

Human Rights of a Prisoner in India

Shringharika Tyagi

Assistant Professor

Fairfield Institute of Management & Technology,

GGSSIP

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**¹ 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

¹ (AIR 1997 SC 610)

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.¹ 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.² 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 Constitution of India act, 1949

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?

Detainee means any person who is kept under custody in detention home or prison because he or she has committed an act barred by the law of the land. A detainee also known as offender who is a person against their determination is depressed of their independence. The independence can be depressed by influential control or detention, hostage's privileges deal with the privileges of prisoner while subsequently the bars. Detainees have basic legitimate right that cannot be taken away from them and these privileges contain right to get food and water, right to have a counsellor, right to get checked by a remedial practitioner of his choice, right to get bail, etc. Section 1 of Prison Security Act 1992 states "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 Anthropological Privileges rule guards individuals from cultural insight, from distress and from vanishing. They also spot the privileges of definite

assemblies of individuals containing youngsters, females, enable persons, native people, and migratory labors. Some of these treaties are flattered by elective procedures that deal through definite problems or sanction individuals to make objection.

2.2 Universal Declaration of Human Rights:

In 1948 a program was ongoing in the United Nations in the method of Universal Declaration of Human Rights which was implemented by the General Assembly of United Nations. This living manuscript is too identified equally Human Rights Declaration, this significant deed delivers some elementary source of organization of integrity. The comestibles in the article are as follows: There is not at all accurate to torture or cruel, unpleasant or humiliating behavior or retribution.

- Definitely not any individual should be imperiled to illogical custody or custody.
- 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 9th 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.”

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 Hirsch 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.”

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.”³
- 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.

2.1 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

³ Declaration on Protection from Torture, 1975.

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.⁴

⁴ <https://www.legalserviceindia.com>

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 and will not be punished twice for the same offence and also will not become witness in his own case."

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*⁵, *Ashok K. Johari 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) clauses (1) and (2) shall not be applicable to the following persons-
 - (a) An rival foreign, or
 - (b) To any individual who is in prison or captive under any law made for providing preventive detention.

⁵ AIR 1997 SC 610)

- (5) A period of three months is stated as restriction period beyond which an individual cannot be held captive by law enforcement officers, except in the following case where “an Advisory Board containing 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) and such individuals are held captive under the statute made for this purpose.”
- (6) If any individual is held captive under the said law will have a basic right to be aware of the reasons for which he being detain and thus it is the obligation of the law enforcement officers to inform such reasons to the said individuals.

3.2 Under Criminal Procedural Law:

Section 56- Individual in detention to be taken before the judge by officer in- charge of Forces Place.

A forces general creating an seizure shorn of authorization intend to, without avoidable suspension and matter to the requirements here delimited as to bond, take or refer the individual incarcerated already a Judge having influence in the case, or earlier the general in custody of a police force place.

Section 304- Lawful help to suspect at government cost in definite cases.

Wherever, in a hearing formerly the Court of Session, the defendant is not signified by a pleader, and where it look as if to the Court of law that the uncertain has not plenty means to lodge a pleader, the Court shall allocate a pleader for his resistance at the overhead of the State.

“Section 54- Investigation of detained individual by health physician at the appeal of the detained individual.

- (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 behalf⁶.

Section 41D- Right of detained person to see a promoter of his prime in cross-examination⁶.

Once at all individual is arrested and questioned through the forces, he shall be allowed to chance an advocate of his superior throughout questioning, however not during questioning. In *Francis Coralie Mullin vs The Administrator, Union Territory of Delhi and Or.*, it was apprehended that “the right of a decent to consult a legal adviser of his choice for any purpose not necessarily limited to defiance in a criminal proceeding but also for securing release from preventive detention of filing a writ petition or prosecuting any

⁶ Code of Criminal Procedure, 1973.

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 detent cannot be deprived of this right nor can this right of the detent 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 decent 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 volatile of Articles 14 and 21”.

Case Laws relating to the rights of prisoners in India

(1) Joginder Kumar v. State

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”⁷.

(2) “Neelabati Bahera v. State of Orissa

Apex court of the country said 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.” Also “the precious right 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.” The Apex court through this decision puts a heavy duty on the law enforcement officers or guardian of prison to keep in check that the persons detain there are given

⁷ [1994 (4) SCC 260]

their basic rights as provided to them by the Living document of the Country. Their liberty is in the very nature of things circumscribed by the very fact of their confinement and therefore their interest in the limited liberty left to them is rather precious.⁸

(3) Charles shobraj v. Superintendent, Tihar jail

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”⁹.

(4) “A.K. Gopalan v. Union of India”¹⁰

Apex Court of the Country observed 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”.

(5) Sheela Barse v. State of Maharashtra

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”¹¹

(6) Smt. Selvi and Ors. V. State of Karnataka and Anr. ¹²

It was interpreted 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

⁸1993 (2) SCC 746

⁹ AIR 1950 SC 27

¹⁰ AIR 1950 SC 27”:

¹¹ AIR 1983 SC 378

¹² 2010(7) SCC 263

as evidence. This Court has recognized that the protective scope of Article 20(3) extends to the investigative 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 them cannot be categorized as material evidence.

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 17th 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 practice 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 bonfide 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"¹³.

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 it 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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