

FROM CONFINEMENT TO REHABILITATION : RETHINKING PRISONER RIGHTS IN THE CONTEXT OF RESTORATIVE JUSTICE

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ABSTRACT

The Constitution of India ensures that every person is treated equally under the law or provided with equal legal protection while in India. This also applies to prisoners, who are guaranteed certain rights and should be treated as individuals. Indian courts, including the Supreme Court, acknowledge the fundamental rights of prisoners in India. The Supreme Court has emphasised that regardless of the circumstances that led a person to commit a crime, prisoners must be treated with respect and provided with basic human rights, dignity and compassion.

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INTRODUCTION

The Constitution of India guarantees that each individual is treated equally under the law or handed with equal legal protection while in India. This also applies to prisoners, who are guaranteed certain rights and ought to be treated as individuals. Indian courts, including the Supreme Court, admit the fundamental rights of prisoners in India.

The Supreme Court has underscored that notwithstanding of the circumstances that drove a person to commit a crime, prisoners must be treated with respect and handed with basic human rights, nobility and compassion.

Mahatma Gandhi formerly said, "Crime is the result of a troubled mind and prisons should provide an environment for treatment and care."

In the case of **State of A.P. Vs. Challa Ramkrishna Reddy & Ors. (2000) 5 SCC 712**, the Supreme Court ruled that prisoners hold all their fundamental rights unless their freedom has been constitutionally confined.

According to the Model Prison Manual 2016. A prisoner is anybody who is confined in a prison under the authority of a competent body. In less complex terms, a prisoner is a person held in jail or prison because they have committed an act precluded by the law of the nation.

In India, the terms "prison" and "jail" are used interchangeably and both convicted individuals and those anticipating trial are generally appertained to as prisoners.

The law on the rights of prisoners has been an evolving one. It is a matter of utmost shame that a country like India doesn't have codified law on the rights of prisoners. There is also no comprehensive enactment to deal with prisoners rights and regulate their conduct while in jail. However, the judiciary of the country has given due acknowledgement to the convicts and held their fundamental rights time and time again. In the absence of thorough legislation, it has managed to set precedents and principles upholding the different rights of prisoners that not only guide but also bind all the courts in India.

BACKGROUND

As mentioned before, the rights of the prisoners have been a developing one. From the case of *Platek v. Aderhold (USA)* where the courts ruled that it has no power to intrude with the conduct of prison or its rules and regulations to the case of *Johnson v. Avery* wherein the court recognised certain rights of the prisoners, the alter has been a dynamic one. In the Indian sphere, the judiciary of the country has invoked Fundamental Rights of the Constitution constantly to the deliverance of the prisoners. In the famous case of Charles Sobraj through *Marie Andre's v. The Superintendent, Tihar Jail*, the Supreme Court Judge Justice Krishna Aiyer held that: “..imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, Courts will refuse to honor the full panoply of Part III enjoyed by a free citizen”.

He further stated that the imprisonment of a prisoner is not simply retribution or deterrence but also rehabilitation.

As emphasized before, the conviction of an individual does not render him non-human. He still remains a human who ought to be treated like one. He should be given the basic human rights accessible to every man strolling on the earth. But at the same time, he should not be treated as a free man with all absolute rights and facilities. His freedom should be subject to certain limitations and lawful limitations. These restrictions, in addition, shouldn't be unreasonable.

The highest court of the USA in the case of *Charles Wolff v. McDonnell* and the Supreme Court of India in its popular cases like *DBM Patnaik v. State of Andhra Pradesh* and, *Sunil Batra v. Delhi Administration* has emphatically stated that it must be realised that a prisoner is a mortal being as well as a natural person or a legal person. If an individual gets convicted for a crime, it does not lessen him to the status of a non-person whose rights might be taken from him/her at the whims of the prison administration. Therefore, imposing any major

punishment within the system of prison is tentative upon the absence of procedural safeguards.

The Apex court of India has been deliberating with the union and state governments since a long time to improve the deteriorating condition of the prisoners which is fundamental because of the overcrowding of prisons, lack of training facilities, labor force and poor infrastructure, etc. Thus, it is obligatory to invoke the rights and constitutional safeguards of the prisoners. Such rights of, unless they are propagated and enforced in each corner and the entire perimeter of the prism, are a nullity and treason of human faith on the criminal justice delivery system.

RIGHTS OF PRISONERS UNDER THE PRISONS ACT, 1894

The Prisons Act of 1894 marked the first legal framework for regulating prisons in India. This act traces vittles targeted at ensuring the welfare and protection of prisoners, including both convicts and under-trials.

Right to Adequate Accommodation (Section 4)

Prisoners have the right to be provided with accommodation that complies with the norms set forth in the **Prisons Act of 1894**. The Model Prison Manual of 2016 also underlines that living conditions in every prison ought to uphold human dignity, covering perspectives such as accommodation, hygiene, sanitation, food, clothing and medical facilities.

Right to Shelter and Safe Custody for Excess Prisoners (Section 7)

If any prison gets overcrowded and it's impractical to transfer the redundant number of prisoners to other facilities, temporary prisons should be arranged to give shelter and safe custody. This is particularly pivotal during outbreaks of epidemic diseases within a prison.

Examination of Prisoners by Qualified Medical Officers (Sections 24 and 26)

- Every prisoner is entitled to be examined by a qualified Medical Officer. The Medical

Officer should record the prisoner's health status, any injuries or marks on their body, their fitness for specific labour (if sentenced to rigorous imprisonment) and any relevant observations. These records are maintained in a book kept by the Jailer (Section 24(2)).

- Female prisoners have the right to be examined by a lady matron, as per the special or general orders of the Medical Officer (Section 24(3)).
- Prisoners cannot be transferred from one prison to another unless the Medical Officer certifies that they are free from any illness that would make the transfer unsafe (Section 26(2)).
- Prisoners cannot be discharged from prison against their will until the Medical Officer deems such a discharge to be safe (Section 26(3)).

Separation of Prisoners (Section 27)

In a prison housing both female and male prisoners, females must be placed in separate buildings or distinct sections of the same building. This arrangement is designed to prevent them from seeing, conversing with or having any interaction with male prisoners.

Prisons detaining male prisoners under the age of twenty-one should have measures in place to separate them entirely from other prisoners, particularly distinguishing those who have reached puberty from those who have not.

Maintenance of Prisoners from Private Sources (Section 31)

Civil prisoners and under-trial criminal prisoners have the right to sustain themselves by purchasing or receiving food, clothing, bedding and other necessities from private sources during appropriate hours. This is subject to examination and rules approved by the Inspector General.

Solitary Confinement (Section 29)

Solitary confinement cells must be equipped to enable prisoners to communicate with a prison officer at any time. Prisoners in solitary

confinement for more than twenty-four hours, whether as a punishment or otherwise, must be visited by the Medical Officer or Medical Subordinate at least once a day.

Supply of Clothing and Bedding to Civil Prisoners and Under-trials (Section 33(1))

Every civil prisoner and under-trial who cannot provide themselves with sufficient clothing and bedding shall receive necessary clothing and bedding from the Superintendent.

Employment of Criminal Prisoners (Section 35)

Prisoners sentenced to rigorous imprisonment may engage in manual labour for more than nine hours in emergencies with written approval from the Superintendent.

The Medical Officer should assess prisoners while they work, record their respective weights on each prisoner's history ticket and ensure they have adequate rest.

If the Medical Officer believes a prisoner's health is deteriorating due to a specific job, that prisoner should be reassigned to a more suitable task as determined by the Medical Officer.

Visits for Civil and Under-trial Prisoners (Section 40)

Both convicts and under-trial prisoners have the right to meet with individuals they wish to communicate with while in prison, during proper times and under reasonable restrictions.

Under-trial prisoners may be allowed to meet their duly qualified legal advisors in private, without the presence of any other individuals, in the interests of justice.

RIGHTS OF PRISONERS IDENTIFIED BY THE ALL INDIA — COMMITTEE ON JAIL REFORMS, 1980

Right to Human Dignity

- The right to be treated as a human being and as a person, as mandated by the Supreme Court of India, which has explicitly stated that prisoners should not be treated as non-persons.

- The right to bodily integrity, safeguarding against the use of physical abuse or violence, whether by custodial staff or fellow prisoners.
- The right to mental integrity, protecting against aggression, whether from staff or other inmates.
- The right to retain fundamental rights guaranteed by the Indian Constitution, except as permitted by law that prescribes conditions of confinement.

Right to Basic Minimum Needs

The right to have basic needs fulfilled, including adequate nutrition, health care, access to clean drinking water, clean and hygienic living conditions, sanitation, personal hygiene, sufficient clothing, bedding and other essential items.

Right to Communication

- The right to maintain communication with the outside world.
- The right to have periodic interviews.
- The right to receive information about the outside world through various communication media.

Right of Access to Law

- The right to effective access to information and all legal provisions that regulate conditions of detention.
- The right to consult or be represented by a legal practitioner of the prisoner's choice.
- The right to access agencies such as State Legal Aid Boards or similar organisations providing legal services.
- The right to be informed upon admission about legal rights related to appeal, revision and review, both for conviction and sentencing.
- The right to receive all necessary court documents for the purpose of filing an appeal, revision or sentence review.

- The right to present individual complaints and grievances effectively to the relevant authorities during imprisonment.
- The right to communicate with the prison administration, the appropriate government and judicial authorities for addressing violations of prisoners' rights and grievances.

Right to be Released on the Due Date

The rights of the prisoners also involve the right to be released before due date in certain circumstances.

RIGHTS OF THE PRISONERS IN INDIA UNDER THE CONSTITUTION

The Constitution of India safeguards the fundamental rights of all prisoners. The Hon'ble Supreme Court, in the case of **State of A.P. Vs. Challa Ramkrishna Reddy & Ors. (2000) 5 SCC 712**, affirmed that a prisoner, whether a convict or an undertrial, does not lose their status as a human being and retains the fundamental rights guaranteed by the Constitution of India, including the right to life.

Articles 14, 19 and 21 of the Indian Constitution bestow fundamental rights on every Indian citizen and these rights extend to prisoners as well. The Hon'ble Supreme Court, in the case of **T.V. Vatheeswaran v. State of Tamil Nadu (1983) 2 SCC 68**, emphasised that fundamental rights under Articles 14, 19 and 21 of the Constitution are applicable to both prisoners and those who are not incarcerated.

Article 14 of the Constitution

Prisoners are entitled to basic human rights, including access to nutritious food, just like any other citizen. Article 14 of the Constitution guarantees equality before the law and the equal protection of the law, ensuring that all individuals should be treated equally.

Article 19 of the Constitution

Article 19 of the Constitution provides various freedoms for citizens, including:

- Freedom of speech and expression

- The right to assemble peaceably and without arms
- The right to form associations or unions
- The right to move freely throughout the territory of India
- The right to reside and settle in any part of the territory of India
- The right to practice any profession or carry on any occupation, trade or business

However, prisoners can exercise only two of these freedoms:

- The right to freedom of speech and expression (Article 19(1)(a))
- The right to become a member of an association (Article 19(1)(c)).
- These rights ensure that prisoners are not deprived of their basic freedoms and legal protections, even while serving their sentences.

Article 21 of the Constitution

Article 21 of the Indian Constitution is a fundamental right that plays a pivotal role in protecting individual rights. It states that “no person shall be deprived of his life or personal liberty except according to the procedure established by law.” This article encompasses two fundamental aspects of rights:

- **Right to Life:** Article 21 guarantees every person’s right to life, which is a fundamental and inherent human right. It protects individuals from arbitrary actions or decisions that could result in the loss of life. This right implies not only the right to physical existence but also the right to live with human dignity. It restricts the state’s power to take life except in accordance with a lawful and just process.
- **Right to Personal Liberty:** Article 21 also safeguards an individual’s right to personal liberty. It ensures that a person’s freedom and physical autonomy cannot be arbitrarily curtailed by the state or any other authority. This includes protection against unlawful arrest, detention or imprisonment. Personal liberty is a

fundamental aspect of a person’s freedom and dignity and Article 21 ensures its preservation.

Article 21 of the Indian Constitution is a critical provision that safeguards the right to life and personal liberty, serving as a crucial protection against arbitrary actions by the state or other entities. It reinforces the principles of justice, fairness and human dignity in the legal system.

OTHER RIGHTS OF PRISONERS IN INDIA

Right to Live in Humane and Good Conditions

In the case of **Upendra Baxi v. State of U.P., (1983) 2 SCC 308**, the Supreme Court issued various directions to guarantee that inmates in the protective Home at Agra do not live in inhumane and degrading conditions. This upholds the right to live with dignity as enshrined in Article 21 of the Constitution.

Right to Free Legal Aid

Anyone who is arrested has the right to consult a lawyer, which is a constitutional guarantee and a fundamental right.

In the case of **M.H. Wadanrao Haskot Vs. State of Maharashtra, (1978) 3 SCC 544**, the Supreme Court established that the right to legal aid is an integral part of a fair procedure.

Article 22(1) of the Indian Constitution ensures the right to be defended by a legal practitioner of one’s choice.

Article 39A of the Constitution further provides for legal aid to the poor and weaker sections of society, including accused persons.

The presence of a lawyer at the stage of arrest can have a significant impact on how the accused is treated in police custody, reducing the likelihood of mistreatment, and coercion and ensuring the respect of the accused’s rights.

The Legal Services Authority Act (LSAA), 1987, also stipulates that any person in ‘custody’ is entitled to legal aid and the State may cover the cost if the individual is willing to accept it.

In Sheela Barse Vs. State of Maharashtra, the Supreme Court directed that when a person is arrested, the police must immediately inform

the nearest Legal Aid Committee and take steps to provide legal assistance.

Right to Speedy Trial

The right to a speedy trial is a fundamental right of prisoners in India enshrined in Article 21. This right applies to both the innocent and those facing charges.

The Constitution mandates a just, fair and reasonable trial procedure.

In the case of **Hussainara Khatoon v. State of Bihar**, the Supreme Court highlighted the shocking situation where a significant number of individuals, including children, were incarcerated for extended periods while awaiting trial. The court expressed concern about the delay in trial, especially for those who could not afford bail.

The Supreme Court held that a procedure that keeps a large number of people behind bars without trial for an extended period cannot be considered reasonable, just or fair and it does not conform to the requirements of Article 21.

Right Against Custodial Violence and Death in Police Lock-ups or Encounters

Rights of prisoners in India to be protected against custodial violence, which can occur in police custody or judicial custody.

Custodial violence includes physical torture, sexual harassment or custodial deaths. No one should be subjected to torture, cruel, inhumane or degrading treatment or punishment.

In the case of **Sunil Batra v. Delhi Administration**, a convict, Sunil Batra, reported violence in prison to the Supreme Court. The court held that prisoners should be protected from corporal punishment and violence.

In the case of **State of Uttar Pradesh v. Ram Sagar Yadav and Ors**, a farmer who refused to pay a bribe to a local police constable died under suspicious circumstances within six hours of detention. The Supreme Court convicted the accused individuals involved in the case.

Right to Meet Friends and Consult a Lawyer

In the case of **Sunil Batra v. Delhi Administration**, the Supreme Court recognised the right of prisoners in India to be visited by friends and relatives, subject to search, discipline and security criteria. Such visits provide comfort to inmates in isolation.

Prisoners have the right to meet and consult with their lawyers.

Right to Reasonable Wages in Prison

Section 53 of the Indian Penal Code allows prisoners sentenced to rigorous imprisonment to be assigned work; however, it does not mandate that such work must be unpaid.

If a person, whether free or a prisoner, provides labour or services for remuneration that is less than the minimum wage, the work falls within the scope of “forced labour” under Article 23 of the Constitution.

In the case of **People’s Union for Democratic Rights v. Union of India**, the Supreme Court noted that labour or services provided for remuneration below the minimum wage constitutes forced labour. Such individuals can seek the enforcement of their fundamental rights by asking the Court to direct the payment of the minimum wage.

CONCLUSION

Prisoners do not cease to be human beings when put behind bars. The Supreme Court and many other courts of India have reiterated this position in several cases so that prisoners do not become a victim themselves. And are provided with a proper rehabilitative environment to help them improve and become better beings. It is incumbent upon the Central and State governments to not only provide the prisoners with humane conditions for a living but also educate them about their rights so that it is not abused by the powerful inside the prison.

It could be said that the judiciary of the country has played a crucial role in safeguarding the rights of prisoners whenever the legislative and executive have erred. It has acted as the saviour

of the convicts and upheld their fundamental rights time and time again. It has thoroughly exercised its powers through judicial activism and has repeatedly devised new remedies and tools to protect the human's right to life and personal liberty. However, much still needs to be done. In this regard, the wide circulation of human rights' available to prisoners, vast publicity of prisoners right in media and corner to corner surveillance in prisons could be some of the keys for upholding the rights of prisoners and ensuring their safe space in the prison.

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