

## **HUMAN RIGHTS OF A PRISONER IN INDIA**

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### **Abstract**

*The Constitution of India is drafted in such a way that it protects the basic rights of every individual or citizen of India. Indian Constitution does not make criminal a non-human just on the basis that he has committed some crime, it always believes that a criminal who is in prison can be changed with the time.*

*Article 21 of the Indian Constitution provides the right of speedy trial and liberty of the prisoners to live their lives as well. The apex court of India has also well recognized the rights of prisoners and has devised rules and regulations towards the right to life and personal liberty of a prisoner. The apex court has issued some guidelines for the rights of prisoners in **D.K. Basu Vs. State of West Bengal**<sup>1</sup>, this is the landmark case in the matters of the rights of prisoner. In our country India the rights of prisoners are also very important because in India around 80% of total prisoners are prisoners who are under trial i.e. who have not been convicted yet, so it becomes very important to protect their interest and to give them their right to life and personal liberty.*

**Keywords:** *Human Rights, Prisoner, Article 21, Constitution of India, Under Trials*

## INTRODUCTION

The concept of a prison and a prisoner is from time immemorial, it has been observed that every era of this developing world had prisons and prisoners, as wherever the civilization is or a society is so to regulate that society or civilization there is a law and if someone violates that law he needs to get punished and to be in some detention and that's where the need of prison comes and the person who is getting punished and to be in detention is called the prisoner.

In the modern times as the law is advancing and with this advancement crimes are also advancing, this caused a rush in the prisons. Usually, we see that wherever there are so many people system of that place gets imbalanced and so the people who are in prison get deprived of their personal basic human rights enshrined for them in the Constitution of India.

To provide them these basic human rights, Supreme Court of India has actively taken part in acknowledging the violation of Human rights being done with any prisoner in India.<sup>1</sup> The apex court has recognized that though these people are prisoners this does not take away their general Human rights as they are Humans also. Our Indian Constitution has enshrined principles to protect these rights under Articles 19, 21, 22, 32, 37 and 39A. Under article 21 of India Constitution every person has the right to life and personal liberty this is the very basic principle on which the foundation of Human Rights has been established.

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<sup>1</sup> (AIR 1997 SC 610)

To ensure proper life of prisoners in prison Government of India has enacted following four Acts:

**1. Prisoners Act, 1894**

This act was the first step taken towards to ensuring some basic human rights of the prisoners. Following issues were resolved in this Act:

- Separate cells were provided for the men, women, convicts, criminals and under trials.
- Every prisoner should be checked by medical professional on regular basis.
- Better and hygienic living conditions in jails.
- Provisions for the mental and physical health of the prisoners, etc.

**2. The Prisoners Act, 1990:**

This act came for the prisoners who were having an insane mindset and unpleasant mind towards other prisoners.

**3. The Prisoners (assistance in court) Act, 1955:**

In this act it was allowed to the prisoners to attend the civil or criminal courts for their own response on accusation or for giving any evidence or becoming a witness to the case. Also, this act provides that no accused will be handcuffed in the court unless in some extraordinary circumstances.

**4. The Prisoners Transfer Act, 1950:**

This act was made for the purpose of making rules regarding the transfers of the prisoners from one state to another or from overcrowded prison to less congested prison in some other state, these transfers can be also for the purpose of rehabilitation or vocational trainings.

## **WHO IS A PRISONER?**

The word Prisoner means any person who is kept under custody in jail or prison because he or she has committed an act prohibited by the law of the land. A prisoner also known as inmate who is anyone against their will is deprived of their liberty. The liberty can be deprived by forceful restraint or confinement, prisoner's rights deal with the rights of inmate while behind the bars. Prisoners have basic legal right that cannot be taken away from them and these rights include right to food and water, right to have an attorney, right to get checked by a medical practitioner of his choice, right to get bail, etc.

Section 1 of Prison Security Act 1992 defines prisoner as any person for the time being is in prison because of any requirement imposed by a court or otherwise, he be detained in legal custody.

### **2.1 International Bill of Rights: -**

International Human Rights law protects people from racial discrimination, from torture and from disappearance. They also recognize the rights of specific groups of people including children, women, People with disability, indigenous people, and migrant workers. Some of these treaties are complimented by optional protocols that deal with specific issues or allow people to make complaint.

### **2.2 Universal Declaration of Human Rights:**

In 1948 a movement was started in the United Nations in the form of Universal Declaration of Human Rights which was adopted by the General Assembly of United Nations. This organic document is also known as Human Rights Declaration, this important document provides some basic principle of administration of justice. The provisions in the document are as follows:

- No one should be subjected to torture or to cruel, inhumane or degrading treatment or punishment.
- No person should be subjected to arbitrary arrest or detention.
- Everyone has the right to life, liberty, and security of a person.
- No one shall be deprived from right to life.
- Everyone charged with the penal offence has the right to be presumed to be innocent until proven guilty.

### **2.3 Declaration on Protection from Torture, 1975**

Declaration on Protection from Torture, 1975 was adopted by the United Nations General Assembly on 9<sup>th</sup> December 1975.

Over the period of time there has been a great controversies and difference of opinions of jurists on the point that whether these declarations or charters by the United Nations are legally binding on the members of the United Nations.

Jurist Manley O. Hudson, who represented a school of thought, has stated that the rules made in declarations and charters are not made obligatory but are merely a co-operation between the members of the United Nations. He himself stated that “whenever the question of respect for human rights appeared in the declarations, it was an aim to be achieved. The declaration did not in any manner impose a legal obligation to respect human rights and fundamental freedom.”<sup>2</sup>

Hans Kelsen another jurist and the founder of the pure theory of law in 1966, held the similar view as Hudson. He also stated that the texts mentioned in the charters or declarations and in their preambles does not impose a legal obligation on the members of the United Nations to respect and follow Human rights principle.

As I mentioned earlier that there were controversies and difference of opinions between jurists, so there were some other jurists who opposed the above opinions. Sir Hersch Lauterpacht was one of the jurists who opposed the view and said that the consent given by the members while adopting the declaration consists of the sense of legal duty in it. His opinion was further supported by the judge of the International Court of Justice, Phillip Jessup, who said that “it is already the law, at least for the members of the United Nations that respect for human dignity and fundamental human right is obligatory.”

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<sup>2</sup> 1949

Some important articles of this Act are:

- Article 2- “Any act of torture or other cruel, inhumane or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purpose of the charter of the United Nations and as a violation of Human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.”<sup>3</sup>
- Article 3- “No state may permit or tolerate torture or other cruel, inhumane, degrading treatment or punishment. Exceptional circumstances such as State of war or a threat of war, internal political instability or any public emergency may not be invoked as a justification of torture or other cruel, inhumane or degrading treatment or punishment.”<sup>4</sup>

#### **2.4 What are the are the issues regarding Prisoners in India**

- Stringent and insensitive attitude of the prison authority towards the prisoners.
- There is lack of medical checkups or provisions regarding medical care.
- Prisoners are lacking in getting legal assistance.
- They are facing the problems in jails because of the unhygienic environment.
- Almost 80% of prisoners are under trial prisoners.
- There is a delay in trials.
- There receive severe mental and physical torture.
- Prisoners are not released even after getting the bail for years.<sup>5</sup>

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<sup>3</sup> Declaration on Protection from Torture, 1975.

<sup>4</sup> Declaration on Protection from Torture, 1975

## **RIGHTS OF THE PRISONERS IN INDIA**

### **3.1 Protection against conviction of crimes under Article 20 of the Indian Constitution.**

1. No one shall be convicted of an offence unless they violated the law in effect when the act charged as an offence was committed, nor shall they be subject to a punishment larger than that which might have been imposed under the law in effect when the offence was committed.

No one may be tried and punished more than once for the same offence, and no one who has been charged with a crime may be made to testify against themselves.

#### **Article 21- Protection of life and personal liberty.**

“No person shall be deprived of his life and personal liberty except according to procedure established by law.”

- (1) Personal liberty under Article 21 of the Indian Constitution is a treasured and prized right, according to the ruling in *Shri D.K. Basu, Ashok K. Johri vs. State of West Bengal, State of U.P.* As the phrase "life of personal liberty" has been interpreted to include the right to live with dignity, it would also include a protection against being subjected to torture or attack by the government or its agents.
- (2) Protection against arrest and imprisonment in certain situations is provided under Article 22.
- (3) (1) No one who is arrested may be held in prison without being told of the reasons for the arrest, and they are not to be denied the opportunity to speak with and be represented by a lawyer of their choosing. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest.
  - (4) Nothing in clauses (1) and (2) shall apply-
    - (a) To any person who for the time being is an enemy alien, or
    - (b) to any person who is arrested or detained under any law providing for preventive detention.
  - (5) No law providing for preventive detention shall authorize the detention of a

person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(6) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

3.2 Under Code of Criminal Procedure:

**Section 56- Person arrested to be taken before the magistrate by officer in-charge of Police Station.**

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

**Section 304- Legal aid to accused at state expense in certain cases.**

Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defense at the expense of the State.

**Section 54- Examination of arrested person by medical practitioner at the request of the arrested person.**

- (1) When a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.
- (2) Where an examination is made under Sub-Section (1), a copy of the report of such examination shall be furnished by the registered medical practitioner to the arrested person or the person nominated by such arrested person.

**Section 50- Person arrested to be informed of grounds of arrest and of right to bail.**

- (1) Every police officer or other person arresting any person without a warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.
- (2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

**Section 41D- Right of arrested person to meet an advocate of his choice during interrogation.**

When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

In **Francis Coralie Mullin vs The Administrator, Union Territory of Delhi and Ors.**, it was held that “the right of a detenu to consult a legal adviser of his choice for any purpose not necessarily limited to defence in a criminal proceeding but also for securing release from preventive detention of filing a writ petition or prosecuting any claim or proceeding, civil or criminal, is obviously included in the right to live with human dignity and is also part of personal liberty and the detenu cannot be deprived of this right nor can this right of the detenu be interfered with except in accordance with the reasonable, fair and just procedure established by a valid law. A prison regulation may, therefore, regulate the right of a detenu to have an interview with a legal adviser in a manner which is reasonable, fair and just but it cannot prescribe an arbitrary or unreasonable procedure for regulating such an interview and if it does so, it would be violative of Articles 14 and 21”<sup>6</sup>.

### **CASE LAWS RELATING TO THE RIGHTS OF PRISONERS IN INDIA**

#### **(1) Joginder Kumar v. State, [1994 (4) SCC 260]:**

In this case it was held that “No arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The justification for the exercise of it is quite another...No. arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need to effect the arrest. Denying a person his liberty is a serious matter”.<sup>7</sup>

#### **(2) Neelabati Bahera v. State of Orissa, [1993 (2) SCC 746]:**

Apex court in this case held that “it is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen of life, except in accordance with law, while the citizen is in its custody. The precious right

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<sup>6</sup> [1981 AIR 746]

<sup>7</sup> [1994 (4) SCC 260]

guaranteed by Article 21 of the constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious.<sup>8</sup>

**(3) Charles shobraj v. Superintendent, Tihar jail, [AIR 1978 S.C. 1514]:**

In this case it was held 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”.<sup>9</sup>

**(4) A.K. Gopalan v. Union of India, [AIR 1950 SC 27]:**

Supreme Court held that “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...Article 21 of the Constitution of India includes the concept of a speedy trial which is offered under the right to life”.<sup>10</sup>

**(5) Sheela Barse v. State of Maharashtra, [AIR 1983 SC 378]:**

It was held 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 39 A but also by Articles 14 and Article 21 of the Constitution of India”<sup>11</sup>

**(6) Smt. Selvi and Ors. v. State of Karnataka and Anr., [2010(7) SCC 263]:**

It was held that “in our considered opinion, the compulsory administration of the impugned techniques violates the ‘right against self-incrimination’. This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence. This Court has recognized that the protective scope of Article 20(3) extends to the investigative

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<sup>8</sup> [1993 (2) SCC 746]

<sup>9</sup> [AIR 1978 S.C. 1514]

<sup>10</sup> [AIR 1978 S.C. 1514]

<sup>11</sup> [AIR 1983 SC 378]

stage in criminal cases and when read with Section 161(2) of the Code of Criminal Procedure, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory. Article 20(3) aims to prevent the forcible conveyance of personal knowledge that is relevant to the facts in the issue.

The results obtained from each of the impugned tests bear a 'testimonial' character and they cannot be categorized as material evidence".<sup>12</sup>

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<sup>12</sup> [2010(7) SCC 263]:

## **The UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)**

These rules are the key standards in all over the world for the treatment of prisoners. Standard minimum rules was first adopted in the year 1957 but in these rules at that time many rules and regulations were not present so these rules need to get revised. In 2015 of 17<sup>th</sup> of December these rules were revised and transformed into new set of rules by the name Nelson Mandela rules and were accepted by the United Nations.

These rules have widely been used and are still a major source of development of Human rights. In this resolution around 122 rules has been mentioned and out of them some are mentioned below:-

- The accommodation provided for the prisoner including place where they sleep should meet up to the basic health standards.
- The administration of the prison should provide education, vocational training and work related to moral, spiritual, remedial and with health and sports.
- Prisons should have proper and hygienic sanitary facilities to comply with needs of nature.
- The rules of the prisons should be applicable to every person without any discrimination on the basis of caste, creed, sex, place of birth, language, etc.
- Every prisoner should be treated with due respect as they carry their inherent dignity with them and value as a human being.
- Categories of prisoners should be made and accordingly they need to be put in different cells.

## CONCLUSION

Imprisonment is a form of reformatory measure that was introduced to reform criminals because it has always been believed by the lawmakers of our country that no matter what crime a person has committed, he can always be reformed. All human beings are born independent with a prudent men conscience and thoughts. Every person is born with human dignity, liberty, freedom and equal rights, his mere committing of an offence cannot take away the rights and freedom of an individual, these are inherent parts of a human person. His human dignity should be protected.

In India, the prisoners were being tortured and been subjected without the human dignity in the prisons from the time immemorial. It has become the normal and usual practise in the jails without any restrictions in the name of investigation, obtaining confession and for revealing something from the prisoner. Torture was not only subjected to the accused but also to the petitioners, complainants, witnesses, etc who came in bonafide belief, they were treated with such barbaric and inhumane way that their human dignity has suffered a huge loss.

Women are also not treated with pure modesty and dignity as they are subjected to custodial rapes, molestations and other sexual tortures.

We have seen a surge in the custodial deaths in the recent years whether it be a judicial custody or police custody, this type of crime is termed as the most disrespected crime amongst others and these crimes comes through the thought process which does not respect the human rights and their dignity. "A total of 2,152 cases relating to deaths of persons in judicial custody and 155 relating to deaths in police custody were recorded in 2021-22"<sup>13</sup>.

To curb all these problems into their right perspective, government need to strictly put some committees who look after the solutions because we have NHRC and the rules but the authorities are lacking in their implications. Human rights of the Individual are the most important and the basic element in human lives. So besides improving the service and working condition of the prisoner staff, what the current need is the mechanism in the prison and in the working of prison authorities, it will ensure an element of transparency and accountability in the prison administration.

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