



Human Rights of Prisoners: A Critical Commentary

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ABSTRACT

The most basic principle of human rights is that it applies to human beings from the time of birth, irrelevant of nationality, race, place of residence, language, sex, ethnic origin, religion or any other status. This has been reiterated by 'The Universal Declaration of Human Rights as it obligates the government to act or refrain from acting in certain ways to ensure fundamental freedom and promote and protect every individual. The human right has been often expressed and guaranteed universally in the form of law, statutes, international customary law and above all 'The Universal Declaration of Human Rights'.

Simply because a person is under trial or convict his right cannot be seized. Certain absolute rights cannot be restricted by the state in any circumstance such as the right to life unless punished with the death penalty, the right to a fair trial, the prohibition of torture, protection from retrospective law and many more. In 1957 U.N. Economic and Social Council adopted guidelines (United Nations Standard Minimum Rules for the Treatment of Prisoners) guiding how the government comply with their legal obligation in case of a person deprived of personal liberty.

Every prisoner has their inherent dignity, therefore except in the case where some rights are outweighed by the interest of society in such situation reasonable limitation may be imposed. Adequate supervision, proper separation of different categories and fulfilment of necessities is also a way of serving the purpose. For fair managed human national legislation, policies and practices should comply with international standards. Favourable conditions with the participation of various community and social institutions shall be created to desegregate ex-prisoners into society.

Keywords: Fair-trial, legislation, prisoners, rights, torture

Introduction

One of the mechanisms of the criminal justice system is to punish the criminals as this work as recompense to the society and victim. In this regards several theories of punishment are provided, keeping in view reformatory theory, this theory aims at rehabilitating the offender to the norms of the society i.e., into a law-abiding member. This contends that crime is not the result of a willful violation of the law. The most usual cause of crimes is mental defects.

From these theories there emerges the punishment of imprisonment and through this, the convicted person is detained in prison and his/her liberty is restricted but this does not affect their fundamental right and certain freedom and has the right to be punished in a certain way. All these rights are governed by rule of law. To protect the right of the person sentenced to immure international organizations and specialized institutions in the field of international criminal law and human rights organizations have worked out several guidelines so that the rights of prisoners can be protected under the other than rights the limitation of which is 'demonstrably necessitated by the fact of incarceration'². These guidelines have been declared in many international human rights documents and also have been enforced by the judiciary in domestic law in several states under obligation to exercise them under the principle of rule of law. The present discussion is an attempt to identify the minimum legal obligation of the government to remain compliant with the norms of international organizations and the approach to be adopted to ensure regional human rights in India.

Historical Background

The origin of the violation of the right can be traced to pre-historic times when the tribal community declared offender outcast and were driven out from the group. In Ancient Greece and Rome and under Anglo-Saxon law the use of banishment, exile or outlawry commonly involved not only confiscation or forfeiture of the property but also the deprivation of civil rights and the benefits and protection of the law³. In the modern era, the function of expunction and removal from society has been taken over by imprisonment which is emerged as a prime instrument in the criminal legal system. The imposition of

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² Principle 5 UN Basic Principles for the Treatment of Prisoners (1990).

⁴ Gordon Hawkins, A Study of Human Rights and Commonwealth Prisoners, 12 Occasional Paper series, 1(1986)

collateral consequences in the form of legal, social and political disabilities upon conviction of an offence derives from a common law background in which life imprisonment resulted in "civil death" and conviction of certain crimes resulted in the loss of certain rights of citizenship⁴.

Different sources of human rights law

Rights and issues

Restraining liberty jeopardises and raises rights and issues which include physical conditions, practices of control and restraint, access to medical care or involuntary treatment, access to education, and abuses of power such as violence, torture, cruelty and several other disrespects. Rights relevant to detention are articulated in fairly general terms in international, regional and domestic human rights instruments⁵. Some of the most important provisions for people held in detention spelt out in the international instruments are the negative right not to be subject to 'torture or cruel, inhuman or degrading treatment or punishment' and the positive right of people deprived of their liberty to be treated 'with humanity and with respect for the inherent dignity of the human person'⁶. Other important and potentially challenging rights for people held in detention include the right to life, liberty and security of the person, equality before the law, privacy, and the protection of family and children⁷.

The theory of rule of law both in substantive conception and in formal conception introduce guidelines which are being reflected in some of the international human rights documents, this form an instrument for managing prison and inmate's right's.

"Universal Declaration of Human Rights" (UDHR) also called as Human Rights Declaration provide some basic principles of the administration of justice.

The International Covenants on Civil and Political Rights, 1966 continue to be a core instrumental treaty for inmate's rights protection.

UN Core Conventions and Specific Instruments aid down minimum standard requirements for prisoner's treatment which further talk about the principle of equality, protection against torture, inhumane and degrading nature of punishment should be avoided etc.

Socio-Legal analysis

Of prisoners of India

Fundamental rights guaranteed by Indian Constitution provide that under trials to be presumed innocent until their guilt is proven by a court of law. As per the report of Prison Statistics India 2021 by the National Crime Records Bureau (NCRB), As of December 31, 2021, Uttar Pradesh recorded the most convicts in its jails (1,17,789), accounting for 21.3% of the total, followed by Bihar (66,879), Madhya Pradesh (48,513), Maharashtra (36,853), Punjab (26,146), and West Bengal (25,769). Together, these States account for 58.1% of all prisoners in the nation.⁸

The share of the prison population awaiting trial or sentencing in India is extremely high by international standards; for instance, it is 11% in the UK, 20% in the US and 29% in France.

With over a staggering Almost 4.7 crore cases still pending as of May 2022 in courts at all levels of the legal system. Over 1,82,000 of them have been outstanding for more than 30 years, with 87.4% of them in lower courts and 12.4% in high courts⁹. The states of Uttarakhand (185.0%), Uttar Pradesh (184.8%), Delhi (182.5%), Sikkim (166.9%), and Madhya Pradesh (164.1%) have the greatest occupancy rates¹⁰. Further, the greatest female occupancy rate was found in Uttarakhand (178.8%), followed by Bihar (152.3%) and Chhattisgarh (147.6%). Nonetheless, Uttar Pradesh had the most female prisoners (4,995), followed by Bihar (3,067), and Madhya Pradesh (3,000). (1,892)¹¹. The age range of 18 to 30 years had the highest percentage of inmates (2,41,320, or 43.6%), followed by that of 30 to 50 years (2,39,814, or 43.3%)¹². Taking into account the education of inmates, among the 5,54,034 inmates, 2,22,513 (40.2%) had literacy levels below class X, 1,33,131 (24.0%) had levels above class X but below graduation, 41,565 (7.5%) had a degree, 10,082 (1.8%) had a postgraduate degree, and 7,052 (1.3%) had a technical degree or diploma. There were 1,39,691 convicts in total who lacked literacy (25.2%).

Under Indian law, every person who is arrested and detained in custody must be produced before a magistrate within 24 hours of arrest, excluding the time needed for transportation to court. Remand to police custody may be for no more than 14 days. If it is to be prolonged thereafter, another order from

⁵ Gordon Hawkins, A Study of Human Rights and Commonwealth Prisoners, 12 Occasional Paper series, 1 (1986)

⁵ Bronwyn Naylor, Human Rights and Their Application in Prisons, Prison Service journal, at 17.

⁶ ICCPR art 7 and 10(1) respectively. The prohibition on torture and CIDT is also stated in the CAT (arts. 1 and 16), and the CRPD (art. 15).

⁷ Naylor, B (2014) Human rights and respect in prisons: The prisoners' perspective. *The law in Context* 31: 84–124; Liebling, Alison (with Helen Arnold) (2004) Prisons and their Moral Performance: A Study of Values, Quality and Prison Life (Oxford University Press).

⁸ Prison Statistics India–2021, available at https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf.

⁹ The Hindu, *Explained | The clogged state of the Indian judiciary*, <https://www.thehindu.com/news/national/indian-judiciary-pendency-data-courts-statistics-explain-judges-ramana-chief-justiceundertrials/article65378182.ece>.

¹⁰ *Supra* note 7.

¹¹ *Ibid.*

¹² *Ibid.*

a magistrate is required. Detention in police custody, at least as far as the law is concerned, may not exceed 90 days. In cases in which the potential sentence is under ten years, detention in police custody may not exceed 60 days.

For all practical purposes, the legal aid movement started in 1980 with the appointment of the Committee for Implementing Legal Aid Schemes ("CILAS"), which was headed by Justice P.N. Bhagwati. CILAS drafted model schemes which were used by many states to formulate their own legal aid and advice programs¹³.

Apart from these lock-up deaths, a matter of disappearance is also common. Prisons Act, of 1894 is the first act concerning prison regulation in India, in which the reformation of prisoners has been given primary importance; The Committee established by the BPR&D (Bureau of Police Research and Development) created the Model Prison Manual, 2003, which goes into great detail about several subjects. It has 28 chapters covering the following topics: institutional framework, headquarters organisation, institutional personnel, custodial management, maintenance of prisoners, medical care, contacts with outsiders, transfer of prisoners, execution of sentences, prisoners sentenced to death, emergencies, education of prisoners, vocational training and work programmes, the welfare of prisoners, remission, leave a special leave, premature release, prison.¹⁴ This prescribes certain rights of the prisoners as follows¹⁵:

- Rights of the Prisoners
- Right to Human Dignity
- Right to Basic Minimum needs
- Right to Communication
- Right to Access Law
- Right against Arbitrary Prison Punishment
- Right to Meaningful and Gainful Employment
- Right to be released on the due date.

Later on, an amendment prison (Amendment) bill was passed in 2016. The certain section mentioned below is laid down in the act which focuses on the reformation of prisoners as follows:

- Accommodation and sanitary conditions for prisoners¹⁶,
- Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison¹⁷,
- Provisions relating to the examination of prisoners by qualified Medical Officers¹⁸,
- Provisions relating to the separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and under trial prisoners¹⁹,
- Provisions relating to the treatment of under trials, civil prisoners, parole and temporary release of prisoners²⁰.

Another act The Transfer of Prisoners Act, of 1950 was also enacted containing provisions for the transfer from one state to another for rehabilitation or vocational training and from overpopulated jails to less-congested ones within the state.

Precedents and Judicial Decisions

In the case of *DK Basu v State of West Bengal*²¹ there were certain **guidelines** stated by the court in the context of custodial violence and said that custodial death is perhaps one of the worst crimes in a civilized society governed by the Rule of Law. The rights inherent in Articles 21 and 22(1) of the Constitution required to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of [Article 21](#) of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the

¹³ . Human Rights Watch, Prison Conditions in India, Library of Congress, 1991, at 12-13.

¹⁴ PRISON MANUAL, available at <https://egyankosh.ac.in/bitstream/123456789/38951/1/Unit-2.pdf>.

¹⁵ *Ibid.*

¹⁶ Section 4 of the Prisons Act, 1894.

¹⁷ Section 7 of the Prisons Act, 1894.

¹⁸ Section 24(2) of the Prisons Act, 1894.

¹⁹ Section 27 of the Prisons Act, 1894.

²⁰ Sections 31 and 35 of the Prisons Act, 1894.

²¹(1997) 1 SCC 416.

functionaries of the Government become law breakers, it is bound to breed contempt for the law and would encourage lawlessness and every man would tend to become a law unto him thereby leading to anarchism whereas no civilized nation can permit that to happen.²²

Though crime is indeed committed by persons and for that they use to be prosecuted it doesn't mean that they cease to be human beings, the question here arises does a person shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal court of human rights jurisprudence. The answer indeed has to be an emphatic 'No'. The precious right guaranteed by [Article 21](#) of the Constitution of India cannot be denied to convict under trials, detenu and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

In *Sube Singh v. State of Haryana*²³ where the people were illegally detained and tortured by the police during an investigation in the context of **Justice A.S, Anand** said 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 rights by such persons. The State must ensure that there is no infringement of the indefeasible rights of a citizen to life, except by law, while the citizen is in its custody.²⁴

Regarding what has been said in the above case it is very clear that becoming a prisoner doesn't put restrictions on the basic fundamental rights of that person whereas by god we all are human beings and should be treated as humans, no law confers power upon anyone to torture, harass and illegally detain any human being.

In *Sunil Batra v. Delhi, Administration*²⁵ the Hon'ble Supreme Court held that there is no total deprivation of a prisoner's rights of life and liberty. The "safekeeping" in jail custody is the limited jurisdiction of the jailer. "To desert safe-keeping into a hidden opportunity to care the ward and to traumatize him is to betray the custodian of law, safe custody does not mean deprivations, violation, banishment from the lantern baguette of prison life and infliction's of travails as if guardianship were best fulfilled by making the ward suffer near insanity." Hon'ble Supreme Court also gave a new dimension to the writ of habeas corpus by its judgment in *Sunil Batra 'II' vs. Delhi Administration*²⁶. While the decision of the Constitution Bench of the Supreme Court in *Sunil Batra I vs. Delhi Administration*²⁷ had crystallized the legally enforceable rights of a prisoner, the later decision in Sunil Batra II radicalized the procedure for the enforcement of the rights of the prisoners.²⁸

In the above famous case, it has been clearly said that if a person's rights are infringed in jail custody then it amounts to a betrayal of custodian law with human rights.

In *Maneka Gandhi Vs the Union of India*²⁹, the Apex Court laid down that the procedure cannot be arbitrary, unfair or unreasonable. This was further endorsed in *Francis Coralie Mullin Vs the Administrator, Union Territory of Delhi and Others*³⁰.

In the case, *Hussainara Khatoon & Ors vs. Home Secretary, State of Bihar*³¹, and Supreme Court observed that our legal and judicial system which continuously denies justice to the poor by keeping them for long years in pre-trial detention is a highly unsatisfactory legal system. It suffers from a property-oriented approach which seems to proceed on the erroneous assumption that the risk of monetary loss is the only deterrent against fleeing from justice.

In the case of *Shahid vs. Scottish Ministers (Scotland)*³² the issue was related to the solitary confinement of a person named Imran Shahid and the Hon'ble Supreme Court held that the continuation of a prisoner's solitary confinement for safety reasons was not authorized under domestic rules and incompatible with the right to private life under Article 8 of the European Convention on Human Rights (ECHR). Lord Reed held that not only was the continued segregation invalid according to domestic law, but it also amounted to a violation of Article 8.

In the case of human rights, it's immaterial whether that person is acquitted or convicted the walls of jails didn't lay down any barrier to the right which are available to another person in society.

Hence, in all the above-mentioned cases, facts and judgments outcomes are different but they are connoting towards the same issue i.e., the rights of prisoners of which they are deprived. Demanding such rights and providing the same are different from each other if a deprived or aggrieved person not putting himself forward for his rights so it doesn't mean that he didn't want to avail them, at this very stage obligations fall on the governance mechanism of the state.

²²www.indiankanoon.org.

²³1988 AIR 2235.

²⁴www.indiankanoon.org

²⁵ 1980 AIR 1579.

²⁶ (1978) 4 SCC 409.

²⁷ *Ibid.*

²⁸www.pucl.org.

²⁹ AIR 1978 SC 597.

³⁰1981 SCR (2) 516.

³¹1979 SCR (3) 532.

³² 2015 UKSC 58.

Impact and Implications

The observations which came out as a consequence of the above discussion and judicial decisions, it's clear that if the legal system support protecting the rights of prisoners then it will certainly impact them psychologically and physically. Certain initiatives have been taken on an international level as “**Basic Principles for the Treatment of Prisoners**” is one of the other documents related to prisoner's rights which were adopted and proclaimed by General Assembly Resolution 45/111 of 14th December 1990. These rules state some relevant guidelines about the protection of prisoners' rights.

As far as the implication is concerned there are certain keys which must be at the top of the hierarchy of priority at the time of implicating the law and providing a remedy for the same. The important keynotes are as follows:

1. **Equality:** To implicate the law and make it a good law it is one of the most important requirements that all prisoners must be equally treated inside the premises of the jail. There should be uniformity in the law according to the **Rule of Law**.
2. **No Biasness:** The ratio of business amongst all the prisoners must be zero as in most cases poor prisoners are not getting healthy meals on the other hand when VIP is in jail for a term, they use to be treated with most of the good amenities, which leads to discrimination amongst them.
3. **Committee:** For the accomplishment of the initiative, there must be an internal committee which would be formed to redress the complaints regarding the violation of human rights and strict surveillance must be put on that committee.
4. **Vetting Process for Prisoner's Officers:** Checking prison officers and vetting them constantly is necessary for ensuring that the human rights of prisoners are protected in prison and everything is going according to the rule of law lessons.

Possible Outcomes and solutions

The decentralization of authority in India has escalated the abuse in police detention. Therefore, an initiative at the central level is not sufficient, the determination of the state government is crucial.

There should be a monitoring system for the criminal justice system, further, any individual who alleges that he or she has been subject to torture has the right to complain and be examined by impartial authority³³.

The procedure for compensation should be replaced by declarations, injunctions and actions for negligence. The concept of the speedy trial should be strengthened i.e., anxiety, expense and disturbance resulting from an unduly prolonged investigation, inquiry or trial should be minimal.

The standard minimum rule for the treatment of prisoners should be taken into account; categorization of prisoners taking account of their sex, age, and criminal record should be necessitated. A list of guidelines in several international documents should be obligatory.

³³ CAT, article 13.