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# Paradigms of Prisoner's Rights: International and Indian Perspective

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## ABSTRACT

*Human rights constitute a major role in the development of the society, if with the evolvement of the society the human rights are not guaranteed to people, development of the society will not be that effective as it could be, this is the reason why the basic human rights are always guaranteed to the people internationally as well as at the national level. In this article the author will majorly focus on the rights of the prisoners, guaranteed to prisoners by international law as well as by national law, with the help of judicial precedents. There are many kinds of prisoners Foreign National Prisoners (FNPs), undertrial prisoners, etc. There are various international instruments that have acknowledged the rights of prisoners including the ICCPR, the ICSEER and the UN Standard Minimum Rules for the Treatment of Prisoners (also known as the Mandela Rules) reflect the significance of the reformatory process while executing a sentence of imprisonment. In this paper prisoners' rights from Indian perspective and international perspective both are discussed comprehensively.*

**Keywords:** Prison, violation, imprisonment, undertrial, convict.

## I. INTRODUCTION

Prisoners are also human and they must enjoy the rights guaranteed to them even when they are behind the bars. *The treatment of prisoners also affects the way in which certain populations view the law enforcement and their legitimacy*<sup>2</sup>. Every individual has basic human rights, prisoners are also human but they are often discriminated in society on the basis of their incarceration, by virtue of which a long-lasting negative impact is left in their mind making it hard for them to reintegrate into the society. In the case of *Shabnam v. Union of India*<sup>3</sup>, the apex court highlight the right of human dignity in context prisoners' treatment.

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<sup>2</sup> Paridhi Poddar and Winnu Das, ESTABLISHING LINKAGES BETWEEN IMPRISONMENT AND IMPOVERISHMENT: REINSTILLING PUNITIVE SENSIBILITIES IN THE CARCERAL STATE, (2017) 7 GJLDP (October) 85.

<sup>3</sup> *Shabnam v. Union of India*, (2015) 6 SCC 702: 2015 SCC OnLine SC 527.

### (A) Purpose of Imprisonment

Originally prisons did not have any purpose beyond holding prisoners until trial<sup>4</sup>. Till 18<sup>th</sup> Century, the primary purpose for which prisons were used was for the confinement of persons accused of crimes and awaiting trials, for debtors and convicts waiting for the imposition of their sentences which usually was death or transportation (deportation) overseas. Imprisonment sentence was rarely imposed for minor crimes<sup>5</sup>.

The purpose of prisons can be divided into two major classes- retributive justice and utilitarian or consequentialist justice after Bentham's theories<sup>6</sup>. Retributive justice is related to the institution of criminal punishment<sup>7</sup>. In other words, retributive justice deals with the concept that the infliction of harm or punishment- in proportion to the offence- is the necessary and correct response to a wrongdoing<sup>8</sup>. Consequentialism conventionally argues that criminal law should distribute punishment in a manner that make the most of desirable consequences, such as social welfare<sup>9</sup>.

## II. RIGHTS OF CONVICT<sup>10</sup>

1. Convict has a right to meet his lawyer and family members at least twice in a week.
2. Should not be paid below from prescribed wages and should be equally remunerated for his labour.
3. Should be treated with dignity.
4. Can give press interviews, subject to certain restrictions.
5. Has right to send letters to his relatives.
6. Cannot be subjected to exploitative labour.
7. Has right to write books and get them published if he/she desires.

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<sup>4</sup> Paridhi Poddar and Winnu Das, *Establishing Linkages Between Imprisonment and Impoverishment: Reinstilling Punitive Sensibilities in the Carceral State*, (2017) 7 GJLDP (October) 85

<sup>5</sup> <https://www.britannica.com/topic/prison> last visited 18.12.2022 (21:36)

<sup>6</sup> Paridhi Poddar and Winnu Das, *Establishing Linkages Between Imprisonment and Impoverishment: Reinstilling Punitive Sensibilities in the Carceral State*, (2017) 7 GJLDP (October) 85

<sup>7</sup> Donald H.J. Hermann, *Restorative Justice and Retributive Justice: An Opportunity for Cooperation or an Occasion for Conflict in the Search for Justice*, Seattle Journal for Social Justice, Vol.16 Issue 1 Summer 2017, Article 11

<sup>8</sup> Paridhi Poddar and Winnu Das, *Establishing Linkages Between Imprisonment and Impoverishment: Reinstilling Punitive Sensibilities in the Carceral State*, (2017) 7 GJLDP (October) 85

<sup>9</sup> Piotr Bystranowski, *RETRIBUTIVISM, CONSEQUENTIALISM, AND THE RISK OF PUNISHING THE INNOCENT: THE TROUBLESOME CASE OF PROXY CRIMES*, *Diametros* 53 (2017): 26–49 doi: 10.13153/diam.53.0.1099

<sup>10</sup> Dr.Prativa Panda, *Rights of Prisoner in India*, Volume : 6 | Issue : 4 | April 2016 | ISSN - 2249-555X | IF : 3.919 | IC Value : 74.50

8. Cannot be held in servitude or slavery.

9. Should not be subjected to any mental / physical torture or any kind of inhuman or degrading punishment.

10. Cannot be isolated in a separate cell, except on medical grounds or if he/she has proven to be dangerous to other prisoners.

#### **(A) Kinds of prisoners**

Prisoners are of various kinds, following are different kinds of prisoners under Prisoners Act, 1894 as well as in general sense:

##### **a. Foreign National Prisoners**

Life inside prison is not easy, and when we discuss about the Foreign National Prisoners it is even harder for them to survive inside the prison because they are often considered as “strangers” by the prison staff and other prisoners and have to face language barriers which often causes disconnect from the surroundings<sup>11</sup>. They face lots of discrimination behind the bars.

##### **b. Undertrial Prisoners**

Undertrials are prisoners who have not been convicted for the charges for which they have detained, and are facing trials in the court. The purpose of keeping undertrials in custody is to ensure fair trial and so that they are not in position to intervene between a fair trial. They are unable to use the advantages of bail provisions, and other factors like poor legal aid, delay in trial, lack of awareness that undertrial prisoners are forced to languish in the jails for long periods<sup>12</sup>.

#### **(B) Prisoners act, 1894**

As per Section 3 of the Prisoners Act, 1894, prisoners are classified into three major groups i.e., criminal prisoner, convicted criminal prisoner and civil prisoners.

##### **a. Criminal Prisoner**

means any Prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction or by order of a Court - Martial.

##### **b. Convicted Criminal Prisoner**

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<sup>11</sup> Madhurima Dhanuka and Palak Chaudhari, *Broken Path to Freedom: Deciphering Lives of Foreign Nationals in Indian Prisons*, 31.2 NLSI Rev 185 (2019)

<sup>12</sup> Komal Khare and Devershi Mishra, *DEBUNKING THE EFFICACY OF S. 436-A OF CRIMINAL PROCEDURE CODE: AN EMPIRICAL STUDY OF UNDERTRIALS IN INDIA*, (2016) 2 HNLU SBJ 69

Section 3 of the Prisoners Act, 1894 defines convicted criminal prisoner as any Criminal Prisoner under sentence of a Court or Court - Martial and includes a person detained in prison under the provisions of Chapter VIII of the Criminal Procedure, 1882 (X of 1882) or under the Prisoner's Act, 1871 (V of 1871).

### c. Civil Prisoner

According to Section 3 "Civil prisoner" means any prisoner who is not a criminal prisoner.

## III. PRISONER RIGHTS: INTERNATIONAL PERSPECTIVE

Following the two World Wars and due to widespread of neglect of even basic human rights and liberties on the basis of sex, religion, race etc had grave effect on prisoners right internationally. Due to war prisons were overcrowded and prisoners were treated badly abuse and murder of prisoners was very common during that time. As a aftermath of the two World Wars various International Treaties were made which laid down codes by which prisoners should be dealt with, following are few of them:

1. Third Geneva Convention (came into force in 1924 significantly amended in 1949).
2. Charter of United Nations (1945).
3. Universal Declaration of Human Rights (1948).
4. United Nations Standard Minimum Rules for the Treatment of Prisoners (1995).
5. International Covenants on Civil and Political Rights (1966).
6. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
7. Basic principles for the Treatment of Prisoners (1990).
8. Basic principles on the use of Force and Fire Arms by Law Enforcement Officials (1990).

**Third Geneva Convention** discusses about the humanitarian protections for prisoners of war. According to this convention the prisoners of war are guaranteed with various rights including the right to humane treatment, right against violence causing seriously endangering health or resulting into death, right against physical or mental torture, right to health including adequate psychological and physical treatment etc. **International Covenant on Civil and Political Rights** is also a comprehensive document in its Article 10 it is enshrined that any person if deprived of their liberty shall be treated with dignity and humanity. **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** also known as Torture Convention prohibits torture and inhuman, cruel, or degrading treatment, without

exception or derogation. **Basic Principles for the Treatment of Prisoners** lays down rule that all prisoners shall have the right to take part in cultural activities and education intended for the development of the human personality, the rules further states that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings. These basic rules also state that prisoners shall have access to the services related to the health available in the country without any discrimination on the basis of their legal situation. Various guidelines are also issued internationally on the treatment of prisoners and the most comprehensive guidelines are **UN Standard Minimum Rules for the Treatment of Prisoners (also known as the Mandela Rules)** Nelson Mandela was adopted by United Nations General Assembly on 17<sup>th</sup> December 2015. Total 122 rules are laid down in the Resolution. Following are few rules:

- i. All prisoners shall be treated with respect due to their value as human and inherent dignity.
- ii. All prisoners with mental, physical, or other disabilities have effective and full access to prison life on equitable basis.
- iii. The rules shall be applied with no discrimination on the grounds of colour, sex, race, language, place of birth etc.
- iv. All accommodations provided for the use of the prisoners shall meet all requirements of health.
- v. Prison administration should offer vocational training and work, education, as well as other forms of assistance that are available and appropriate, including those of a moral, spiritual, remedial, social and health as well as sport- based nature.
- vi. Different categories of prisoners shall be kept in separate institution or parts of institution, based on their sex, age, criminal record, necessities of their treatment and the legal reason for their detention.

**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**<sup>13</sup> states that “*No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”

#### IV. PRISONERS RIGHTS: INDIAN PERSPECTIVE

According to the Prison Statistics India- 2021<sup>14</sup> the total number of prisons at national level has

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<sup>13</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).

<sup>14</sup> Prison Statistics India-2021 Executive Summary, [https://ncrb.gov.in/sites/default/files/PSI-2021/Executive\\_ncrb\\_Summary-2021.pdf](https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf) (Jan.29, 17:01 pm)

increased by 1.0% which is from 1,306 in 2020 to 1,319 in 2021.

Year	No. of Prisons	Actual Capacity of Prisons	No. of Prisoners at the end of the year	Occupancy Rate at the end of the year
2019	1,351	4,00,934	4,81,387	120.1%
2020	1,306	4,14,033	4,88,511	118.0%
2021	1,319	4,25,609	5,54,034	130.2%

From the above-mentioned statistical data, number of prisoners are increasing gradually from 2019 to 2021. With the increasing number of prisoners, the awareness about their rights must be promoted in the prisons. Many prisoners are still not vigilant enough to enjoy their rights even when the statutes guarantee them various rights.

According to Indian perspective rights of prisoners are protected under various statutes such as Indian Penal Code, Prisoners Act, 1894, Code of Criminal Procedure, Constitution of India:

- **Rights of Prisoners under Constitution of India**

- i. Protection in respect of conviction for offences (Article 20).
- ii. Protection of life and personal liberty (Article 21).
- iii. Protection against arrest and detention in certain cases (Article 22).

- **Rights of Prisoners under Indian Penal Code**

- i. Protection against the arrest made with corrupt or malicious intention (Section 220).

- **Rights of Prisoners under Prisoners Act, 1894**

- i. Accommodation for Prisoners (Section 4).
- ii. Accommodation of male prisoners, female prisoners, and other prisoners in separate (Section 27).
- iii. Maintenance of certain prisoners from private sources for the purpose of maintaining himself/herself subjected to examination and approval by Inspector General (Section 31).
- iv. With Superintendent's permission, prisoners have right to work and follow any trade or profession (Section 34).

- v. Sick prisoners have right to proper care (Section 37).
- **Rights of Prisoners under Code of Criminal Procedure**
  - i. Right to Bail (Section 50).
  - ii. Right to examination by medical practitioner (Section 54).
  - iii. Right to be taken to magistrate without delay (Section 56).
  - iv. Right to get copies of documents (Section 208)
  - v. Right to be present during trial (Section 273)
  - vi. Right to free legal aid (Section 304).
  - vii. Right to have legal practitioner (Section 410).

Rights are guaranteed to prisoners under various statutes but the awareness of the same must be promoted. Prisoners are living under the veil of ignorance resulting in the circumstance where they are bearing the torture within the prisons and experiencing the violation of their rights.

## V. JUDICIAL PRECEDENTS

Judiciary has always acted as a watchdog in protecting human rights. It has always taken the progressive approach in order to deal with the violation of human rights. Following are some rights of prisoners explained with the help of judicial precedents.

### (A) Right against solitary confinement<sup>15</sup>

The landmark judgment of *Sunil Batra vs. Delhi Administration*<sup>16</sup> holds a vital place while discussing right against solitary confinement and this case also helped in securing the fundamental rights of prisoners. In this case, Sunil Batra a prisoner of Tihar Central Jail, who was serving a death sentence, wrote a letter to a judge of Supreme Court which was later converted into habeas corpus proceeding. In that letter he discussed about the questionable treatments of inmates at the jail as well as the poor living conditions of prisoners. In this case Supreme Court considered the validity of solitary confinement. The court further observed that every prisoner has right against Solitary Confinement.

### (B) Right against Hand Cuffing

In the case of *Prem Shankar Shukla v. Delhi Administration*<sup>17</sup>, the Apex Court struck down the

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<sup>15</sup> Solitary confinement is a form of imprisonment in which the prisoner lives in a single cell with no contact with other people.

<sup>16</sup> AIR 1978 SC 1675

<sup>17</sup> AIR 1980 SC 1535



provisions of the Punjab Police Rules which discriminated between the poor and rich prisoners in determining who was to be handcuffed.

### **(C) Right to Speedy Trial**

The apex court held in this case that the right to speedy trial is guaranteed to prisoners under Article 21 of the Indian Constitution<sup>18</sup>. But still while observing contemporary judicial system it is seen that there is lack of speedy trial in judicial system, the delay in trial of the cases is usually caused due to many reasons, one of such reason is inadequate number of judges and lawyers in judiciary itself.

The Supreme Court in the case of A.R. Antulay v. R.S. Nayak<sup>19</sup> held that at all stages like investigation, inquiry, trial, appeal, revision and retrial, the right to speedy trial arising from Article 21 of the constitution is available.

### **(D) Right against Inhuman Treatment of Prisoners**

Prisoners are also human, just because they are behind bar does not mean that they will suffer from inhuman treatment. It was held by Supreme Court in Kishore Singh v. State of Rajasthan<sup>20</sup> that the use of third-degree method by police is violative of Article 21. In the case of Sheela Barse v. Union of India<sup>21</sup> the Supreme Court passed an order which stringently barred the incarceration of non-criminal and mentally unsound individuals in jails<sup>22</sup>.

### **(E) Right to have interview with Relatives, Friends, and Lawyers**

It was held by the Supreme Court in the case of Francies Corale Mullin v. the Administrator, Union Territory of Delhi & others<sup>23</sup> that the right to life and liberty also included right to live with human dignity and therefore detainee would have right to have interviews with friends, family members and lawyers without stringent restrictions<sup>24</sup>.

### **(F) Right to Free Legal Aid**

In the case of M.H. Hoskot vs. State of Maharashtra<sup>25</sup> the question was dealt by the court that whether the right to free legal aid is provided under the Article 21 of the Constitution or not? It

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<sup>18</sup> Hussainara Khatoun v. Home Secretary, State of Bihar (1980) 1 SCC 98 : AIR 1979 SC 1369

<sup>19</sup> (1992) 1 SCC 225

<sup>20</sup> AIR1977SC2401

<sup>21</sup> (1993) 3 Crimes 261 SC : JT (1993) 4 SC 558 : (1994) 4 Scale 493 : (1993) 4 SCC 204 : 1993 Supp (1) SCR 561

<sup>22</sup> Hashmat Ali Khan and Mishal Naqshbandi, *Importance of Addressing Mental Health in the Criminal Justice System-An Overview*, 29 ALJ (2021-22) 80

<sup>23</sup> 1981 SCR (2)516

<sup>24</sup> Dr.Prativa Panda, *Rights of Prisoner in India*, Volume : 6 | Issue : 4 | April 2016 | ISSN - 2249-555X | IF : 3.919 | IC Value : 74.50

<sup>25</sup> 1978 AIR 1548

was observed by the court that it is the obligation of the State to provide free legal aid, whenever undertrial prisoners are unable to defend themselves. This is a landmark judgment because for the first time in India, it established the right of prisoners to free legal aid under Article 21 of the Constitution which deals with the liberty provision<sup>26</sup>.

### **(G) Right to Freedom of Speech and Expression**

Prisoners also have right to freedom of speech and expression and the same was observed by the court when a petitioner prisoner wanted to publish his own biography, the court held that prisoners are also human being and under Article 19 (1) of the Indian Constitution freedom of speech and expression is also guaranteed to prisoners. Thus, prisoners have right to write<sup>27</sup>.

## **VI. CONCLUSION & SUGGESTIONS**

Despite the rights which are guaranteed to prisoners by various international convention and Indian laws, prisoners still suffer from abusive treatment. The increasing violation of rights of prisoners is the plight for most world's prisoners. There are many prison massacres, violent guard abuse, dramatic protests which still make their place in new headlines<sup>28</sup>. Many countries still deny journalists, human right groups and other outside observers to nearly access the penal facilities which are provided to prisoners<sup>29</sup>. If the human rights groups are allowed to interact more with prisoners, then it will become easy to promote awareness among prisoners about the rights guaranteed to them.

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<sup>26</sup> Nieharika Sharma, Case Commentary on M.H. Hoskot vs. State of Maharashtra, <https://articles.manupatra.com/article-details/Case-Commentary-on-MH-Hoskot-vs-State-of-Maharashtra> last visited 24.12.2022 (12:10 pm)

<sup>27</sup> State of Maharashtra v. Prabhakar Pandurang 1966 AIR 424

<sup>28</sup> HUMAN RIGHTS WATCH PRISON PROJECT, <https://www.hrw.org/legacy/advocacy/prisons/index.htm> (last visited Jan. 29, 2023)

<sup>29</sup> *Id.* at 26