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PRISONER'S RIGHTS

“Every saint has a past;

Every sinner has a future”

-Oscar Wilde

In India, the socio-legal system is rooted on non-violence, mutual respect and human dignity of every individual. If an individual commits any crime, then it doesn't mean that by committing a crime, he or she ceases to be a human being or shouldn't be recognized as a human being losing their basic constitutional rights. Every individual, whether native or outsider of a country are born independent, free, equal in dignity and have human rights, whether it's a prisoner or not. Also, we are entitled to human rights without any discrimination as these rights are itself fundamental and universal in nature governed by law. Therefore, if any person who is a prisoner and is being tortured or harassed in some way then it will lead to injustice and to protect this injustice, rights are given to prisoners for their protection and welfare.

“To deny people their human rights is to challenge their very humanity.”

-Nelson Mandela

So he/she must be provided with all the fundamental rights, though imprisoned. In this paper, I have discussed existing Constitutional and Legal Framework in India to safeguard the prisoners' rights and also elucidates the various judicial guidelines issued from time to time concerning the

needs and care of prisoners. The paper, further also talks about the status of conjugal rights in India as compared to other countries and the significance of it in the rehabilitation of detainees.

Keywords

Prison, Detainees, Rights, Fundamental Rights, Legal framework, Conjugal Rights

Who are Prisoners?

In layman's language, the word 'prisoner' means that any individual who is kept under legal custody in a jail or prison because that person had committed any offence or act which is prohibited by the law of the country. A prisoner is also known as an **inmate** who is deprived of his/her liberty by forceful restraint or confinement.

Section 1(6) of Prison Security Act 1992 defines the term 'prisoner' "*as any person for the time being in prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody.*"

Rights under the Constitution

The prisoners are no longer viewed as an object or a slave of the nation, who the law will leave at the jail door and who would be convicted to civil death. If a person commits an unlawful act, it's unfair to disqualify him as a human being and deprive him of those aspects of life which are essential to maintain his human dignity.

In **Charles Shobraj v. Superintendent, Tihar Jail**, Court said that "*except for the fact that the compulsion to live in 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.*"¹ Also, "*the convicted persons go to prisons as punishment and not for punishment.*"

The Fundamental rights offered under the Indian Constitution are not absolute in nature, and some reasonable limitations have been imposed. When an individual is convicted and put in prison, he has a different status from free men. A prisoner cannot request all the fundamental rights, which are available to free men.

Rights that have been mentioned in Part third of the Indian Constitution are offered to the prisoners on the ground that a prisoner remains a person inside the jail. The Right to personal liberty has been given an extremely comprehensive explanation by the Apex Court. This

¹ Charles Shobraj v. Superintendent, Tihar Jail, A.I.R. 1978 S.C. 1514.

fundamental Right is available not exclusively to free men but also even to individuals who are conflicted with the law.

According to the viewpoint of a well-known constitutional writer ‘**Upendar Baxi**,’ the meaning of Article 21 is so vast that it almost covers several types of rights such as the Right to bail, right to food, Right to shelter, right to speedy trial, right against custodial violence etc.

Article 14: Equality before law- *‘The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.’*²

Article 14 of the Constitution contemplates that every person, even it’s a prisoner or not, have the equal right to be treated equally irrespective of its religion, caste, sex, race, etc. as a prisoner is also a person and should be treated alike. If any person or any authority violates the rights of prisoners, in that case, they will violate the provisions of Article 14 of the Constitution which protect the right to equality and equal protection of the law.

In a landmark case of **T.V. Vatheeswaran v. State of Tamil Nadu**, it was held that *‘Article 14, 19 and 21 are available to both prisoners and freemen. Prison’s walls do not keep out fundamental rights.’*³

Article 19⁴ provides six freedoms to every citizen of India. Among all these, only freedom of speech and expression and freedom to become a member of an association or unions can be enjoyed by the prisoners. The detainees cannot enjoy the other four, such as freedom of movement, freedom of profession, freedom to the residence and to settle.

Article 20(1)⁵ protects the persons from ex post facto laws; this clause of article 20 provides to protect a detainee from being convicted to any punishment. **Article 20(2)**⁶ represents the principle of “Double jeopardy”, this clause states the rule of the common law of “Nemo Debet Vis Vexari” that is no person should be put behind bars twice in jail for the commitment of the same offence.

One of the significant safeguards which are useful for undertrials and “detenues” is mentioned in Article **20(3)**⁷ of the Constitution, the jail authorities or the police authorities can’t force the prisoners to give the testimony.

² INDIA CONST. art. 14.

³T.V. Vatheeswaran v. State of Tamil Nadu, A.I.R. 1983 S.C. 361.

⁴ INDIA CONST. art. 19.

⁵ INDIA CONST. art. 20, cl. 1.

⁶ INDIA CONST. art. 20, cl. 2.

⁷ INDIA CONST. art. 20, cl. 3.

Article 21 'No person shall be deprived of his life or personal liberty except according to the procedure established by law.'⁸

This Article specifies two concepts-

- a) Right to life
- b) Principle of personal liberty.

In **A.K.Gopalan's case**, the Court held, "*the ambit of Personal Liberty by Article 21 of the Constitution is wide. It covers both substantive rights to Personal Liberty and the procedure prescribed for their deprivation.*"⁹

In **State of Andhra Pradesh v. Challa Ramkrishna Reddy**, the Supreme Court held that '*Right to life is one of the basic human rights, guaranteed to every individual by Article 21 and not even the State has authority to infringe it. A prisoner does not cease to be a human being even when lodged in jail; he continues to enjoy all his fundamental rights, including the Right to life.*'¹⁰

Article 22(4) to (7) gives certain special safeguards for the "detenues" detained under preventive detention laws.

- **Article 22(4)** provides the maximum period of two months for detention for which a detainee can be captured without asking the opinion of the Advisory Board.
- **Article 22(6)** states that the authorities can deny the disclosure of certain facts to detainee in the public interest.
- **Article 22(7)** states that there is a provision for the formation of the Advisory Board.

Article 39 A of the Constitution empowers the prisoners to secure free Legal Aid.

Just because a person has been imprisoned, doesn't mean his rights can be violated.

In **Sheela Barse v. State of Maharashtra**, Court observed that "*the Legal assistance to a poor or accused, arrested and put in danger of his life or personal liberty, is a constitutional requirement by Article 39A as well as by Articles 14 and 21 of the Constitution.*"¹¹

Articles **72 & 161**¹² grants special powers to the President and the Governors of States, to grant pardon or mercy to the detainees from the judicial process.

Role of Judiciary in Protecting Prisoner's Rights

⁸ INDIA CONST. art. 21.

⁹ A.K. Gopalan v. U.O.I., A.I.R. 1950 S.C. 27.

¹⁰ Andhra Pradesh v. Challa Ramkrishna Reddy, A.I.R. 2000 S.C. 2083.

¹¹ Sheela Barse v. State of Maharashtra, A.I.R. 1983 SC 378.

¹² INDIA CONST. art. 72.

In, India, the Judicial system plays a major part as it sets the laws which are to be mandatorily abided by the citizens of the country. Likewise, this fact cannot be rejected that our Honorable Judiciary has not ignored the detainees and recognized several rights for them through their judgments and interpretations. Judiciary in every nation has an obligation and a Constitutional role in ensuring Human Rights of citizens. Since every country has judicial authority for the protection of its national citizens, it must make rules and regulation of jail for the person who conflicts with the law. But in no way it means that the Constitution will not provide any rights to the detainees. The detainees also have their legal and fundamental rights.

-Right to food and water,

The prisoner must be given decent access to sufficient food and to be free from hunger and malnutrition. He/She also ought to be given adequate and clean water for personal uses.

-Right to legal aid,

Providing legal aid is one of the constitutional rights, and its philosophy is that it should be provided easily to the person in need by the legal machinery who cannot acquire it by itself.

Through the 42nd Amendment Act, 1976 free legal aid has been inserted as one of the Directive Principles of State Policy under Article 39A of the Constitution. Since this Article is placed under part-IV of the Constitution among the Directive Principle of State Policy, hence, it isn't enforceable by the courts. But it is a significant right which has been included in our Constitution.

In **M.H. Wadanrao Hoskot v. State of Maharashtra**, the Court said "*Right to legal aid is one of the elements of fair procedure, i.e. the Supreme Court reading Articles 21 and 39-A, read with Article 142 and section 304 of Cr.PC together acknowledged that the Government was under a duty to provide legal services to the accused persons*"¹³ to provide him with justice.

-Right to speedy trial,

It is a fundamental right which has been construed into our Constitution under Article 21 for the rights of prisoners. Every individual is presumed to be innocent until proven guilty. If once a case has been brought before the Court, then the trial has to be conducted quickly to punish the guilty and to relieve the innocent. Therefore, the courts must punish the guilty person as quickly as time permits so that the accused person is not being harassed over time, and justice is not delayed.

In **Kadra Pahadiya v State of Bihar**¹⁴, the Supreme Court held that '*Right to speedy trial is a part of the fundamental Right envisaged under Article 21 of the Constitution. Postponement in*

¹³ M.H. Wadanrao Hoskot v. State of Maharashtra, A.I.R.1979 S.C. 192.

¹⁴ Kadra Pahadiya v. State of Bihar, A.I.R. 1983 S.C. 1167.

the disposal of cases is the denial of justice, so the Court is required to adopt essential steps for expeditious trial and quick disposal of cases.’ The Supreme Court held that *‘No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair and just.’*

-Right to expression,

In the case of **State of Maharashtra v. Prabhakar Panduranga**¹⁵, the Court held that *“the right to personal liberty includes the right to write a book and get it published and when this right was exercised by a detenu, its denial without the authority of law violated Article 21”*. The State or its officials cannot confine the publication.

-Right against solitary confinement, hand-cuffing & bar fetters and protection from torture,

Solitary confinement means seclusion of a detainee from the human society with only occasional access to other individuals and only at the discretion of the jail authorities.

Torture implies causing painful tangible or intangible injuries in the body or soul of an individual by the Police or investigating agency to extract information regarding the crime.

An arrested individual or undertrial prisoner ought not to be subjected to hand-cuffing in the absence of justifying circumstances. In **Prem Shankar Shukla v. Delhi Administration**, the Court held that *“to hand-cuff is to hoop harshly and to punish humiliatingly. A prisoner is entitled to the minimum freedom of movement under Article 19, which cannot be cut down by the application of hand-cuffs. The hand-cuffs must be the last resort as there are other ways for ensuring security.”*¹⁶

Police officers should be the protector of the citizens and not be the person who violates the valuable rights of the citizens.

In **Sunil Batra v. Delhi Administration and Ors**, the Supreme Court examined the validity of solitary confinement and also observed that *constantly or continuously putting bar fetters to the prisoners day and night diminish the prisoner from being a human being to an animal and considered this type of treatment brutal and abnormal and held that it is also against the principles of the Constitution of India.*

In **Ajab Singh & Anr. V. State of Uttar Pradesh & Ors**, the Court held that *“the death of any person under judicial custody is not appreciated and if such death occurs then such holding custody is not only responsible for giving answers to the public at large but also the Court that under whose custody such incident occurred.”*

-Right to meet friends/relatives and consult a lawyer,

¹⁵ State of Maharashtra v. Prabhakar Panduranga, A.I.R. 1966 S.C. 424.

¹⁶ Prem Shankar Shukla v. Delhi Administration, A.I.R. 1980 S.C. 1535.

Nowadays, prison is not treated to give prisoner relief from physical torture but to also provide mental support. In **Sunil Batra (II) v. Delhi Administration** Supreme Court observed that *“prisoners have the Right to meet their friends and relatives and mentioned that the visit of the friends or relatives should be searched properly and other security criteria should be maintained.”*¹⁷

-Right to reasonable wages in prison,

A person, whether in a prison or a freeman, have the Right to get remuneration for the services rendered. If the payment is not analogous to the services rendered, then it would be categorized as ‘forced labour’ according to section 23 of the Constitution. Therefore, the prisoners who are made to do work in prison must be paid reasonable wages.

In **Mahammad Giasuddin v. State of A.P.**, the Court directed the State *“that the remuneration should be paid on a reasonable rate which means that it should not be less than the minimum wages. The work which is done by the prisoners is not only a part of the punishment but also rehabilitation for the prisoners. They are provided with training for their work to prevent them from idleness, depression etc. The kind of work which would be regarded to every prisoner is determined by the medical examination by keeping in mind their mental and physical being.”*¹⁸

-Right to be protected against any violence, harassment,

The detainees have a right to be free from sexual harassment, sex crimes, racial discrimination such as racial segregation, disparate treatment based on ethnicity, religion or age by other prisoners or prison personnel.

-Right to medical and mental health care,

The prisoners must be given sufficient medical and mental health treatments.

-Right to complain about prison conditions

The prisoners have the Right to complain regarding prison conditions and seek remedy from prison officials and Courts.

Other Enactments

These Enactments were made to create prison a better place to spend punishment for both men and women. Few of them include:

Prisoner’s Rights under the Prisons Act, 1894

¹⁷ Sunil Batra v. Delhi Administration, A.I.R. 1980 S.C. 1579.

¹⁸ Mahammad Giasuddin v. State of A.P, A.I.R. 1977 S.C. 287

This is the first legislation in India to discuss the prison guidelines. The principal objective of the Act is to provide rehabilitation of detainees in association with the prisoner's rights.

The main provisions for the reformation of prisoners are as follows:

- **Section 4 - Accommodation for detainees:** The State Government shall provide, for the detainees in the territories under such Government, accommodation in prisons constructed and regulated in such way as to comply with the requisitions of this Act in respect of the separation of detainees.
- **Section 7 - Temporary accommodation for detainees:** At whatever point, it appears to the Inspector General that the quantity of detainees in any jail is more than can conveniently or securely be kept therein, and it is not convenient to transfer the abundance number to some other jail, or whenever from the outbreak of epidemic disease inside any jail, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any detainees, the provision shall be made, by such officer and in such a way as the State Government may coordinate, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or securely kept in prison.
- **Section 24(2) - Prisoners to be examined on admission:** Every criminal detainee shall also, at the earliest after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the condition of the detainees' health, and of any injuries or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer considers fit to include.
- **Section 27 - Separation of prisoners:** The orders of this Act concerning the separation of prisoners are as follows-
 - a) in a jail containing both female and male detainees, the females shall be confined in separate buildings, or separate parts of the same building, in such way as to prevent their seeing, or conversing or holding any intercourse with, the male detainees;
 - b) in a jail where male detainees under the age of 21 are confined, means shall be provided for separating them altogether from the other detainees and for separating those of them who have reached the age of puberty from the individuals who have not;
 - c) unconvicted criminal detainees shall be kept separated from convicted criminal detainees
 - d) Civil detainees shall be kept separated from criminal detainees.

In 2016, the Parliament passed the Prisons (Amendment) Bill, 2016 to amend the Prisons Act, 1894 to provide better protection, assistance and welfare to the detainees.

The Prisoners Act, 1990:

It is the obligation of the Government for the removal of any detainee confined by any order or sentence of any Court, who is of unsound mind to a lunatic asylum and other places where he will be given appropriate treatment.

Any court which is a High Court may in a case in which it has recommended to Government the granting of a free pardon to any detainee, allow him to be at liberty on his own cognizance.

The Transfer of Prisoners Act, 1950:

The Act was enacted for the transfer of detainees from one state to another for rehabilitation or vocational training and from overpopulated jails to less congested prisons within the State.

The Prisoners (Attendance in Courts) Act, 1955:

The Act contains provisions authorizing the removal of detainees to a civil or criminal court for giving proof or for explanation to the charge of an offence.

Model Prison Manual:

The Committee prepared the Model Prison Manual and presented it to the Government of India in 1960 for implementation. It is the guiding rule to create a base for the current Indian prison management to be governed. On the guidelines of the Model Prison Manual, the Government of India, Ministry of home affairs, in 1972, appointed a committee that works on jails. Furthermore, made a report and mentioned the requirement for a national policy on jails. They also made a significant reference with concern to the organization and treatment of offenders and laid down principles.

This Committee gave the following points on which prisoners can connect with their families and lawyers:

- a) The Government shall limit the number of letters a detainee can write in a month under the rules. However, there shall be no constraint on the numbers of letters received to a prisoner.
- b) Each detainee shall be allowed to have meetings with their families, relatives, friends and lawyers once every month. But, the number of persons who may interview a detainee at one time shall ordinarily be limited to three.
- c) For the guests, visitors, proper waiting rooms may be built in each prison to allow them to await their turn for meetings.
- d) The maximum time cutoff the interview shall be 30 minutes, which can be further extended by authorization of the superintendent of prisons.

This Committee issued a recommended way how the detainees shall be dealt with, and they should be allowed to contact their family members and lawyers in an endorsed way.

Conjugal visits in prisons of India

Conjugal visit refers to a scheduled visit where a prisoner is permitted to spend time with their legal spouse. Visit's duration may extend from several hours to several days wherein the meeting parties may engage sexually. It is a modern-day concept adopted by countries like Germany, Canada, Spain, Russia, Belgium, Saudi Arabia and to some extent Brazil, U.S.A and Israel even permits same-sex conjugal visits.

When Siddique Ali, 40, a prisoner of Palayamkottai Central Jail, in Tamil Nadu's Tirunelveli district submitted a Habeas- Corpus petition along with his wife, a division bench of the High Court awarded a two-week conjugal visit to him for Procreation. Madras High Court granted leave to the convict who is serving a life term by invoking laws in various countries, which permits such visits and also by resolution of the Centre that conjugal visits are not a privilege but rather a right.

The idea is being progressively adopted by countries worldwide taking into consideration that conjugal visits are of much significance in preserving family bonds and for decreasing the tendency of breaking prison's norms by prisoners. Psychiatrists, Psychologists, Prison reforms and academics that endorse a correctional and rehabilitation measures for prisoners have consistently agreed to the fact the conjugal visits help a detainee to return to a normal life after being released from jail.

Here, in the present case, the authorities argued before the Court that the jail manuals nowhere mention granting leave to the prisoner on such requests. However, the Court noted that according to Rule 20 of Tamil Nadu Suspension of Sentence Rules, 1982, the seventh ground for suspension has been mentioned as "any other extraordinary reason". This scenario falls under the scope of it as there was no legislation or regulation regarding this. Furthermore, devoid of this provision, the Court will even have Article 21 to consider the plea of wife petitioner. It held that since the wife was not incarcerated, and she was the one suffering outside the jail, she cannot be denied her legitimate expectation to have a child.

In India, currently, no law expressly allows prisoners for conjugal visits. But, in 2015, The Punjab and Haryana High Court permitted conjugal visits and artificial insemination for prisoners. Justice Surya Kant held that *unless reasonably classified, prisoners are entitled to the right to procreate while incarcerated and that it was a fundamental right. Still, it will be the sole prerogative of the State to regulate a legally established procedure for the same.*

Justice Surya Kant had said, *"Such a right, however, is to be regulated as per the policy established by the State which may deny the same to a class or category of convicts as the right*

*described above is not an absolute right and is subject to the penological interests of the State”.*¹⁹

In Sunil Batra judgement of 1978, it was held that “*Imprisonment does not mean farewell to fundamental rights (Part III of the Constitution)*. However, Indian prisons, while taking away some personal freedom as part of prison life, do not necessarily take away the fundamental rights of prisoners. But, the current framework hardly gives any prolonged contact between prisoners and families.

The present **mulaqat** system allows families to visit prisoners. This very quick meeting hardly extends beyond 20 minutes that too held in a very crowded noisy place, which often leads to extremely less chances of emotional gains.

In contrast, the colonial-era laws allowed **kacchi mulaqat and pakki mulakat** to detainees, where the latter permits the convict one-on-one meetings with their spouse.

In contrast, prisons without bars or open-air prisons are more lenient, i.e. the Rajasthan’s Sanganer open camp permits selective convicts to reside with their family members to enhance integration and instil in them family responsibility and self- discipline.

Risk of health is also a factor when discussion on conjugal rights is brought up. Deprivation of conjugal rights by the Courts are due to rising and innumerable cases of HIV/ AIDS in jail. The same was also reported because of sexual intercourse between the same gender. Well, the cause for this evil is deprivation of the conjugal relationship of the detainee.

A few countries have recognized the rights of detainees for conjugal visits. If the jails are overcrowded, the Government should find out measures for such problems. As reforming the prisoners is part of the corrective mechanism provided in the criminal justice, Conjugal visits will undoubtedly help detainees to maintain a good relationship with their family members, reduce recidivism, motivate and an incentive to good prisoners.

However, the Court has suggested that it is a right time that the Government should constitute a committee to consider the probability of providing conjugal visit, analyze the pros and cons of allowing conjugal visits and also to provide the facility for a conjugal visit to eligible detainees subject to safety measures and precautions are taken.

Conclusion

“Forgiveness is the attribute of the strong”

- Gandhi.

¹⁹ Express Web Desk, *What is the status of conjugal rights for prisoners in India*, THE INDIAN EXPRESS (Jan.25, 2018, 5.00 PM), <https://indianexpress.com/article/what-is/what-is-the-state-of-conjugal-rights-for-indian-inmates-5038969/> (Last accessed on Nov. 15, 2020).

Life is not merely animal existence. So, being a detainee he/she must be given all the rights which a free man is equipped with. The Court should act as a custodian and protector of fundamental rights of the citizens. Committing a crime does not reduce that person into a non-person. Still, the punishment should also be provided to safeguard society and let other people beware of doing such acts. A detainee is a human being, a natural person and also a legal person. The detainee's rights ought to be taken seriously to achieve complete justice.

It is clear from the above inspection that Judiciary plays a major role in the protection of rights of prisoners and have been acting as a saviour for the detainees in cases where legislative and executive are not able to provide a perfect solution to them. The detainees are also not deprived of their fundamental rights while they are behind the bars as Article 14, 19, 21 implicitly guarantees the rights of the prisoners. Furthermore, the Conjugal rights with certain conditions will also soon be granted as the Court suggested setting up a committee to address the issue of conjugal visits to acquaint them with the rights they deserve as humans.

However, the motive remains the same that the police authorities and the prison authorities need to be trained and accommodated so that they take detainees rights seriously.

De Jure Nexus

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