

The conflict of Fundamental Rights; International and State Responsibility towards a Human

Thrapthi Perumal¹, Asma Sultana² and IndrajithSelvaraj³

Introduction

It has been agreed that there are some practices that are so abhorrent that people cannot be subjected to them no matter what that person has done. For example, the world forum has accepted since the 15th century that no one should be tortured, in any circumstance. Equally, a more holistic view of crime and prisoners has developed over time, meaning prisoners' crimes are understood in a wider, societal context.

Fast-forward to the 1950s. The European Convention on Human Rights set out a new human rights framework for a modern, democratic society. So let's take a look at how this international treaty, which is still in force today, both, protects and restricts prisoners' human rights.

The most basic principle of human rights is that they apply to everybody. This is because they apply to anyone that is 'human'. This means human rights are afforded equally to prisoners.

However, the European Convention on Human Rights (ECHR) recognizes that there are situations where some rights can be restricted if they are outweighed by the interests of society. For example, where it is in the interests of national security to invade someone's privacy, or to limit someone's free speech rights to prevent another person getting hurt. Equally, the ECHR recognizes that committing a crime can legitimately result in a person being deprived of their liberty.

As mentioned above, the right to liberty is not the only right in the ECHR that can be forfeited if a person has been fairly convicted of a crime. Other rights can be restricted if this is necessary for public safety or the prevention of crime (among certain other reasons – check out the ECHR itself to have a look), and if the restriction is a proportionate means of achieving that aim.

Other rights that can be restricted include:

Freedom from forced labor

¹Student, 4th year B.C.A L.L.B (Hons) School of Excellence in Law, Chennai; Tamil Nadu India.

²Student, 4th year B.Com L.L.B (Hons) School of Excellence in Law, Chennai; Tamil Nadu India.

³Student, 4th year B.Com L.L.B (Hons) School of Excellence in Law, Chennai; Tamil Nadu India.

Prisoners are often expected to work as part of their punishment (but can't be made to if unfit, or their religion forbids this on certain days).

Privacy

Prisoners can be stopped and searched at any time and prisoners' phone calls and correspondence may be monitored.

Property

Prison staff can put restrictions on what you can keep in your possession.

Education

Prisoners under 16 should have 15 hours education per week, but this can be restricted for safety or security reasons.

The European Court of Human Rights has now considered this question six times and each time has concluded that the blanket ban on *all* prisoners taking part in elections violates the right to free elections and is not defensible on grounds of the prevention of crime. Although the judgment indicates that it would be lawful to allow only a small category of prisoners to vote.

Prisoners are also entitled to rights to some extent as a normal human being when they are behind the prison. These rights are provided under the Constitution of India, the Prisons Act, 1894 etc. Prisoners are persons and have some rights and do not lose their basic constitutional rights. In the case of *State of A.P. v. Challa Ramkrishna Reddy*,⁴ it was held that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. The Supreme Court has emphasized that a prisoner, whether a convict, under-trial or detenu, does not cease to be a human being and, while lodged in jail, he enjoys all his fundamental rights guaranteed by the Constitution of India including the right to life guaranteed by the Constitution. Even a person is convicted and deprived of his liberty in accordance with the procedure established by law; a prisoner still retains the residue of constitutional rights.⁵

Prisoner's Rights under the Constitution of India

Constitution of India does not expressly provide the provisions related to the prisoners' rights but in the case of *T.V. Vatheeswaran v. State of Tamil Nadu*,⁶ 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.

⁴(2000) 5 SCC 712: AIR 2000 SC 2083.

⁵M. P. JAIN, INDIAN CONSTITUTIONAL LAW 1295 (5th Ed. 2003).

⁶AIR 1983 SC 361 : (1983) 2 SCC 68.

Human Rights vis-a-vis Justice System in Present Era : A Publication of Jus Dicere

Article 14 of the Constitution of India says that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. Thus Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation.

Article 19 of the Constitution of India guarantees six freedoms to the all citizens of India. Among these freedoms certain freedoms cannot enjoyed by the prisoners because of the very nature of these freedoms.

Article 21 of the Constitution of India says that No person shall be deprived of his life or personal liberty except according to procedure established by law. This Article stipulates two concepts i.e., right to life and principle of liberty. By Article 21 of the Indian Constitution it is clear that it is available not only for free people but also to those people behind the prison. Following are the rights of prisoners which are implicitly provided under the Article 21 of the Constitution of India:-

1. Right of inmates of protective homes,⁷
2. Right to free legal aid,⁸
3. Right to speedy trial,⁹
4. Right against cruel and unusual punishment,¹⁰
5. Right to fair trial,¹¹
6. Right against custodial violence and death in police lock-ups or encounters,¹²
7. Right to live with human dignity,¹³

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

1. Right to meet friends and consult lawyer,¹⁴
2. Rights against solitary confinement, handcuffing & bar fetters and protection from torture,
3. Right to reasonable wages in prison.

⁷UpendraBaxi v. State of U.P., (1983) 2 SCC 308.

⁸M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544.

⁹HussainaraKhatoon v. State of Bihar, (1980) 1 SCC 81.

¹⁰Jagmohan Singh v. State of U.P., AIR 1973 SC 947.

¹¹Rattiram v. State of M.P., (2012) 4 SCC 516.

¹²D.K. Basu v. State of W.B., (1997) 1 SCC 416.

¹³JeejaGhosh v. Union of India, (2016) 7 SCC 761.

¹⁴Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

Prisoner's Rights under the Prisons Act, 1894

Prisons Act, of 1894 is the first legislation regarding prison regulation in India. This Act mainly focus on reformation of prisoners in connection with the rights of prisoners.

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

1. Accommodation and sanitary conditions for prisoners,¹⁵
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,¹⁶
4. Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners,
5. Provisions relating to treatment of undertrials, 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.

Humanitarian rights under Prison Law

1. Human rights derive from the inherent dignity of the human person. All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. There are no exceptions. Torture is defined as any act by which severe physical or mental pain or suffering is intentionally inflicted on a person, other than that which is inherent in or incidental to lawful sanctions. Ill-treatment is defined as other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. Any act of torture committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, is a crime against humanity. No prisoner shall be subjected, even with his or her consent, to any medical or scientific experimentation which may be detrimental to health. Like torture and ill-treatment, enforced disappearances and summary executions are completely prohibited.

Conclusion

¹⁵People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

¹⁶Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535.

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It can be said that the prisoners are also entitled to all his fundamental rights while they are behind the prisons. Indian Constitution does not expressly provides for the prisoners' rights but Articles 14, 19 and 21 implicitly guaranteed the prisoners' rights and the provisions of the Prisons Act, 1894 contains the provisions for the welfare and protection of prisoners. The Court has ruled that it can intervene with prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of the prisoner. Supreme Court in many cases held that prisoner is a human being, a natural person and also a legal person. Being a prisoner he does not cease to be a human being, natural person or legal person. 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 absence of procedural safeguards.