the Government was under duty to provide legal services to the accused persons."

#### **RIGHT OF EXPRESSION:**

In the case of *R. Rajagopal alias R.R. Gopal and Another v. State of Tamil Nadu and Others*, "The petition raises a question regarding the freedom of press vis-a-vis the right to privacy of the citizens of this country. The court held that the petitioners have a right to publish, what they claim to be the life-story/autobiography of Auto Shankar insofar as it appears from the public records, even without his consent or authorization. Similarly, the State or its officials cannot prevent or confine the said publication."

#### **RIGHT TO SPEEDY TRIAL:**

Article 21 of Indian Constitution provides right to speedy trial as a fundamental right to the prisoner. This article guarantees just; fair; and reasonable procedure. The fact that the provision of a speedy trial is a socio-legal right to protect the individual, make it essential for the accused person. It is in the interest of all concerned that the accused is guilty, or innocent is discovered as fast as possible in the situations.

The provision of speedy trial of accused is on the primary motive of the criminal justice system. Once the court took the cognizance of the allegation then the trial has to be

conducted speedily to find out who is guilty or who is innocent and discharge the innocent. It is relevant to mention that if there was a delay in, directly constitute a denial of justice which is said to be "justice delayed is justice denied".

The right to speedy trial is contained under section 309 of Cr.PC.

In the case of *Raj Deo Sharma v. The State of Bihar*, "the question before the court was whether the prosecution against the petitioner on the grounds of delay in the conduct of the trial should be cancelled on the facts and circumstances of the case:

- In cases where the trial is a punishable offence with imprisonment for a period not exceeding seven years, whether or not the accused is in jail, on completion of a period of two years from the date of recording the plea of the accused on charges, whether or not the prosecution has examined all the witnesses, the court shall close the proof of prosecution and within that period the court may proceed to the next step provided by law for the trial of the case.
- In the cases mentioned above, if the accused has been in prison for a period not less than half of the maximum penalty period prescribed for the offence, the court of trial shall immediately release the accused on bail on such terms as it deems appropriate.
- If the offence under trial is punishable by imprisonment for a period exceeding 7 years, whether or not the accused is in prison, the court shall close the evidence of the prosecution at the end of three years from the date of recording the accused's plea on the charge laid, whether or not all witnesses have been examined by the prosecution within that period and the court may proceed to the next step provided by law for the trial of the case."

#### **RIGHT TO MEET FRIENDS / RELATIVES AND CONSULT LAWYERS:**

Prisoners' rights have not only been recognized to protect them from physical distress or torture in person but to save them from mental abuse as well. The right to life and personal freedom protected in Article 21 cannot be limited to the simple existence of animals. It means more than simply physical existence.



In *Dharmbir v. State of U.P.*, “the court ordered the state government to permit family members to visit the prisoners and, under guarded conditions, to visit their families for the prisoners at least once a year.”

In *Jogindar Kumar v. State of U.P.*, “the court held that the human rights horizon is expanding, and, at the same time, the crime rate is also increasing and that the court received complaints about human rights violations due to indiscriminate arrests. The court observed that someone is entitled to be informed.”

Whether a person is arrested and detained in custody at a police station or other premises, he shall have the right to do so, If he requests, to inform a friend or relative who is known to him or who is likely to be interested in his welfare informed, as soon as practicable, except to the extent permitted by this section, that he has been arrested and is being detained.

#### **RIGHT TO REASONABLE WAGES IN PRISON:**

The literal meaning of remuneration is that. “An amount of money which is paid to someone for the work he has done.” Remuneration must not be less than the set minimum wages and has to be paid to the person who has been appointed as labour or service for the state. There is no difference between among a convict serving a punishment behind the prison walls and a freeman in the society.

In the case of *Mahammad Giasuddin v. State of A.P.*, “The court ordered the state to take into account the reasonable rate of payment of the wages. It should not be lower than the minimum salary.”

In the case of *People's Union for Democratic Rights v. Union of India*, “the court explained that: when an individual offers labour or service to another individual and remuneration which is paid to him is less than the minimum wage in comparison of the labour or service offered by him clearly covered under the scope and meaning of the words “forced labour” under Article 23 of Indian Constitution.

Inside the prisons, for prisoner’s reform, they will provide work in the prison and they must be offered which is sound and reasonable. The wages offered should not be below the minimum wages.”

#### **NARCO ANALYSIS/BRAIN MAPPING/POLYGRAPH:**

The concept of Narcoanalysis, Polygraph test and Brain mapping developed as a preferred tool of investigation for

investigating agencies around the world for discovering the truth from the convict.

In *Selvi v. State of Karnataka*, the Supreme Court has declared the method Narcoanalysis, Polygraph test and Brain Mapping is unconstitutional in nature and violates the human rights. This decision is less acceptable to various investigation authorities as it will be creating a hurdle to future investigation and many alleged criminals will find a way to escape from conviction with this concept. But after a lot of debates, Supreme Court mentioned that an accused can only be used to such tests when he gave willful consent to them. The result of tests will not be taken into account and not used as evidence in front of court against him but can only be used for further future investigation.

These methods were used in various highlighted cases previously for further investigations, like Arushi Talwar murder Case; Nithari killings Case; Abdul Telagi Case; Abu Salem Case; Pragya Thakur (Bomb blast Case) etc. that attracts various public interest.

#### **9. INTERNATIONAL INSTRUMENTS FOR PRISONERS**

The rights of the prisoners are available under the provisions of following International Instruments, like:

##### **THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR):**

On 10 December 1948, the UN General Assembly implemented the Universal Declaration of Human Rights (UDHR) with a view to promoting human rights in the world. It was mentioned below,

- Article 1 of the UDHR states that, “in dignity and rights all human beings are born free and equal.”
- Article 2 of the UDHR states that, “everyone shall have the right, without dissimilarity of any kind, to all the rights and freedoms provided for in this Declaration, such as race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or other status.”
- Article 3 of the UDHR states that, “every person has the right to life, freedom and personal security.”
- Under Article 5 of the UDHR states that, “no one shall be subjected to torture or cruel, inhuman or humiliating treatment or punishment.”

##### **THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR):**

The ICCPR offers every person the right to life by birth, whether he is a prisoner or a liberator. Law protects this right, and nobody is forcibly deprived of his or her life. It was provided according to:

- Article 7 of the ICCPR states that, “no one shall be tortured or subjected to cruel, inhuman or humiliating treatment or punishment.”
- Article 10 of the ICCPR, which is the most important article relating to prisoner treatment. It offers that, “all people deprived of their freedom are treated with humanity and with respect for the human person's inherent dignity.”

#### **THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS:**

The UN Standard Minimum Rules on the Treatment of Prisoners contain so many rules concerning prisoner's rights. That's as follows:

- Provisions relating to the separation of categories of prisoners.
- Provisions relating to the accommodation.
- Provisions relating to the clothing and bedding.
- Provisions relating to the food.
- Provisions relating to the exercise and sport.
- Provisions relating to the medical services.
- Provisions relating to the protection of prisoners against double jeopardy.
- Provisions relating to the prohibition of corporal punishment, punishment by placing in the dark cell, and all cruel, inhuman or degrading punishment.
- Provisions relating to the information to and complaints by prisoners.
- Provisions relating to the rights of prisoners to contact with their family and reputable friends.

#### **THE EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT:**

The Convention establishes the European Committee for Torture Prevention and Inhuman or Degrading Treatment or Punishment. The committee may visit all custody places, justified by the convention as “any place within its jurisdiction in which the public authority deprives persons of their freedom.” Once a state government has been informed of the Committee's intention to conduct a visit, it must allow access to the territory with the right to free travel without restriction, full information about the

facility in question, unlimited access to the facility and free movement within it, the right to interview any person held in the facility freely communicates with any person who believes that they can provide relevant information and access to any other information that the Committee considers necessary to carry out its task. All collected information is confidential.

#### **UNITED NATIONS BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS:**

The basic principles for the treatment of prisoners of the United Nations provide that all prisoners should be treated without distinction of any kind, with due respect due respect for their inherent dignity and value as human beings. They should be rendered in accordance with all human rights and fundamental freedoms laid down in internationally recognized instruments with the exception of freedom of movement.

#### **10. SUGGESTIONS AND RECOMMENDATIONS**

The Idea of Human rights is free from all restrictions and everyone has an inherent right to use of Human Rights whether he will be a prisoner or a freeman. A prisoner is a person who had a conflict with the present law with the availability of all kinds of Human rights and restricted legal rights. So, no one arbitral withdraws the rights of prisoners. Our Nation has a rich history and culture of slavery and lack of slave rights and now day's conditions of prisoners are almost similar to slaves. Our Govt. and judiciary need to take some serious steps to protect the rights of prisoners who are under judicial custody or under trial convicts.

To protect their rights our authorities, need to take some following steps that are-

- Our Authorities need to sync the available prison management with the present Indian criminal provisions, punishments and justice system to optimize the efficient and effective use of the present mechanism.
- Our Govt. need to form more committees to audit all the management and use of resources provided to the management and prison management need submit a yearly report to the committee to prepare a proper record.
- Authorities need to put more focus on young offender aged between 18-21 years; because they are the future of our nation and they go under heavy mental change, so prison authorities need to work on their betterment.

- Different-different prisoners need to arrange and settled according to their crimes, charges and punishment. It will help to maintain the prison reform system and further crime rate.
- Most of the prisons have faced the problem of over-crowding which leads to lack of facility and proper reforms of prisoners. So, govt. needs to construct more no. of prisons in different-different cities.
- Authorities need to put more pressure on the rehabilitation of prisoners rather than confined them into four walls and gave them harsh treatment.
- Prisoners faced a lot of time at the disposal of their appeals pending before the higher courts. Generally, this will happen due to high pendency of appeal cases and also due to lack of required strength of judges. Hence our judiciary needs more no. Judges to hear and settled the higher appeals.

## 11. CONCLUSION

It has been observed that a Convict (prisoner) is a person who is depressed of liberty against his or her will. This can be by confinement, capture, or by forcefully restraint, but he does infringe his human rights as well as the rights being in the prison. They also have offered all the rights which an individual of the society has offered but with some reasonable restrictions. Being a prisoner that doesn't mean they are eligible to demand fundamental rights. Even if he is confined in prison, he can enjoy all his basic rights. The prisoners still have all their constitutional rights when they are convicted of a crime and deprived of their freedom in accordance with the procedure laid down by law.

The Apex Court has taken corrective measures and provides the executive and the legislature with essential guidelines. It is clear from the inspection of the above contribution that the Indian judiciary was very sensitive and keen to protect the human rights of the people. However, the motive remains same that the police authorities and the prison authorities need to be trained and accommodated so that they take prisoner's rights seriously.

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