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CRITICAL ANALYSIS OF THE PRISONERS' RIGHTS VIZ A VIZ ARTICLE 21

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ABSTRACT

The world's justice system revolves around punishing the individual who has acted or omitted in a way that has resulted in the loss of our self-evident rights. The laws relating to the rights of prisoners are very dynamic. The rights now granted to prisoners may not have been available to them during the period of independence or British rule. The pre-Independence period was a dark period for the Indian Criminal Justice System in terms of treatment of prisoners, when the British used incarceration and even minor offenses could result in the individual's execution. The purpose of this study is to probe into the treatment of the prisoners in the prison with respect to whether a violation of Article 21³⁷⁸, which talks about the life and personal liberties' rights that are vested with us, is occurring or not. As we know, our Indian society is based on the principles of respect for each other, non-violence, and the dignity of the human being, so if a person acted or omitted something resulting in him committing a crime, it does not mean that he will or should be considered a human being again. And if there is any violation of Article 21, this leads to a violation of Article 14³⁷⁹. Here, Article 14 talks about the "A.V. Dicey's Rule of Law" where equality before the law and equal protection of the laws are emphasized. So, everybody is equal in the eyes of law, so violating it would mean that they are not being

treated as human beings by giving them their unalienable rights.

Keywords: Indian Criminal Justice System, Article 21, Article 14, Unalienable rights

I. INTRODUCTION

"Hate the crime and not the criminal." - Mahatma Gandhi

As India continues to grow at a rapid pace, the rate of crime increases at the same rate. According to a report published by the "NCRB: National Crime Records Bureau", which compared crimes committed between 1953 and 2006, the rate of murder committed increased by 7.3% and the rate of kidnapping increased by 47.80%. Also, the crime rates against women have increased a lot between the years 1990 and 2008. According to the "National Crime Records Bureau", the main crimes that came to be registered that involved women with reference to the year 2018 were:

1. The cruelty that is pertained by the husband or the relatives of the husband: 31.9%
2. By assaulting a woman with a motive to outrage their modesty: 27.6%
3. The abduction and the kidnap of women: 22.5%
4. The rape of women: 10.3%

The data above depicts the rise in female crime rates since the Moss Declaration of Independence, 1872. The crime in the society increases as the occurrence of the evolution of the society takes place.³⁸⁰

Now, to control the occurrence of such crimes, a dire need for imprisonment is required. So, what exactly does imprisonment mean? According to Black's Law Dictionary, "Imprisonment means the confinement of a person in prison; it also can be defined as a period where the individual

³⁷⁸ The Constitution of India, 1950
² *Ibid.*

³⁸⁰ National Crime Records Bureau, <https://ncrb.gov.in/en/crime-india>, (last visited Dec 30, 2022).

does not have liberty." It is also known as "incarceration."³⁸¹ Now, the imprisonment of the prisoner in the prison should be in a place where human beings can stay, but the reality is far from what we see from the outside. The prison condition in India is not a place where a sane person can stay. The prisoners are treated in such an inferior manner that it is forgotten that they are also human beings. As the crime rate is increasing tremendously, many individuals end up in prison, resulting in the overcrowding of that place. Furthermore, the lack of training, personnel, and infrastructure adds to the problem of the violation of the individual's fundamental and statutory rights, which is so obvious but not openly discussed, because people tend to forget the prisoners just because of the crime they have committed and also forget that they are human beings whose rights are also being violated but no one is there to speak up for them.

The rule of the British was a horrendous experience for India, but as they were departing from India, they gave us some of their valuable knowledge in the field of law. The concept of "rule of law," "equality before the law," the Indian Penal Code of 1860, etc. The constitution of India's Article 21 can be said to have been drawn out of the concept of the rule of law. The article states that all the citizens of India are entitled to the fundamental liberty such as the right of being entitled to life and personal liberty, but this article is only on paper; there is still a category of people who are not entitled to the provisions of it; they are the prisoners of India. In the case of "*Charles Sobhraj vs. Supdt. Central Jail, Tihar, New Delhi*,"³⁸² Justice V.R. Krishna Iyer stated that an individual's imprisonment does not imply giving up their fundamental rights, but the courts will refuse to recognize the entire Part III of the Fundamental Rights⁴ that are so vested in a free citizen of India.

II. EVOLUTION OF THE PRISON SYSTEM IN

³⁸¹ Bryan A. Garner, *Black's Law Dictionary*, 907 (11th ed. 2019).

³⁸² 1979 SCR (1) 512.

INDIA

The present prison system in India can be traced back to the 18th century, when British rule was predominant. At that time, even a small offense could lead to the execution of the individual, and not even imprisonment was given. The founder of the reformation of the prisons is said to be Macaulay, who insisted on the creation of a committee to check the condition of jails in India. The deplorable conditions of the jails and the prisoners were known from the report submitted in 1838 by the Committee.

Later in the year 1864, it was suggested that all the provinces should appoint civil servants as superintendents of the civil jails. Also, another committee was created to take into consideration the management of the jails. This committee focused on the health of the prisoners and the conditions they were residing in. It provided recommendations with regard to:

1. Diet in the jail.
2. Discipline of the jail.
3. The fostering of the juvenile delinquents and the making of the reformatories.
4. The prisoner's desegregation.
5. The habitual offenders' treatment.
6. The prisoners' classification
7. The imposition of fines on prison officers who made a mistake
8. The European prisoners' treatment
9. The compiled statistics of the jail

The 1864 committee recommended that the Central Prison's cellular accommodation be reduced by 15%, that juveniles be separated from the other prisoners, and that proper education be provided for them.³⁸³

Then, in the year 1870, the Prison Act was passed, which amended the legislation that is related to the prison system of the country. It outlined the basic guidelines for prison

³⁸³ Vidya Bhushan, *Prison Administration in India* 188 (S.Chand 1970).

administration as well as the types of punishments and their implementation under the supervision of prison officials. The present prison system is based on the Prison Act, 1870, and the Prison Act, 1894.

In the year 1889, a committee on the reformation of jails was formed to address the work of the prison rather than the rules of administration. After this committee, another one named the "All India Committee of Prisons" was established in 1892. The report of this committee provided the foundation for the Prisons Act of 1894. This act was concerned with the punishment and work of the prison and didn't put emphasis on the treatment or the punishment's result.³⁸⁴

III. GUIDING STAR FOR THE PRISONERS' RIGHTS: NELSON MANDELA RULES

The protection of the prisoners' dignity in the society is never seen in a good light, they were ostracized, stigmatized and not considered as a part of the society. There were not given the recognition or the value of that the normal human beings had. Hence, the safeguarding of their rights was never an easy work to do. It was treated as a herculean task in earlier times. The Nelson Mandela Rules were named after the most celebrated prisoner, in the year 2015. The United Nations acknowledged that the then Standard Minimum Rules were orthodox in ideology where adequate improvement in field of human rights and criminal justice system were lacking, since the adoption 60 years ago, hence, they replaced it with the current rules known as the Nelson Mandela Rules, which provided the adequate legal representation in the court of law and in the society. These rules are not meant to be present in the penal institutions in a detailed manner in a State rather it is present to get in an agreement with the contemporary thoughts of the essentiality of the prisoners that most of the system in a nation requires.

These are internationally recognized rules which provide for the better administration in the prison, these are accepted by the prison administration for the betterment of the prisoners. The essence behind the Nelson Mandela rules were:

1. Promotion of the humane surroundings of the prison.
2. Increase the perception that the prisoners being in a part of the society
3. The work done by the staffs of the prison being valued as a crucial social service.

There are nine thematic fields which this rule emphasizes on:

1. The innate dignity of prisoners treated as human beings.
2. The prisoners being a vulnerable group.
3. Services of medicine and health that is supposed to be provided to them
4. The sanction, discipline and limitations that is encompassed on them.
5. Thorough and detailed investigation of the custodial torture and death.
6. Adequate legal representation in the court of law.
7. Proper inspections and address of the complaints.
8. The terminology, and
9. The training of the workers who are present in the prison administration.

These are held to be as the minimum standard for the better treatment of the prisoners. These rules came to be because of the treatment that then President of South Africa, Nelson Mandela faced. These rules on the duty that administration and the society are having to treat all the prisoners with utmost respect for their innate values as human beings, and to restrict the working staff from inflicting any kind of torture or ill treatments on to them.

³⁸⁴ S.K. Pachauri, History of Prison Administration in India In 19th Century: Human Rights In Retrospect, 55 IHC 492, 493-494.

IV. CONSTITUTIONAL PROVISIONS FOR THE PRISONERS

Part and parcel of the fundamental rights that are present in Part III of the constitution do not fully encompass the prisoners, but some of the rights that are present are vested in the prisoners and cannot be taken away because the prisoners are still people inside the prison.³⁸⁵ Article 21 of the constitution has been given a wide interpretation by the Supreme Court, which now applies not only to free citizens but also to prisoners.³⁸⁶ This article is interpreted in a way that states that the prisoners are entitled to:

1. The liberty to get a speedy trial
2. The liberty to get access towards free legal aid and service.
3. Right against torture
4. Right to be free of inhumane and humiliating prison treatment

Now, the constitutional safeguards that are present in our Constitution for the protection and prevention of discrimination against prisoners are as follows:

A. ARTICLE 14:

This article talks about equality before the law and equal protection under the law. Now, this article is present to protect the prisoner from getting treated unequally; even inside the prison, they are still human beings, so they should be treated as such. A violation of this article occurs when they are not given the opportunity to defend themselves or when their rights as a free man are not exercised.

B. ARTICLE 19:

This article states that the six freedoms that are provided, such as freedom of trade and business and freedom to form associations or unions, are not available to the prisoners

because this article comes into conflict with the whole concept of prisons.

C. ARTICLE 20:

This article leads to the avoidance of double jeopardy, that is, no individual will be convicted twice for the same offense, and it talks about self-incrimination, that is, no individual can be forced to be a witness in her own case.

D. ARTICLE 21:

This article states that no individual's right to life and personal liberty can be taken away from them under any circumstances. Here, right to life may include hygienic conditions of the prisons, right to free legal aid, the right to speedy trial, right against solitary confinement, etc.

V. JUDICIAL PERSPECTIVE TOWARDS THE TREATMENT OF THE PRISONERS

The Supreme Court has repeatedly upheld the status of prisoners in society and tried their hardest to provide them with constitutional safeguards that should be vested in them but are taken away by society due to the conservative mentality of the people who don't want the prisoners to even exist in society. We need to observe the Supreme Court's opinion on the treatment of the prisoners in a chronological manner.³⁸⁷

In the *A.K. Gopalan vs. Union of India*³⁸⁸ case, the petitioner was detained in the Madras Jail under the "Preventive Detention Act, 1950". Here, the Supreme Court stated that the detention is not violative Article 21 and the ambit of Article 21 is very wide which include procedures prescribed for deprivation of the liberty as well the substantive rights of the personal liberty.

³⁸⁵ Sunil Batra vs. Delhi Administration, AIR 1980 SC 1579.

³⁸⁶ Durga Das Basu, Introduction to the Constitution of India 126 (24th ed. 2020).

³⁸⁷ K. I. Vibhute, Right to Human Dignity of Convict Under 'shadow Of Death' And Freedoms 'behind The Bars' In India: A Reflective Perception, 58 ILI 15, 28.

³⁸⁸ AIR 1950 SC 27.

Then, in the case of *Kharak Singh vs. State of Uttar Pradesh*³⁸⁹, the supreme court here held that the word "life" is more than the existence of a mere animal. The prohibition against its denial applies to all limbs and abilities used to enjoy life. The rule also forbids mutilating the body by amputating an arm or limb, removing an eye, or destroying any other organ of the body through which the soul communicates with the outside world.

After this case, the major turning point of the interpretation of Article 21 came from the landmark case law, i.e., "*Maneka Gandhi vs. Union of India*"³⁹⁰, here the ambit of the expression "life" that is present in Article 21 widened and states that the procedures that are made by the state should be justified and reasonable. This decision acted as a catalyst for people's rights and the judges' formulation of Article 21, in which every essential right required for human life was covered.

And furthermore, in the case of "*Sheela Barse vs. State of Maharashtra*"³⁹¹, here the Supreme Court gave directions in regard to the poor conditions and ill treatment of the prisoners in the jail. The guidelines were as follows:

1. The interrogation of the female prisoners should be done in the presence of female officer.
2. On the occurrence of an arrest without warrant, the person so arrested should be informed about the reason behind the arrest and should also be informed about the entitlement of the bail.
3. That anytime a person is detained or arrested by the police and transported to the jail, the police will promptly notify the Legal Aid Committee of the arrest, and such Legal Aid Committee will take urgent steps to offer legal help to the arrested person at State expense, if he is prepared to accept such legal

assistance. The State Government will give the necessary money to the relevant Legal Aid Committee in order to carry out this directive.

4. The police should immediately take the person so detained family information to whom the arrested person want to inform about the arrest.
5. Inquiring into any complaints of torture or other mistreatment while in police custody, and informing the detained person of his entitlement to a medical examination under section 54 of the Code of Criminal Procedure of 1973, is the responsibility of the magistrate before whom the accused person is brought.

The supreme court's view on the treatment so provided to the prisoner should be more humane rather than the inhuman treatment so provided now.

VI. CONCLUSION

It is clear that the convict is a person whose right to life and liberty has been taken away by society, even though it has been stated numerous times that they are also human beings with fundamental rights, which is being ignored time and again. A prisoner does not have the right to demand fundamental rights, but that doesn't mean the prisoners doesn't have any. Even if he is confined, he can still enjoy some parts of Part III of the Fundamental Rights of the Indian Constitution. The treatment that they face is degrading that it won't be considered humane in a sensible sense. The United Nations because of such inhuman treatments published the "Nelson Mandela Rules" which replaced the older "Standard Minimum Rules", that were followed in the past 60 years. It was time for them to get updated with the current everchanging society so as to get adopted in this society. People who are committing the crime won't stop being human beings, they are human beings who are having their innate rights to live and have their

³⁸⁹ 1964 SCR (1) 332.

³⁹⁰ AIR 1978 SC 597.

³⁹¹ 1983 SCR (2) 337.

personal liberty safeguarded. It is acknowledged that most of the rights of the prisoners are ceased at the exact time when he/ she commits the act. So, hating the criminal is wrong, according to the Gandhian principle, rather hate the crime. The Supreme Court has taken all the corrective measures and given the legislature and the executive certain guidelines for the betterment of the prisoners. Prison is a punishment in and of itself for a prisoner; hence, prisons are intended to be places of rehabilitation rather than places where more punishment is applied, resulting in a violation of their human rights. Hence, the rights of the prisoners should be recognized and the stigma that is present in the society towards the family members of the criminals should also be eradicated.

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