



# PROTECTION TO THE RIGHTS OF PRISONERS IN THE LIGHT OF CONSTITUTION OF INDIA

**Chhavi Ahlawat<sup>1</sup>**

## ABSTRACT

Every person who takes birth inherits basic human rights of survival such as right to food, water, right to be defended, right to protection from torture or violence and so on, which cannot be taken away. Such rights are also provided by the Constitution of India to every citizen of the nation. There are three pillars of the criminal justice system- management of police, judiciary, and prison population. This research paper focuses on the rights of prisoners, how those rights are violated, and the corrective actions that the Constitution of India at the national level and international organizations at the international level give. The best laws regarding the prisoner's life are provided both by International Law and the Constitution of India. Prisoners are an unwelcome part of society, but we still have a responsibility to care for them by giving them a secure environment and way of life.

Keywords: Human rights, Constitution of India, criminal justice system, corrective actions, secure environment.

## INTRODUCTION

Prisoners' rights are those of the prisoners while they are incarcerated. Prisoners Right is a serious issue to consider. Prisoners are also people, yet they do not receive similar treatment as people. Recently, Apex Court took up the issue of injustices that inmates are subject to. Indian captives endure inhumane treatment. These inhumane conditions include poor treatment, numerous fire dangers, inadequate food, inadequate health and medical facilities, lack of functional restrooms, poor sanitation, torture in detention, fatalities, etc. The lack of adequate governance by the prison administration leads to violations of both prisoners' fundamental and human rights. Delivery of justice must be improved, and reformatory theory must be applied practically. Delivery of criminal justice includes significantly prison. It is a place where accused or prisoners are kept apart, making them subject to discrimination regarding certain rights that are not available to the accused who are members of the underprivileged section of society but are available to those who are members of the elite section of the community.

<sup>1</sup> Research Scholar, Department of Law, Central University of Haryana, Mahendragarh, Mob. No. 9667217949.

## MEANING OF THE WORD “PRISONER”?

A person, who is restrained, imprisoned, or held in custody pursuant to a court order because of breaking a law, is referred to as a prisoner. A person may be imprisoned during a trial until his or her innocence is established or may be there to complete a sentence. Anybody who is denied their freedom against their will is a prisoner, also known as an inmate. By using restraint or imprisonment with force, this freedom may be taken away. In particular, we can say that anyone who has broken a state law and has been found guilty of the crime or is currently awaiting trial for the crime would be kept in custody in a facility known as a jail or prison where they are detained and are referred to as inmates. Hence, as per the legislation, a prisoner is defined as "any individual for the time being in a jail as a result of any necessity imposed by a court or otherwise that he be detained in legal custody"<sup>2</sup>

## INHERENT RIGHTS OF PRISONERS

If a person is found guilty, it does not mean that he is no longer a human being. He should be treated equally as a human being as all people are endowed with inherent human rights as well as essential liberties guaranteed by Constitution of India. Although a prisoner's ability to roam freely is limited because of other limits on his freedom, basic rights like the right to nourishment and the right to equality are nevertheless guaranteed and inherent to them since birth. Prisoners are given certain fundamental rights by the Constitution of India, which cannot be revoked. They have the option to file a case against the breach of their rights in any court of law whether in the High court or Apex court, whenever their rights are violated. These rights include both constitutional and human rights. Thus, these inherent rights continue with a person till his/her entire life.

## PROTECTION OF PRISONERS RIGHTS AT GLOBAL LEVEL

As per UN Charter, it includes a number of rights intended to ameliorate prisoner conditions, protect them from cruel treatment, and enable humane treatment for them. These guidelines are as follows:-

1. Prisoners must be treated with respect and considered as valuable human beings, which means they must be treated just like other people.
2. There should be no distinction of any form based on a person's race, sex, gender, color, religion, language, political nation, or birth place.
3. While it becomes essential to support inmates' welfare and development in order to reform them, prisoners should be held in prison until they have served entirety of their legally mandated sentence.
4. All convicts must have access to human rights and fundamental freedoms outlined in UDHR, ICESCR, ICCPR, and other UN Covenants.

<sup>2</sup> Prison Security Act, 1992, s. 1.

**PROTECTION OF PRISONERS RIGHTS IN INDIA: CONSTITUTIONAL PERSPECTIVE**

Fundamental rights are the core rights of Human being. Likewise prisoners are also entitled to these rights. It was stated by Apex Court that “Imprisonment does not create a spell to waive off the fundamental rights”. The court also declared that fundamental rights are enforceable in the case of Prisoners as well their rights are not restricted by their imprisonment.

Prisoners have access to the fundamental rights outlined in Part III of the Constitution of India since they are considered as individuals when they are incarcerated. In addition to introducing the idea of reasonable classification under the concept of Rule of Law, it considers the idea that like should be treated similarly.<sup>3</sup> The basis for classifying prisoners into different groups with the goal of rehabilitation is provided by the Constitution of India for prison officials. There are six liberties guaranteed by the Constitution of India to all citizens equally, albeit some of them are not available to prisoners. These are freedom of movement<sup>4</sup>, freedom to live and work anywhere, and freedom to practice any profession of one’s choice<sup>5</sup>. Nonetheless, the convicts also benefit from other privileges granted within the same. In addition, the Constitution also contains a number of provisions that, while they cannot quite be referred to constitute prisoner rights, may nonetheless be important.

Another provision under Part III provides for protection from the ex post facto laws wherein, a prisoner is protected from being subjected to any punishment or conditions of punishment (including imprisonment) that were not permitted by law at the time he committed alleged act and for which he was found guilty and sentenced following the trial than was permitted by law.<sup>6</sup>In other words, no harsh labor conditions can be established against someone who committed the offence for which they were imposed but were not required to do so under the law at the time.

The nemo debit rule of common law states that no person should be subjected to risk of doing the same offence twice, or vis vari. The earlier prosecution and punishment for the same offence may serve as a complete defense in the subsequent prosecution and punishment.<sup>7</sup>

Another fundamental right provides that no one may be deprived of their life or personal freedom other than in accordance with legal procedures. In case of granting bail to a prisoner, refusal to post bail would be a violation of fundamental right to personal liberty, which might be restored in accordance with the legal process.<sup>8</sup> Other rights include following rights- to a quick trial, to appeal and free legal representation, against use of handcuffs and bar fetters, to publish book, against violence while in custody, freedom to leave, no legal right to elude arrest, firmly opposed to inhumane treatment, firmly opposed to solitary confinement and so on.

<sup>3</sup> The Constitution of India, art. 14.

<sup>4</sup> The Constitution of India, art. 19(1) (d).

<sup>5</sup> The Constitution of India, art. 19 (1) (g).

<sup>6</sup> The Constitution of India, art. 20(1).

<sup>7</sup> The Constitution of India, art. 20(2).

<sup>8</sup> The Constitution of India, art. 21 .

The Constitution of India provides that the State must ensure that functioning of the legal system promotes justice on the basis of equal opportunity and, in particular, must provide free legal aid through appropriate legislation or programs or in any other way to ensure that no citizen is denied the opportunity to secure justice due to their financial situation or another disability.<sup>9</sup>

The State is also required to guarantee a judicial system that advances justice based on equal opportunity for all. To provide legal assistance programming across the nation with a statutory foundation that followed a set pattern, the Legal Services Authority Act (the Act) was passed in 1987. The Act was eventually put into effect on November 9th, 1995. Legal assistance programmes work to guarantee that Constitution's promises are upheld in law and spirit and weaker, poorer, and more oppressed segments of society have access to equal justice. The National Legal Literacy Mission was introduced on March 6, 2005, to symbolize transition from "ignorance" to "legal empowerment". NLLM is project in which three wings of governance—the Legislature, the Judiciary, and the Executive—have joined forces to reach out to the most marginalized and vulnerable sections of our society and inform them of their rights, as Chief Justice Lahoti (as he was then) noted in his speech on the occasion..

In order to provide effective legal assistance and achieve goal of "Access to Justice for all," legal aid goes beyond simply representing clients in court disputes. It also includes promoting legal literacy and legal awareness. The goal is to raise knowledge of legal rights and legal aid programs so that the targeted populations, for whom the Legal Services Authorities Act has provided free legal assistance, will become aware of them and contact the relevant legal services professionals.

## **PROTECTION OF PRISONERS RIGHTS: ROLE OF INDIAN JUDICIARY**

Judiciary plays a crucial role to determine that inherent rights of the prisoners can never be taken away from them. Following are the judgments where in the judiciary has emphasized on the rights of the prisoners which are protected.

- In a relevant judgment, the Court ruled that it must be understood that a prisoner is a human being in addition to a natural or legal person. When such a person is found guilty of a crime, this does not render him a non-person; his rights are still connected to him and cannot be taken away by anyone, including jail administration. Prisoners sentenced to civil death are no longer regarded as slaves of country, and committing offence and going through incarceration does not automatically preclude someone from being a person.<sup>10</sup>
- According to court, the prisoners' rights under Articles 14, 19, and 21 of Constitution of India are restricted but cannot be unchanging. According to Rule of Law provision, all convicts must be treated

<sup>9</sup> The Constitution of India, art. 39(a).

<sup>10</sup> DBM Patnaik v. State of Andhra Pradesh, (1975) 3 SCC 185

equally and it also discusses equal protection under law on Indian soil. Although there may be a fair classification of convicts, there shouldn't be any type of prejudice against them.<sup>11</sup>

- The court ruled that prisoners have right to a speedy trial, which covers all stages of the legal process— inquiry, trial, appeal, and revision. On the grounds that accused did not request it, the right cannot be denied to him. Legal Assistance is also his right, if the accused cannot afford to hire a lawyer to represent him, it is the state's duty to do so. The state must also keep him informed at every stage of the case as it proceeds through the court system.<sup>12</sup>
- The judge ruled that the Constitution guarantees everyone the right to a dignified life. This idea contends that each person has the right to a dignified existence and that every person's life is valuable.<sup>13</sup>
- The court determined that everyone should have access to essential human rights, including right to medical care and instructed jail administration to offer inmates afflicted with any illness, required physical and mental health care facilities. Every prisoner has the right to a quick trial regardless of the crime they are accused of committing in order to receive justice. Justice should not be delayed since a delayed justice is a justice denied. The prisoners should be given a prompt trial.<sup>14</sup>
- According to court, relevant provisions of Constitution of India underline that the government of the nation has a responsibility to offer legal aid and legal services to the accused.<sup>15</sup> Prisoners have the right to be free from solitary confinement, which is a type of imprisonment in which the offender is housed in a distinct cell under close observation.<sup>16</sup>
- The court ruled that prisoners cannot be treated inmates like animals. They are also people, hence, cannot be subjected to degrading or offensive act against nature. It's illegal to do this. Other rights that apply to prisoners include right to privacy, the prohibition against cruel or inhuman treatment, the right to education, right to receive books, right to freedom of expression, etc.<sup>17</sup>
- Apex Court decided against request for transfer of case in progress. The court agreed that the prisoner's request for a court not granted by statute was valid.<sup>18</sup>
- Apex Court ruled that state should offer free legal representation to accused if they are unable to do it on their own.<sup>19</sup>

<sup>11</sup> *Charles Shobraj v. Superintendent*, AIR 1978 SC 1675.

<sup>12</sup> *AR Antulay v. RS Nayak* 1988, AIR 1988 SCR.

<sup>13</sup> *Kharak Singh v. State of U.P.*, AIR 1964 SCR 1

<sup>14</sup> *Rasikbhai Ram Singh Rana v. State of Gujarat*, (1998) CriLJ 1347.

<sup>15</sup> The Constitution of India, arts. 21, 39A, 142.

<sup>16</sup> *Madhav Hayawadanaro Hoskot v. State of Maharashtra*, (1978) 3 SCC 544.

<sup>17</sup> *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 409.

<sup>18</sup> *Kalyan Chandra Sarkar v. Rajesh Ranjan and Pappu Yadav*, (2005) 3 SCC 284.

<sup>19</sup> *M.H. Hoskot v. State of Maharashtra*, AIR 1987 SC 1548.

- Apex Court ruled that state should offer free legal representation to accused if they are unable to do it on their own.<sup>20</sup>

## CONCLUSION

The Constitution of India established a democratic welfare state with equal opportunities for everyone, without any kind of discrimination, to advance personally and further the interests of the country. A major goal of the Constitution is to create necessary infrastructure in jails to ensure that those detained there receive prompt and effective legal assistance, are made aware of their rights, including the important Right to Life and Liberty guaranteed by the Constitution of India, and have access to the means necessary to defend those rights. Prisoners have all the rights which are granted by International law as well as Indian constitution only some rights are subject to the restriction as they are prisoners. They cannot enjoy each and every right but that does not mean they should be ill-treated. They have laws regarding their rights, safety and everything. Universal declarations are there to support them and provide them an environment which is safe and healthy for them. Although in general there are applicability of these rules and laws is mere in numbers but in India the execution authorities are keeping their eye on this and definitely after a time it will become more progressive.



<sup>20</sup> *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.