

Human Rights and Prisoner's Rights

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Abstract

The subject chosen deals with two important and related concepts "Prisoner's rights" and "Human Rights." This research seeks to explore more into this relationship. Do prisoners have human rights? What Rights Should Be Taken Away? Why we have to support prisoner's rights? Should Constitutional rights apply for prisoners? Many people, including high ranking political leaders, sometimes argue that prisoners don't have or should not be allowed to enjoy their human rights. This research paper aims at relevant topic and concept of "Prisoner's Rights and Human Rights". What rights and laws curtailed to prisoners? Present scenario of prisoner's life and the differentiating factors between the real life prisoners to rights which are actually conferred to prisoner's according to law. "The Prison Act", which is enacted on 22nd march 1894 and enforced on 1st July 1984. Thus, the basic idea behind this act is that the prisoners are sent to jail/prison because they did something which is immoral, unacceptable, or wrong to the society. There are rights available to the prisoners provided by the Constitution of India. Being a prisoners doesn't deprived their basic constitutional rights including the fundamental rights. They are also entitled for the right of golden triangle (Article 14, 19 & 21) under Constitution of India, provided with certain exceptions. This research explores information about the present scenario of prisoners like overcrowding, violence, food crises, sanitation issues and so on. Prisons and their administration in India covered under State list (4th item), 7th schedule of Constitution of India. Punishment and human resource do not go hand in hand. They are two faces of the same coin. Punitive actions is been justified on various grounds against the human resources cry. And further all we discuss in the research paper.

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Introduction

Human rights are the rights a person has simply because he/ she is a human being and are held by all the personal equally, universally and forever. These are the basic rights and freedoms available from birth to the death of the human and are based on shared values like dignity, fairness, equality, respect and independence. It focus primarily on the relationship between a nation`s government and its citizens. The government is required to protect the rights of the citizens. Human rights were set out for the first time on 1948, by the United Nations in the Universal Declaration of Human Rights. As per the Constitution of India, Article 21 clearly says that human rights are not confined to free people but also to those people behind the bars.

There are certain rights of prisoners which are implicitly provided under Article 21 of the Constitution of India:

1. Right of inmates of protective homes,
2. Right to free legal aid,
3. Right to speedy and fair trial,
4. Right against cruel and unusual punishment,
5. Right against custodial violence and death in police lock-ups or encounters,
6. Right to live with human dignity.

Apart from these rights of prisoners, Constitution of India also provides following rights to the prisoners:-

1. Right to meet friends and consult lawyer.
2. Rights against solitary confinement, handcuffing & bar fetters and protection from torture.
3. Right to reasonable wages in prison.

Following Sections of the Prisons Act, 1894 are related with the reformation of prisoners:-

1. Accommodation and sanitary conditions for prisoners,
2. Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison,
3. Provisions relating to the examination of prisoners by qualified Medical Officer,
4. Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and under-trial prisoners,
5. Provisions relating to treatment of under-trials, civil prisoners, parole and temporary release of prisoners.

In the year of 2016 the Parliament has been passed the Prisons (Amendment) Bill, 2016 to amend the Prisons Act, 1894 with a view to provide protection and welfare of the prisoners.

Research Methodology

The methodology adopted is largely analytical and descriptive. Reliance has been taken largely on secondary issues like issues arise from the proper implementation of rights of the prisoners who are behind the bars. Various landmark case laws and articles have been rich with valuable pointers and gave directions to the research.

Objective

The objective of the study to analyze the rights available to the prisoners in India for proper implementation and especially focusing in the concept of prisoner`s rights as a part of Human Rights. This paper explores the Constitution of India about the rights of prisoners and various landmark cases have been analyzed to make suggestions which can bring reform in the conditions of prisoners in jail.

Description of the Research Issues

This paper covers the rights of the prisoners in India as a human right which is somehow not being properly maintained and followed either by violence, overcrowding, food crises or by the torture, physical or mental harassment by the police officers which violates the basic rights and in some cases results the death of the prisoner. Gender based violence is also highlighted in this paper in the form of molestation or by rape of female prisoners as far as their rights are concerned.

International Covenant on Civil and Political Rights, 1966

There are several International Conventions, rules and guidelines to ensure that prisoners be given human treatment. Under Part III, Article 10(1) states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Article 10 supplements article 7 on torture. Person`s detention in prison is a part of administration of justice. The subject human right and administration of justice therefore, deals with the prisoners in jail/ prison.

In *Deena v. Union of India*,³ the Supreme Court of India and the Universal declaration of Human Rights, 1948 declared that “no one shall be subject to torture or cruel, inhuman or degrading treatments or punishment”.

Basic principle for the Treatment of Prisoners, 1960

³AIR 1983 SC 1155 (1186).

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By the 7th U.N. Congress on the Prevention of Crime and the Treatment of Offenders affirms the Basic Principles for the Treatment of Prisoners:-

1. All prisoners in the jail shall be treated with respect due to their inherent dignity and value as human being.
2. All prisoners shall have the right to participate in educational and cultural activities. For the full development of the human personality.
3. No discrimination shall be done on the ground of colour, language, national or social region, religion, race, sex, political or other opinion, property birth or other status.
4. Shall have the right to have the medical facility over the country without discrimination on the ground of their legal situation.
5. Respect the religious belief and culture precepts of the prisoner from he/she belong.

Position of Law and Constitution in India

Prisoners are also entitled for the fundamental rights given under Part III of the Constitution of India. According to the Prison Act, 1894, the types of prisoners are:

1. Civil prisoner
2. Convict
3. Under – trial

Civil Prisoner

Under preventive detention act, a civil prisoner may be a ‘detenue’. In *State of Andhra Pradesh v. ChallaRamkrishna Reddy*,⁴ it was stated that a prisoner is deprived of his personal liberty in accordance with the procedure establish by law and that must be reasonable fair and just but the prisoner still left with his following constitutional rights.

Convict

Article 21 of the Constitution of India is available to them and because of this only they are protected in the prisons also. By the mere reason of conviction of an individual his/her all fundamental rights cannot be deprived. That convict may be deprived of fundamental freedoms like Article 19(1)(b) that says to assemble peaceably and without arms, 19(d) that says to move freely throughout the territory of India, 19(e) that says to reside and settle in any part of the territory of India.

But the other rights are guaranteed to them like to dispose of the property for the existence of which detention can be no impediment likewisethe article 21 of Constitution of India.

Under- trial Prisoners

⁴(2000) 5 SCC 712.

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It was held in *BibhutiNathJha v. State of Bihar*⁵ that the appellant accused sent to the recommended hospital not to the choice of the person and recommendation must be given by the Medical Board only. As in this case Medical Board recommended that appellant accused be given treatment in reputed mental hospital in Ranchi rather than in Bihar, SC accepted that prayer by the high court and directed that the prisoner be referred to said mental hospital in Ranchi not in Bihar.

In *Kalyan Chandra Sarkar v. Rajesh Ranjan*⁶ it was happened that, a member of parliament requested for the medical treatment outside the jail but the Supreme Court referred the matter to the concerned competent doctor and directed that treatment be done by the recommendation of such doctor only.

In *D.B.M. Patnaik v. State of Andhra Pradesh*,⁷ the court decided to take sufficient steps to prevent escape of the prisoners from the prison. Hence, in the matter said:

“A convict has no right more than anyone else, to dictate where guard to be posted to prevent the escape of the prisoners. The installation of live- wire mechanism does not offend their right. It is preventive measure intended to act as a deterrent and cause death only if a prisoner cause death by scaling the wall while attempting to escape from lawful custody. The installation of live- wire does not by itself cause the death of the prisoners”.

Guidelines Laid Down By the Supreme Court

Guidelines governing arrest of the person during investigation

To strike a balance between the protection of human rights of citizen from cruel & unjust treatment and the injustice at the hand of enforcing agencies and the need of police, in *Joginder Kumar v. State of Uttar Pradesh*,⁸ Supreme Court laid down the guidelines governing arrest of the person during investigation, and these are as follows:

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 he 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.

⁵(2005) 12 SCC 286.

⁶(2005) 3 SCC 284.

⁷ AIR 1974 2092.

⁸(1994) 4 SCC 260.

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It is directed by the court therefore must be enforced strictly because these protection flow from article 21 of the Constitution of India.

Guidelines in all cases of Arrest and Detention

Supreme Court laid down the following guidelines in *D.K. Basu v. State of West Bengal*,⁹ which have to be followed by the both center and state security and investigating agencies in all the cases of Arrest and Detention, until the any decision of the court;

1. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a memo shall be attested by at least one witness. Who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
2. 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 Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
3. The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
4. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

Directions for detainee to meet family members and lawyers in jail

In 1981, SC held that the meeting to family members and lawyers by the detainee are his right under the part of his 'personal liberty' as it is a part of Article 21 of the Constitution of India. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,¹⁰ Court gave the certain directions as follows:

1. There is a provision which restricts the interview only to once in a month is arbitrary and unreasonable particularly when a detainee stands on a higher footing than an under- trial or convict prisoner.

⁹AIR 1997 SC 610.

¹⁰AIR 1981 SC 746.

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2. With the prior permission of the District Magistrate a detenu can have a meet with their relatives and friends twice in a week. But only with the prior permission the D.M. (District Magistrate).
3. A detenu also have a right to consult with the legal advisor office choice for any purpose including securing release from preventive detention which is the part of article 21 “personal liberty” and the “right to live with human dignity”.

Human which must be observed during detention of the Detenu

It was held in *Charles SobrajvsSupdt. Central Jail*¹¹ that human rights of the detenu must observed during detention in the prison. And the Prisoners in the jail have the right to reading and writing books.¹² These where the directions issued by the Supreme Court

1. Putting of the under trial Prisoners behind the guidance is prohibited.¹³
2. That by the beating of the supervisor, it was caused that the Prisoner will die, such supervision should not be appointed.¹⁴
3. All the obligations are necessary implied as article 21 of the constitution of India the jail manual must be updated.¹⁵

Children with Mother Prisoners

As part III and IV of the Constitution provides that there are specific rights which must be provided to the mother- prisoner. A search conducted by the ‘National Institute of Criminology and Forensic Science’ on “Children of women prisoners in Indian jail” brought some silent features of the study to the notice all government in February 2002, are:

1. It was observed that the most of the children were suffering from diverse deprivation relating to food accommodation Healthcare education.
2. Women inmates with their children but not given any special or extra mile in many jails only in some cases occasionally some extra food will be given only as an form of glass of milk. And in some other jail separate food is provided only to the grown up children over the age of 5 but the quality of the food was similar provided to the atoms.
3. Any separate specialized medical facility for the children of women prisoners were also not available in jails.

¹¹(1979) 1 SCR 512.

¹²Sunil Batra v. Delhi Administration, AIR 1978 SC 1675.

¹³Prem Shankar Shukla v. Delhi Administration, (1980) 3 SCC 526.

¹⁴Watch Dogs International v. Union of India, (1998) 8 SCC 338.

¹⁵MahadevHayawadanraoHoskot v. State of Maharashtra, (1978) 3 SCC 544 .

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4. There are not any single prison's office deployed for the looking of the children or their mother. The staff has to perform both the task of their job as well as taking care of the children of women prisoner.

Some of the important suggestions were taken out from these points which are:

1. The jail for a pregnant woman must have the minimum and basic facilities for the delivery of the child and for providing prenatal and post natal care of the both mother and newborn child.
2. Children should not be kept with the Prisoners such as women convicts under trial offenders relating to all type of crime including violent crimes.
3. Utensils of suitable size separate material should be provided to every mother prisoner to feed their child and all the children should be provided with clothes in multiple sets.
4. If the women prisoner is falling ill staff has to make the arrangements for the further care of the child of her.

In *R.D. Upadhyay vs state of Andhra Pradesh*¹⁶ it found that in 2002 there were 6496 under trial women with their 1053 children and 1873 convicted women with 206 children. On 23rd January, 2002, it was noted that three matters were required to be dealt with by the Court:

1. Creation of sufficient number of subordinate courts as well as providing adequate infrastructure and filling up of the existing vacancies.
2. Necessary direction with regard to dealing with the children of women under-trial prisoners/women convicts inside jail.
3. Arrangement required to be made for mentally unsound people who are either under-trial prisoners or have been convicted.

Observation Home

Supreme Court issued certain directions in the *R.D. Upadhyay v. State of A.P.*¹⁷ case to ensure about the minimum standard are met by all the UTs and states for the welfare of the children living in prison with their mother prisoner are as follows:

1. A child shall not be treated as an under-trial/convict.
2. Rights of a pregnant women
3. Birth of child in prison
4. Female prisoners and their children
5. Food, clothing, medical care and shelter

¹⁶AIR 2006 SC 1946.

¹⁷WP (C) No. 132/02.

6. Education and recreation for children of female prisoners
7. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.
8. The children should be separated from prisoners for the development of their personality..
9. Dietary Guidelines for Indians was recommended:-
 - Cereals and Millets: 45, 60-120 and 150-210 grams
 - Pulses: 15, 30 and 45 grams
 - Milk: 500 ml (unless breast fed, in which case 200 ml)
 - Roots and Tubers: 50 and 100 grams
 - Green Leafy Vegetables: 25, 50 and 50 grams
 - Other Vegetables: 25, 50 and 50 grams
 - Fruits :100 grams
 - Sugar: 25, 25 and 30 grams
 - Fats/Oils (Visible): 10, 20 and 25 grams

One portion of pulse may be exchanged with one portion (50 grams) of egg/meat/chicken/fish. It is essential that the above food groups to be provided in the portions mentioned in order to ensure that both macro-nutrients and micro-nutrients are available to the child in adequate quantities.

Right against Delayed Execution

Supreme Court in *TV Vatheeswaran v. State of Tamil Nadu*,¹⁸ two judge bench held that if the court delay in execution of the death sentence exceeding two year than this would be the sufficient ground to invoke article 21 of the constitution of India and the life imprisonment will be commuted from the death penalty.

Also in a case resolved by S.C. held that if the conduct and behavior of the accused in the jail and he is delayed in execution in death sentence by 2 or more years and evident by the concerned jail authority that he is genuinely repentance. It was held that the death sentence commuted to the life imprisonment¹⁹. And the constitutional bench of the Supreme Court was observed that for giving the death sentence a certain explanation must has to be giving²⁰.

National Human Rights Commission Report

2015- 16

¹⁸AIR 1983 SC 361 (2).

¹⁹Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra, AIR 1985 SC 231.

²⁰Kehar Singh v. Union of India, AIR 1989 SC 653.

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According to the National Human Right Commission Report that the reason for overcrowding was observed that the main reason for overcrowding is the increasing number of under-trial prisoners day-by-day and the period for which they languish in jails is also a very long one. In few cases, it was found that the under-trials were in judicial custody for years, which is far beyond the punishment prescribed for any offence under the penal law.

| States | No. of under-trial prisoner |
|----------------|-----------------------------|
| Uttar Pradesh | 62,669 |
| Bihar | 23,424 |
| Maharashtra | 21,667 |
| Madhya Pradesh | 21,300 |
| West Bengal | 15,342 |
| Rajasthan | 14,225 |
| Jharkhand | 13,588 |
| Punjab | 13,046 |
| Delhi | 10,879 |

In the year 2015-16 the Investigation Division has dealt with a total of 3,848 cases of custodial deaths, including 3,606 cases of death in judicial custody and 242 cases of death in police custody. The Division has also dealt with 156 cases of deaths in encounter with security forces/police forces. The forensic experts empanelled with the NHRC have given expert opinion in 204 cases of custodial deaths and encounter deaths. The Investigation Division has collected reports and analyzed 1,827 fact finding cases relating to complaints regarding allegation of threat to life in fake encounter, false implications, illegal detention, custodial torture and other complaints of violation of human rights.

| Type of case | No. of cases filed |
|------------------|--------------------|
| Judicial custody | 3606 |
| Police custody | 242 |
| Total | 3848 |

Constitution of Expert Committee in NHRC for Amendment to Prison Act, in pursuance to the recommendations made in the National Seminar on Prison Reforms organized by the NHRC, the Commission constituted a Committee of Experts on 18 March 2015 under the chairmanship Shri Sanjay Kumar, Principal Secretary, Home (Jails), Government of Punjab

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to suggest amendments to the Act, in order to align it with human rights norms, judgments of the Supreme Court and International Conventions binding on India.

2014- 15

The NHRC organized a two-day National Seminar on Prison Reforms. The aim of the seminar was to assess the status of the implementation and discuss future course of action so as to improve the condition of prisoners and prison administration from the perspective of human rights.

| Types of person in jail | No. of women | No. of children |
|-------------------------|--------------|-----------------|
| Under- trial | 390 | 457 |
| Convict | 1172 | 1320 |
| Total | 1562 | 1777 |

Possible Outcomes and the Solution

Prisoners are only deprived from rights to liberty but other human rights are available to them which mean they also have a right to live with dignity. Prisoner authority are under an obligation for the supervision of prisoners according to law with respect to the individual human rights. There are certain prison welfare schemes under which they can conduct themselves to have better life after their release. For example they can make clothes, prepare eatable goods, allocate created work etc.

Every prisoner is entitled to have a good quality of medical care that is available in the community which is extremely inadequate due to lack of resources, non-maintained staff or lack of financial funding. Improved prison management and prison condition are fundamental to developing a sustainable health strategy. The health of the prisoner is an integral part of public health and such improvement would help for the success of public health policies. The staff members of the prison should meet prisoners regularly so that they can share their problems. Also educational, rehabilitation and mental health counseling can be provided to the prisoners. Therefore certain steps should be taken to secure the infringement of their basic human rights so that they can also live with dignity.