

## PRISONER'S RIGHT: EVOLVING JURISPRUDENCE

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### A-RESEARCH METHODOLOGY

The following research is based upon Prisoners Right and its analysis in present context .The content of the research paper is based upon secondary sources of data. Author has used various websites and book to work for the same.

Main objective of the research paper is-

- 1) To analyse the relationship between human right and prisoner right.
- 2) To trace the role of judiciary in order to ensure the safeguard of people behind the bar.
- 3) To know the judicial trend in regard to prisoners right.
- 4) To do a comparative study.
- 5) To know the evolving phrase of human right.

### B-INTRODUCTION

Imprisonment is one of the most common method of punishment adopted by almost in all countries in order to punish for the offence. The proof for the same can be seen in ancient history <sup>1</sup>.Historically the main objective of punishment was of two folded— deprivation of the prisoner from social life and his segregation from the society as to ensure security in society.

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<sup>1</sup> Prison system which is a method of handling criminals was the result of historic accidents. It was not a carefully thought out plan. The great prison in Rome was built by Pope Innocent X in 1655. There were generalised institutions for the care of criminals. The Seventeenth and Eighteenth centuries saw the rise of "Prisons", "Jails", "Houses correction "etc. See John Lewis ,Gillin, *Qriminology and Penology* (1977)page-372.

In course of time, however, several purposes such as deterrence, incapacitation and reformations<sup>2</sup> came to be recognised. Even it do not possess any deterrence value, then to it give a time for a accused to sit and realise his mistake which he has done in past.<sup>3</sup> Revenge, maybe the most old and premier reason for discipline, came to be clarified in a extremely prominent yet sad explanation: 'tit for tat furthermore, a tooth for a tooth'. For the man in the road it is the rough type of reprisal the general public which takes upon the wrongdoer at the point when the establishment of detainment started the reason for existing was only requital. Detainment was taken as a type of retribution upon the guilty parties for the wrongdoings.

New theories of crime causation and new approaches to punishment emerged in the earlier part of the nineteenth century. The old free will theory<sup>4</sup> and hedonism<sup>5</sup> were submerged in the flow and the focus was shifted from the individual to the society.

It was regularly contended that the individual wrongdoers were not in charge of getting to be lawbreakers and that societal irregularity opens the way of wrongdoing. Sensible augmentation of this hypothesis makes the general public capable to care for the lawbreakers. Definitely it requires a change of disposition a change from mistreating as of now discouraged part of lawbreakers to a clearer understanding and liberal convenience of the freaks into the general public. It was a shift from cold-bloodedness to graciousness, from "requital to kind heartedness. The global human rights developments added driving force to this improvement.

### **C- EVOLVING JURISPRUDENCE**

“Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a ‘member of human family’ irrespective of any consideration.”<sup>6</sup> There are some unalienable rights which are part of human dignity and life

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<sup>2</sup> The Philosophy of Punishment (1969), p.282 J.D.Mc Clean and J.C.Wood, *Criminally Justice and, Treatment for Offenders* (1969),page :83-87.

<sup>3</sup> V.N.Rajan, *Whither\_ Criminal Justice Policy?* (1983) , p.178.

<sup>4</sup> F.Galliher and James L.Mc Cartney, *Criminology* (1977), p.110.

<sup>5</sup> It is often referred to as the hedonistic calculus. Jeremy Bentham was the exponent of this theory. He viewed people possessing a free will. According to him the criminal laws should prescribe punishment just severe enough to offset the pleasure people receive from committing a criminal act. See Galliher and Mc Cartney, page.110.

<sup>6</sup> V.N.Rajan, *Whither\_ Criminal Justice Policy?* (1983) , p.178.

and that should not be taken away in any way. Jurisprudence of prisoners right is one of the evolving aspect in criminology.

” Convicts are not wholly denuded of their fundamental rights. No iron curtain can be drawn between the prisoner and the Constitution. Prisoners are entitled to all Constitutional rights unless their liberty' has been constitutionally curtailed. However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial. Conviction for a crime does not reduce the person into a non-person whose rights are subject to the whim of the prison administration, and, therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards. By the very fact of the incarceration prisoners are not in a position to enjoy the full panoply of fundamental rights because their very rights are subject to restrictions imposed by the nature of the regime to which they have been lawfully committed”<sup>7</sup>

#### **D-INDIAN LEGAL PROVISION**

The Indian Supreme Court has been active in responding to human right violations in Indian jails and has, in the process, recognized a number of rights of prisoners by interpreting Articles 21, 19, 22, 32, 37 and 39 A of the Constitution in a positive and humane way.

Given the Supreme Court's overarching authority, these newly recognized rights are also binding on the State under Article 141 of the Constitution of India which provides that the Law declared by the Supreme Court shall be binding on all courts within the territory of India.

HOWEVER there is no specific legal provision in the constitution of india regarding prisoners right but it is subject to judicial interpretation and various guideline issued by Supreme court. ”there are some of the unalienable rights to all citizen of India which have been enumerated in Part III of the Constitution are available to the prisoners also because a prisoner remains a "person" inside the prison”<sup>8</sup>. 2 The privilege to individual freedom has now been given wide interpretation by the Supreme Court. This privilege is accessible to free individuals as well as

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<sup>7</sup> A.I.R. 1978 S.C. 1675 at p.1727 per Desai J.

<sup>8</sup> Sunil Batra v. Delhi Administration, A.I.R. 1980 S.C.

even to those behind bars. The privilege to fast trial , free legitimate guides, right against torture, right against in human, and degrading treatment go with a man into the jail moreover.<sup>9</sup>

One of the essential arrangements of the Constitution of India which is for the most part connected by the courts is article 147 in which the guideline of balance is typified. The principle that "like ought to be dealt with alike" and the idea of sensible arrangement as contained in article 14 has been an exceptionally valuable aide for the courts to decide the class of prisoners.<sup>10</sup>

These rights are inherent in Articles 21 and 22(1) of the Constitution and require be recognizing and scrupulously protecting. For effective enforcement of these fundamental rights, the court issue the following requirements:

1. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.
2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.
3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

### **ROLE OF JUDICIARY:CASE LAWS**

- 1) In Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others,<sup>11</sup>The Supreme Court ruled that the right to life and liberty includes the right to live with human dignity and therefore a detainee would be entitled to have interviews with family members, friends and lawyers without severe restrictions. Court stressed upon the need of permitting the prisoners to meet their friends and relatives. The court held

<sup>9</sup> Maneka Gandhi vs Union Of India on 25 January, 1978 SCR (2) 621.

<sup>10</sup> Article 14 reads:— "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

<sup>11</sup> Francis Coralie Mullin vs The Administrator, Union ... on 13 January, 1981: 1981 AIR 746, SCR (2) 516

that the prisoner or detainee could not move about freely by going outside the jail and could not socialize with persons outside jail.

- 2) In the case of *Prem Shanker Shukla v. Delhi Administration*,<sup>12</sup> the petitioner was an under-trial prisoner in Tihar jail. He was required to be taken from jail to magistrate court and back periodically in connection with certain cases pending against him. The trial court has directed the concerned officer that while escorting him to the court and back handcuffing should not be done unless it was so warranted. But handcuffing was forced on him by the escorts. He therefore sent a telegram to one of the judges of Supreme Court on the basis of which the present habeas corpus petition has been admitted by the court.
- 3) In the case of *D.K. Basu v. State of West Bengal*,<sup>13</sup> the Court treating the letter addressed to the Chief justice as a writ petition made the following order: In almost every States there are allegations and these allegations are now increasing in frequency of deaths in custody described generally by newspapers as lock-up deaths. At present there does not appear to be any machinery to effectively deal with such allegations. Since this is an all India question concerning all States, it is desirable to issue notices to all the State Governments to find out whether they are desirous to say anything in the matter. Let notices issue to all the State Government. Let notice also issue to the Law Commission of India with a request that suitable suggestions may be made in the matter. Notice be made returnable in two months from today.
- 4) In the case of *Ajab Singh & Anr. v. State of Uttar Pradesh & Ors*<sup>14</sup>, the court said that: We do not appreciate the death of persons in judicial custody. When such deaths occur, it is not only to the public at large that those holding custody are responsible; they are responsible also to the courts under whose orders they hold such custody.

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<sup>12</sup> *Prem Shankar Shukla vs Delhi Administration* on 29 April, 1980 AIR 1535, 1980 SCR (3) 855

<sup>13</sup> *Shri D.K. Basu, Ashok K. Johri vs State Of West Bengal, State Of U.P* on 18 December, 1996

<sup>14</sup> *Ajab Singh & Anr. vs State Of Uttar Pradesh & Ors.* on 9 March, 2000

- 5) *Maneka\_Gandhi v. Union of India*<sup>15</sup> was the turning point in the human rights Jurisprudence particularly in individual freedom. The expression 'individual freedom' in Article 21 is of the most stretched out sufficiency what's more, covers each one of the rights which constitutes individual freedom of man. The individual freedoms have been raised to the status of particular crucial right and given extra security under Article 19.

## **E-COMPARATIVE STUDY**

### **International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights came into existence 23 March 1976. Article 10 of the International Covenant on Civil and Political Rights gives that any individual denied of their freedom should be treated with humankind and dignity. The article forces a necessity of division of detainees in pre-trial confinement from those as of now indicted violations, and in addition a particular commitment to separate blamed adolescent detainees from grown-ups and bring them before trial rapidly. There is likewise a prerequisite that the concentration of detainment facilities ought to be change and recovery, not discipline. These arrangements apply to those in penitentiaries, healing centers (especially psychiatric clinics), detainment offices, amendment offices or whatever other office in which a man is denied of their freedom. The article 7 of the Covenant, which bans torment or other remorseless, heartless or debasing treatment, by ensuring those denied of their freedom with an indistinguishable with the expectation of complimentary people.

### **UN Standard Minimum Rules for the Treatment of Prisoners**

The UN Standard Minimum Rules for the Treatment of Prisoners came into force on 1955. The measures set out by the UN are not lawfully authoritative but rather offer rules in universal and metropolitan law as for any individual held in any type of care. They are by and large viewed

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<sup>15</sup> *Maneka Gandhi vs Union Of India* on 25 January, 1978 AIR 597, 1978 SCR (2) 621



as being great guideline and practice for the administration of custodial offices. The report sets out gauges for those in guardianship which covers enrollment, individual cleanliness, apparel and bedding, sustenance, exercise and game, restorative administrations, train and discipline, instruments of limitation, data to and objections by detainees, contact with the outside world, books, religion, maintenances of detainees' property, warning of death, disease, exchange, expulsion of detainees, institutional staff and examination of offices. It likewise sets out rules for detainees under sentence which additionally incorporates treatment, order and individualisation, benefits, work, instructions and amusements, and social relations and after-care. There are additionally exceptional arrangements for rationally irregular detainees, detainees nabbed or procede trial, common detainees and people apprehend or kept without charge.

**There are different nations which consider voting as human right subsequently they give detainees the opportunity to vote. Nations which offer appropriate to vote to detainees are-Czech Republic , Denmark, Finland. Ireland, Latvia, Lithuania, Macedonia, Montenegro, Serbia, Spain, Sweden, Switzerland and Ukraine..**

**Prisoners right in U.S-** All detainees have the fundamental rights expected to survive and support a sensible lifestyle. Most rights are taken away apparently so the prison framework can look after request, teach, and security. Different rights are given like-be discipline through due procedures, authoritative interests, get to the parole procedure (denied to those imprisoned in the Federal System), rehearse religion openly, parallel insurance and so forth.

**Prisoners right in Uk-** There are those who believe that all people should have access to certain human rights, regardless of who they are and what they have done in the past ,some of the rights are-the right to food and water ,an education ,a solicitor and private legal counsel ,freedom from discrimination and harassment ,good healthcare ,communication with those outside prison etc.

Breaches of prisoners' rights in international law

## **UNITED STATES OF AMERICA**

The American government has been accused of many breaches of prisoners' rights in international law. The most publicized case is the detention facility it maintains in Guantanamo

Bay, Cuba. The American government claimed that the facility was not covered by the Geneva Conventions protecting prisoners of war as the detainees were 'enemy combatants'. Regardless of the status accorded to detainees, international law still prohibits torture. It is now clear that the CIA allowed water boarding which is not only a breach of international law but also the American Army Field Manual which prohibits cruel, humiliating or degrading treatment.

## **AFGHANISTAN**

In Afghanistan, US soldiers are accused of abusing prisoners in a secret prison in Bagram Air Base. The prisoners held there were exposed to extreme temperatures, not given adequate food, bedding, or natural light and religious duties were interfered with. There are also claims of abuse in Shebarghan prison in northern Afghanistan for which America is jointly responsible with the Afghan government. Shebarghan prison is claimed to be overcrowded with inadequate bathing and ablution facilities, as well as lack of food and medical care.

## **IRAQ**

In 2003, accusations started to emerge of prisoner abuse in Abu Ghraib prison. US soldiers at Abu Ghraib prison serving there were accused of beating prisoners, forcing prisoners to strip, forcing prisoners to masturbate, and threatening prisoners with dogs, smearing prisoners with faeces, making prisoners simulate sex and form naked piles. There were also accusations that prisoners were raped, sodomised and beaten to death.

## **F-CONCLUSION**

The State can't, by law or generally denies any individual of the privilege to live with essential human pride. Torment or savage, brutal or corrupting treatment or discipline which trenches upon human respect would be impermissible under the Constitution. In this way the Supreme Court hoisted insusceptibility against torment or corrupting treatment to the status of a key directly under Article 21, however it is not particularly identified as a key right in the Constitution.<sup>16</sup>

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<sup>16</sup> P.N.Bhagwathi, "Human Rights in the Criminal Justice System", 27 JILI (1985) I at p.25.



Punishment of Custodial brutality is unlawful and in addition illegal, however that being said, it is still by and by. Custodial Violence is an infringement of essential human rights and opportunities, as per Universal Declaration of Human Rights with respect to custodial torment and mishandle of force by law requirement powers.

Despite the fact that there are various articles in constitution and numerous areas in the Criminal Procedure Code, 1973, Indian Penal Code, 1860 and Evidence Act, 1872, which protects the enthusiasm of the detainees, the topic of whether there is a legitimate usage, is an imperative viewpoint to be noted. Indeed, even in this present situation, we find numerous instances of tormenting to death in the police headquarters, punishment of custodial viciousness upon the detainees, and so forth.

### **G-SUGGESTION**

The suggestion in regard to Prisoners right in context of India could be-

- 1) Legislation can take active interest in framing the Rights of Prisons.
- 2) There should be enough facilities for the prisoners inside the prison in order to give them dignified and humane condition.
- 3) State may form separate committees for inspection in jails in order to ensure the wellbeing of prisoners.
- 4) There should be inside jail mechanism to hear the disputes and problems of the prisoners
- 5) State may also plan for the establishment of new policies which may help the prisoners to carry their life smoothly after coming out of the jail
- 6) There should be regular interrogation and checking of the behaviour of the authorities in the jail.
- 7) There should be set criteria for the code of conduct of the authorities in the jail and also remedies for the same.
- 8) Prisoners should be acknowledged with their rights and duties and also there should be enough opportunity to represent themselves.