

RESTRAIN THE CULPRIT, NOT HIS RIGHTS: LET THE PRISONER LIVE!

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Human Rights are the rights a person is born with. All beings are born independent, free and equal rights and into dignity.¹ These rights are inherent to all human beings irrespective of one's nationality, place of residence, sex, national or ethnic origin, colour, religion, and language, etc.² These rights are inalienable rights entitled to human beings within the realm of human society.

Human Rights are fundamental in nature and are all interrelated, interdependent and indivisible.³ There are certain universal human rights that have been stated and guaranteed by law in the form of treaties, statutes, customary international law, general principles and sources of international law such as 'The Universal Declaration of Human Rights'.⁴ The main principle of human rights is based on non-discrimination which is further propagated on the principle of equality.⁵

A "prisoner" or "inmate" is a person kept under detention in jail or prison for an act committed which is prohibited by law of the land. A prisoner is deprived of liberty against their will.

The Indian socio-legal is based on non-violence, mutual respect and human dignity of the individual.⁶ All human beings are necessitated to these rights because of being in the human fraternity. A person by committing an offence under the law of land does not change from

¹ Human Right: <http://blog.ipleaders.in/human-rights/>

² What are human rights: <https://www.ohchr.org/EN/Issues/Pages/whatarehumanrights.aspx>

³ *Id.*

⁴ *Id.*

⁵ Article 1 of the Universal Declaration of Human Rights

⁶ Human Rights Violation of Prisoners by Tanija Singh

<http://indianpeoplesforce.org/ipfnewsread/Mg==/Human-Rights-violation-of-Prisoners>

being human. He should be endowed with the demand to be treated with equal dignity and respect that every human deserves.

We live in a society of law and order, whereby it is essential to ensure that all the individuals can live a reasonably dignified life.⁷ A person who is in custody or imprisoned because of crossing the line of law is still entitled to live life with dignity behind the bars. These rights should not be affected by the punishment of the person's wrongdoing.

However, there are certain restrictions that are imposed on prisoner's rights but they deserve the basic rights irrespective of being the human society or behind the bars. All individuals inclusive of inmates have certain basics rights that cannot be taken away from them. Such as⁸:

- The right to food and water.
- Protection from torture, violence and racial harassment.
- Being able to get in touch with an attorney to defend himself/ right to free legal aid.
- Right to speedy justice and fair trial under Article 21.
- Right against Solitary Confinement, Handcuffing & Bar Fetters, and Protection from Torture
- Right to basic medical healthcare

Now that we have discussed in brief about human rights in general and prisoners being human beings having access to rights. The next to be discussed is the international standards on human rights for prisoners, the issues of concern regarding the prisoners in India, judicial activism in the promotion and protection of prisoners and conclusion.

⁷ Article 21 of Indian Constitution

⁸ Ibid at 1.

INTERNATIONAL HUMAN RIGHTS STANDARDS FOR PRISONERS

International human rights are binding on all state and humans inclusive of prisoners.⁹ All human beings are born free and equal in dignity and rights.¹⁰ The same way prisoners are to be treated as human beings without any discrimination. None shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment without any exceptions.¹¹

International human rights standard for prisoner are:¹²

- Right to Physical and Moral Integrity
- Right to an Adequate Standard of Living
- Health Rights of Prisoners
- Making Prisons Safe Places
- Prisoners' Contact with the Outside World
- Complaints and Inspection Procedures
- Special Categories of Prisoners
- Persons under Detention without Sentence
- Non-custodial Measures
- The Administration of Prisons and Prison Staff

ISSUES OF CONCERN REGARDING THE PRISONERS IN INDIA.

There are specific problems that are related to Indian Prisons. Major being related to the running of prisons, the way of treating the inmates as well as the rights available to them. One of the issue is of the differential treatment of female prisoners, juveniles, politically background and the accused.

9 International Covenant on Civil and Political Rights [hereinafter "ICCPR"], article 2, para. 3.

10 Universal Declaration of Human Rights [hereinafter "UDHR"], preamble and article 1; ICCPR, preamble.

11 UDHR, article 5; ICCPR, article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [hereinafter "CAT"], preamble and article 2; Code of Conduct, article 5.

12 <https://www.ohchr.org/Documents/Publications/training11Add3en.pdf>

Female prisoners are to be kept separate from the male prisoners. It is important that they are guarded, trained and supervised by female staff members only. Due to the lack of staff members, there is a shortage of female staff that is required to balance the working of female prison cells. This causes a lot of problems such as sexual harassment, sexual favours, and an insensitive attitude of jail authorities.

Individuals with strong political connections, if found guilty can manipulate the circumstances with power and money or both.¹³ Offenders with political power are given differential treatment from the general prisoners. There is definitely power play which takes place for early release, bail, better treatment and even dropping of charges. The facilities provided to them are way different from those provided to the general offenders in the prison.

In case of *Rama Murthy vs. State of Karnataka*¹⁴, the Supreme Court of India specified with 9 major problems of India Prisons. Those being:

- 80% of the prisoners are undertrials
- Delay in the trial of these prisoners
- Even though bail is granted, prisoners are not released
- Lack of or insufficient provision of medical aid to prisoners
- Callous and insensitive attitude of jail authorities
- Punishment carried out by jail authorities not coherent with the punishment given by the court
- Harsh mental and physical torture
- Lack of proper legal aid
- Corruption and other malpractices.

According to the Prison Statistics India 2015 report by the National Crime Records Bureau (NCRB)¹⁵, India's prisons are overcrowded with an occupancy ratio of 14% more than the capacity. The overcrowded prisons lead to sub-condition living standards without proper food

13 Dr. Ashutosh, Rights of Accused, Universal Law Publication Co. 2009, p118.

14 (1997) 2 SCC 642

15 <http://ncrb.gov.in/statpublications/psi/Prison2015/Full/PSI-2015-%2018-11-2016.pdf>

and work, lack of proper medical facilities and legal aid services and violence and callous attitude of the authorities. More than two-thirds of the inmates are undertrials.¹⁶

Article 21¹⁷ of the Constitution guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatments to any person whether he is a national or foreigner. It also entitles prisoners to a fair and speedy trial as part of their fundamental right to life and liberty.¹⁸ Undertrials are presumed innocent until proven guilty and are often subjected to mental and physical torture during the custody period and exposed to inhuman living conditions and violence within the prisons.¹⁹ They tend to have no/limited legal representation and are not made aware of their rights and representation available to them under the Constitution. Due to lack of finances, support system outside the jail, and the limited ability to communicate with lawyers from within the jail premises, their ability to defend themselves in the court of law is hampered leading to delays in their trial and/or proper execution of their bail or the sentence. This is again a violation of the prisoner's human rights as well as the fundamental rights.

Another issue faced by the prisoners is in relation to their conjugal rights. The conjugal rights are rights of prisoner's for the purpose of procreation of their offspring. These visits are scheduled where the legal spouse is allowed to spend time with one another. The prison management in India has not been very favourable for the prisoners. According to the management, the parole and furlough serve a more useful purpose for the prisoners as they can maintain their family as well as social ties within the society. In most countries, these visits are scheduled within the prison complex whereas in India these visits are not permitted or appreciated for the reasons of morality and ethical considerations keeping in view the Indian customs and traditions.

Another issue faced by the prisoners is in relation to the severe crunch of prison guards and supervisory staff. The prisons have been over-crowded and suffer from shortage of staff. At present, there is a shortage of approximately 35% in prison officials as well as the supervisory

16 Jails at 14 per cent over capacity, two in three prisoners undertrials
<https://indianexpress.com/article/explained/overcrowding-in-jails-prisos-reforms-tihar-jails-police-ncrb-5130869/>

17 Constitution of India: Article 21; <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>

18 *Id* at 16.

19 *Id* at 16.

positions. The nation's capital, Delhi have the most crowded prisons and have almost 50% shortage in staff which has led to a great deal of disadvantages to the prisoners depriving them of their basic human rights at the hands of the state machinery.

JUDICIAL ACTIVISM IN ADVANCING HUMAN RIGHTS OF PRISONERS

All the citizens by the Constitution of India are provided with fundamental rights. Supreme Court of India has 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.

Justice V.R. Krishna Iyer in the case of *State of M.P. v Shyamsundar Trivedi*²⁰ said that "Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess." A person committing a crime does not cease to be a human being and cannot be denied the basic human rights as guaranteed by the constitution of India.

Disturbing conditions of the prison and violation of the basic human rights such as custodial deaths, physical violence/torture, police excess, degrading treatment, custodial rape, poor quality of food, lack of water supply, poor health system support, not producing the prisoners to the court, unjustified prolonged incarceration, forced labour and other problems observed by the supreme court have led to judicial activism.²¹ Overcrowded prisons, prolonged detention of under trial prisoners, unsatisfactory living condition and allegations of indifferent and even inhuman behaviour by prison staff has repeatedly attracted the attention of critics over the years.²² There have been no worthwhile reforms affecting the basic issues of relevance to prison administration in India.²³ However, there are reformative steps which have been taken into consideration for the promotion and protection of the human rights.

The judiciary has adopted the wider interpretation of Fundamental Rights and Directive Principles of State Policy guaranteed by the Constitution in relevance to the advancing of Human Rights. It has contributed to the Human right jurisprudence by adopting wider interpretation to Article 21 of the Constitution to bring within its scope the human right

²⁰ *State of M.P. v Shyamsundar Trivedi* (1994) 4 SCC 395

²¹ NHRC, 1993

²² Justice A N Mulla Committee, 1980-83

²³ Justice A N Mulla Committee, 1980-83

jurisprudence and by bringing Public Interest Litigation. The Supreme Court of India has in the case *Ajay Hasia v. Khalid Mujibe*²⁴ declared that it has a special responsibility, to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence.

The Honourable Supreme Court of India in *Sunil Batra vs. Delhi Administration*²⁵ dealt with the rights of prisoners. The Court gave the answer to the question whether prisoners are persons and whether prisoners are entitled to fundamental rights in custody. It has held that prisoners are humans and have rights as prisoners according to the International Covenant on Prisoners' Rights to which India is a signatory. Although there might be a shrinkage in the fundamental rights, prisoners are to be treated as humans. The court also rejected the hands-off doctrine. To put handcuffs on prisoners is taken to hoop harshly and to punish humiliatingly. Article 19 of the Constitution provides for the minimum freedom of movement that cannot be cut down by the application of handcuffs.

In the case of *T.V. Vatheeswaran v. State of Tamil Nadu*²⁶, death sentence was awarded to the T.V Vatheeswaran which was later appealed to quash the death sentence to life imprisonment on the ground that taking away life of T.V Vatheeswaran after keeping him in jail for ten years, eight of which in illegal solitary confinement, would be violative of Article 21, 14 and 19. It was held that the Articles 14, 19 and 21 are available to the prisoners as well as freemen. Prison walls do not keep out fundamental rights.²⁷ It was stated that no article in

the constitution is a complete code in itself and several of the Fundamental Rights guaranteed by Chapter III of the Constitution overlap with each other. Article 21²⁸ says: "No person shall be deprived of his life or personal liberty except according to procedure established by law." In regard to Art. 21, it is held that the procedure contemplated by the article had to be fair, just and reasonable, and not some semblance of procedure, fanciful, oppressive or arbitrary. A law satisfying the requirements of Art. 21 would still have to meet the challenge of Art. 14 and Art.19 of the Constitution. Article 14²⁹ gives the right to equality and equal protection which

24 *Ajay Hasia v. Khalid Mujibe* A.1.R 1981 S.C. 487 at 493

25 *Sunil Batra vs. Delhi Administration*: <https://indiankanoon.org/doc/778810/>

26 AIR 1983 SC 361: (1983) 2 SCC 68.

27 Rights of prisoners under Indian Law: <http://legaldesire.com/rights-prisoners-indian-law/>

28 Article 25 of The Constitution of India. <https://indiankanoon.org/doc/1199182/>

29 Article 14 of The Constitution of India. <https://indiankanoon.org/doc/367586/>

is also applicable to prisoners. Any violation of human rights committed on prisoners should warrant the attention of the legislature and judiciary. Thus Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article is a very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation. Under Article 14 and 21³⁰, the prisoners are provided the right to friends, relatives and lawyers and right to free legal aid. Further, the death sentence was substituted by life imprisonment.

The Rudal Shah³¹ case is an instance of a breakthrough in Human Rights Jurisprudence. Rudal Shah was detained illegally in prison for more than fourteen years. He filed Habeas Corpus before the court for his immediate release and, inter alia, prayed for his rehabilitation cost, medical charges and compensation for illegal detention. After his release, the question before the court was "whether in the exercise of jurisdiction under Article 32, such an order in the nature of compensation consequential upon the deprivation of the fundamental rights?" However, the Constitution of India does not expressly state anything in regard for grant of compensation for violation of a fundamental right to life and personal liberty. The judiciary has evolved to add the right to compensation in cases of illegal deprivation of personal liberty. The Court granted monetary compensation of Rs.35,000 against the Bihar Government for keeping the person in illegal detention for 14 years even after his acquittal.

This humanitarian attitude of the judges has helped the poor, illiterate and needy victims who were victimized by the acts of the authorities.

In the case of D.K. Basu v. State of West Bengal³², the court suo-moto brought a case based on a letter to the chief justice. The court coined that Custodial Violence, including Torture and Death in Lock-Ups, strikes a blow at the Rule of Law. Custodial torture is a violation of human dignity and degradation which destroys the personal being of an individual. It is an assault on human dignity and whenever human dignity is wounded, civilization takes a step backward.

³⁰ The constitution of India

³¹ Rudal Shah V. State of Bihar, 1983

³² D.K Basu vs. State of West Bengal: <https://indiankanoon.org/doc/501198/>

Article 22³³ guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. The Court observed that despite the presence of several Constitutional and Statutory provisions aimed at safeguarding the personal liberty and life of a citizen, there had been several instances of torture and deaths in police custody which was a disturbing factor. The Court issued a list of 11 guidelines in addition to the Constitutional and Statutory Safeguards which were to be followed in all cases of arrest and detention. The guidelines are as follows³⁴: –

- (i) The Police Personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The Particulars of all such personnel who handle interrogation of the arrestee must be recorded in a register.
- (ii) That the Police Officer carrying out the arrest shall prepare a memo of the arrest at the time of arrest and such memo shall be attested by at least one witness and countersigned by the arrestee and shall contain the time and date of arrest.
- (iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of the arrest is himself such a friend or a relative of the arrestee.
- (iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within period of 8 to 12 hours after the arrest.

³³ The Constitution of India; <https://indiankanoon.org/doc/581566/>

³⁴ Ibid at 26.

- (v) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (vi) An entry must be made in the Case Diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars if the police official in whose custody the arrestee is.
- (vii) If the arrestee requests he should be examined at the time of his arrest for any injuries present on his/her body and must be recorded at that time. The "Inspection Memo" must be signed both by the parties.
- (viii) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors.
- (ix) Copies of all the documents including the memo of arrest should be sent to the Magistrate for his record.
- (x) The Arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- (xi) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.

The Andhra Pradesh High Court in *G. Bhargavi, Hyderabad v. Secy., Home Dept., Hyderabad and Others*³⁵ dealt with an identical issue wherein a direction was sought to take immediate steps and allow conjugal visits to spouses of prisoners in jails across the State of Andhra Pradesh. The court rejected the claim observing that if conjugal visits are to be allowed keeping in view good behaviour of the prisoners, chances of the environment in the jail getting disturbed

³⁵ Ms. G. Bhargavi, 2012 (5) A.L.D. 432.

cannot be ruled out as it will have an adverse impact on the other inmates of the jail who have not been selected and extended such benefit.³⁶

It was also observed that “It is not that there is no provision in the Rules to release the prisoners to enable them to lead a family life with their spouses when they are granted furlough/leave of course for a limited period.”

In 2015, the Punjab and Haryana High Court in case of Jasvir and Sonia Singh has allowed both the husband wife i.e. the jail inmates to have sex for the purpose of procreation. This judgment is historic in itself. The court has held that the prisoners have right to conjugal visits or artificial insemination for progeny as a fundamental right under the ambit of Article 21 of the Constitution of India.³⁷

The Madras High Court in January 2018 has also recognised that “Conjugal visits of the spouse of the prisoners is also the right of the prisoner³⁸,” further allowed a 40-year-old life detained at Palayamkottai Central prison to proceed on a leave for two weeks for assisting his wife in the infertility treatment.

The apex court in May 2018 has also shown concern to the major problem of overcrowding in the prisons and has directed the chief justice of high courts to bring a Suo-moto writ petition to look over the same problem. The High court has further asked the HC to deal with the matter relating to the lack of prison staff, unnatural deaths in prisons and prison reforms. These problems are considered to be human right violation and to be looked into by each high court independently with assistance of State legal service Authority.³⁹

³⁶ Human Rights of Prisoner by Anuj Kumar: <http://legaldesire.com/human-rights-of-prisoners/>

³⁷High Court allows jail inmates to have sex with their partners by Ajay Sura:
http://timesofindia.indiatimes.com/articleshow/45785525.cms?utm_source=contentofinterest&utm_medium=txt&utm_campaign=cppst

³⁸ Prisoner Has Right To Conjugal Visits, Says Madras HC; Allows Leave To Lifer For Fertility Treatment by: Akanksha Jain:

<https://www.livelaw.in/prisoner-right-conjugal-visits-says-madras-hc-allows-leave-lifer-fertility-treatment-read-order>

³⁹ Supreme Court concerned about overcrowding in prisons, asks HCs to look into issue by PTI:
<https://indianexpress.com/article/india/supreme-court-concerned-about-overcrowding-in-prisons-asks-hcs-to-look-into-issue-5174903/>

Conclusion

We have established that prisoners are entitled to fundamental and human rights while they are behind the prisons. Constitution of India does not expressly provide for the prisoners' rights but Articles 14, 19 and 21 are to be interpreted in the broadest ambit which implicitly guarantees the prisoners' rights and other statutory protection such Prisons Act, 1894 containing the provisions for the welfare and protection of prisoners.

To have a fair and humane prison system and management of prisoners, the national legislation, policies, and practices must be made in the light of the international standards developed to protect the human rights of prisoners. Prison torture or violation of human rights of prisoners in all forms is banned by the 1948 Universal Declaration of Human Rights (UDHR), the 1949 Geneva Conventions, the American Convention on Human Rights, the International Covenant on Civil and Political Rights, and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

According to the relevant international standards and norms, prison reforms are necessary to ensure that principle of non-discrimination, equality is respected and the human rights of prisoners are protected and their prospects for social reintegration increased.

Prison authorities have a responsibility to ensure that the supervision and treatment of prisoners are in line with the rule of law, with respect to individuals' human rights, and that the period of imprisonment is used to prepare individuals for life outside the prison walls. The intervention of court with prison administration when constitutional rights or statutory prescriptions are necessary to protect the prisoners from any injury behind the bars. The courts have to play as a mediator to protect the prisoners for their rights in prison.