



Prisoners' Rights in India And U.K. – A Comparative Study

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ABSTRACT

Concern over the condition of prisons has grown in recent years. This issue has been under scrutiny by the judiciary, particularly in the 1980s when there were several cases that examined the problems related to prison administration. Additionally, legal experts have also discussed the matter, with a priority on human rights. These discussions and developments can be attributed to the increased awareness and emphasis on human rights in the international community. Therefore, the issue of prison administration and the condition of prisoners has become an important topic of conversation and concern.

The concept of prisoners' rights has been a topic of discussion and debate for many years. In recent times, there has been a growing concern about the protection of human rights in the context of imprisonment. This dissertation focuses on the comparative study of prisoners' rights in India and the United Kingdom. The study aims to examine the legal framework, policies, and practices that exist in these countries to protect prisoners' rights.

India and the United Kingdom have different legal systems, and their approaches to prisoners' rights are different. The common law system is the foundation of India's legal system, while the United Kingdom has a mixed legal system. The study seeks to compare and contrast the legal framework, policies, and practices in these two countries concerning prisoners' rights.

Chapter one introduces the concept of prison and prisoners, providing definitions to understand the subject better. Chapter two delves into the history of the prison system, highlighting the different types of prisons in India and the UK. Chapter three discusses the rights of prisoners as enshrined in international conventions, including a comparative analysis of the rights in India and the UK in 3.1 and 3.2, respectively.

1. INTRODUCTION

When an individual is incarcerated, they forfeit many of their rights; however, it is believed that not all legal rights are automatically extinguished by a sentence of imprisonment. Despite being deprived of certain rights due to incarceration, residual rights are retained by prisoners. Even though a prisoner's freedom is limited because of their isolation, the physical limits that are put on them must be fairly needed for the reasons of security, and inmates are still entitled to certain basic liberties.¹

The rights of different types of prisoners, including undertrials and detainees, are determined by courts based on certain standards. This study primarily examines the rights of convicted prisoners, but it also investigates the rights of other types of prisoners. This study's objective is to determine fresh prisoner entitlements by utilizing a comparative methodology to assess the aftermath of conviction and the level of rights granted subsequent to conviction. The UK and the US will be juxtaposed to attain a more comprehensive outlook on the subject matter.

Always consider our quality of life when interpreting the right to life; it should not only be seen as a right. Although the inmates' imprisonment is the result of their breaking a nation's laws, their fundamental human rights are guaranteed by numerous international treaties and constitutional regulations & cannot be infringed upon under any circumstances.

In the course of the research, many regulations and statutes concerning the rights of convicts that have been enacted in India and the UK were investigated. Additionally, it highlighted the ways in which fundamental human rights are infringed in incarceration facilities. To evaluate the rights of inmates, further considerations like legislation and illuminating precedents are required.

¹ The book "A Constitutional Miscellany" authored by V.R. Krishna Iyer in 1986 contains a reference on page 153.

The most common type of punishment used by virtually all legal systems is imprisonment. History demonstrates that it was used back then.²

At initially, incarceration was a means of both isolating prisoners from the general population and depriving them of their ability to socialise. Over time, though, different goals, such as prevention, incapacitation, and reformation³, came to be seen. Even if jail has little deterrent effect, it at least forces the prisoner to sit back and reflect on his previous actions, which may lead to a change in attitude and behaviour in the future.⁴

Inquiries into the justifications for punishment have been made frequently by both academics and courts around the world. Most people agree that the goals of punishment are retribution, deterrence, atonement, reformation, or rehabilitation. Since imprisonment is almost usually employed simply a form of penalties, the grounds for punishment became known as the explanations for confinement.⁵ Depending on the goal one assigns to imprisonment, this condition either made it worse or made it better.

The main objective of jail is to protect society from criminals. Prisoners cannot be reformed solely via the use of punitive techniques of therapy. The criminal justice system's techniques have changed thanks to various human rights theories, laws protecting those rights, and the courts. The treatment of inmates is also governed by a number of UN resolutions. The State is required by law to protect its citizens, and in order to fulfil this commitment, the Indian Constitution and other laws recognise a number of fundamental rights for citizens. The question of whether it is possible under Article 21 to include the inmates' access to conjugal rights while they are inside the jail raises itself in light of the expansion of their rights. The rights of the victims who had been the primary targets of the crime they had committed are also a concern, as is the extent to which the prisoners' rights can be improved in the pretext of Human Rights without violating those of the victims who bore the brunt of the crime.

² The prison system, a means of dealing with criminals, is a legacy of historical mishaps. It was not a well-thought-out strategy. Innocent X, the pope, constructed Rome's large prison in 1655. Institutions with a general focus existed to care for offenders. The development of "Prisons," "Jails," "Houses of Correction," etc. occurred in the seventeenth and eighteenth centuries. See page 372 of John Lewis 1977 book *Criminology and Penology*.

³ *The Philosophy of Punishment*, edited by H.B. Action, published in 1969, page 282 *Criminal Justice & Treatment of Offenders (1969)*, by J.D. McClean & J.C. Wood, pages 85–87.

⁴ p.178 of V.N. Rajan's book, "Whither Criminal Justice Policy?," which was published in 1983.

⁵ Imprisonment can be used to keep a prisoner awaiting trial, punish him after conviction, or make life so terrible that he submits to his captor. It will be custodial, punitive, or coercive. The three categories merged in the Middle Ages. Ralph P. Pugh, *Imprisonment in Mediaeval England (1961)*

Protecting the rights of those who are incarcerated is an essential component of our nation's judicial system, as it ensures that those who are incarcerated are treated humanely, with dignity and respect. These rights serve to protect detainees from abuse, neglect, and mistreatment while they are in custody, and to provide them with basic necessities such as food, water, and medical attention.

Although the specifics of prisoner rights may differ based on the country and legal system in which they are detained, there are certain principles that are universally recognized. These include protection from cruel and inhumane treatment, access to legal representation and medical care, and the freedom to practice one's religion.

1.1 DEFINITION OF PRISON AND PRISONERS

The term "prison"⁷ originates from the Old French word "prison," which signified a "place of detention" or "imprisonment." The English word "prison" was derived from this word. In turn, the French word was taken from the Latin word "præmionem," which signified a "place of detention," and its meaning was carried over into French.

The term "prisoner"⁸ originates from the Old French word "prisonnier," which meant "a captive" or "a person in custody." The English word "prisoner" is derived from this word. The Latin origin from which the French word was derived is the same one that gives us the English word "prison."

Individuals who have been found responsible of committing a crime and who have been given a sentence that requires them to serve time in jail are housed in a facility known as a prison.

Prisons are normally designed to serve as a kind of punishment for illegal behaviour as well as a means of safeguarding society from those who have committed significant offences. Prisons are typically managed by the government or private organisations on behalf of the government.

People who are incarcerated in a jail or another type of correctional facility are referred to as prisoners. They have been proven guilty of a crime and are currently serving a sentence that requires them to be behind bars. There are many different types of offences that can land a person behind bars, including drug offences, violent crimes, offences against property, and white-collar offences. Prisoners may be compelled to take part in educational and vocational programmes, as well as counselling and rehabilitation services, while they are incarcerated in order to assist them in getting ready for their transition back into society after they are released.

One landmark judgment that provides a definition of prison and prisoners is the case *Sunil Batra v. Delhi Administrati on, 1978*. Here, the Apex Court of India defined a prison as "a place where individuals are involuntarily detained by the state, deprived of their liberty and kept in custody."

Furthermore, the court defined prisoners as "persons who are detained in custody, whether they are under trial prisoners, convicts, or detenus, and who are, therefore, unable to move freely and have restrictions placed upon their rights and liberties."

This definition provided by the SC of India in *Sunil Batra v. Delhi Administration*, 1978, has been cited in subsequent judgments and is considered a landmark judgment in Indian jurisprudence related to prisons and prisoners.

In the United Kingdom, one landmark judgment that provides a definition of prison and prisoners is the case of *R v. Governor of Brock hill* EWCA Civ 1015. In this particular case, the court of appeal outlined the characteristics of a jail as "a place of detention where persons are held under the authority of the state, either following conviction and sentence or while awaiting trial or sentence."

Additionally, the court defined prisoners as "persons who have been deprived of their liberty and held in custody under the authority of the state, whether they are remand prisoners or serving prisoners."

The UN's General Assembly adopted the Basic Principles for the Treatment of convicts 1990, which provides a definition of prisoners within its scope. According to Principle 1, "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Furthermore, Principle 4 states that "all prisons shall ensure that the purpose for which they are established and their nature are clearly defined and that the purposes and nature of imprisonment are communicated to prisoners."

⁷ Oxford Languages. (2021). Prison. Retrieved September 27, 2021, from <https://www.lexico.com/definition/prison>

⁸ Oxford Languages. (2021). Prisoner. Retrieved September 27, 2021, from <https://www.lexico.com/definition/prisoner>

1.2 Classification of Prisoners

The primary aim of prison administration is to reform offenders and prepare them for safe re-entry into society. Achieving this goal requires a scientific classification system for prisoners.⁹ Without such a system, it is impossible to provide individualized treatment tailored to the needs and capacities of each prisoner. By categorising inmates according to the unique characteristics of their situations and the level of development required, the correctional authorities are better able to fulfil the diverse demands of distinct groups of offenders. Past prison reforms have demonstrated that housing prisoners together without regard for their specific needs leads to psychological distress.

Eliminating or controlling criminal inclinations requires a knowledge of the roots of a crime, which includes the criminal's familial history, way of life, schooling, cultural background, and other pertinent elements. For various forms of treatment, including food, accommodation, job duties, and academic and reformatory courses for a variety of offenders, these objective factors constitute the basis.

Prisoner classification serves several objectives, involves setting up a comprehensive, customised, well-rounded therapy and education programme, maximising the use of available resources and facilities, and ensuring proper custody, discipline, and work assignments. There will be greater prison oversight and management, regulation, output, and organisation of education and therapy if people are categorised correctly. Sexual orientation, mental and physical well-being, career and academic requirements, rehabilitation and correctional potential, the type of crimes, goals, threats, previous convictions, social processing, and unlawful sophistication are just some of the factors that should be taken into account when classifying prisoners. Courts previously employed a broad classification system depending on the kind and quantity of criminal activity.

⁹ Report: Tamil Nadu Prison Reforms Commission (1977)

Convict categorization has essentially become a routine, automated process. Some contemporary criminologists argue that the type of crime committed by an individual should not be a determining factor when classifying prisoners. They contend that the offense committed is not necessarily indicative of the prisoner's potential for rehabilitation.

According to Barnes and Teeters, the objective of classification is to distinguish inmates based on their potential for rehabilitation, irrespective of their sentence or crime committed.¹⁰

It is undeniable that a person's offense does not necessarily reflect their potential for rehabilitation.

Classification in England

In England, a system of classification exists for prisoners, which groups them into distinct categories based on specific criteria. These classifications include male and female inmates, civil and criminal convicts, pre-trial and sentenced detainees, adult and juvenile prisoners, and high-profile and regular inmates. However, the classification process is not always strictly adhered to for various reasons. The need for efficiency and pressure on the system often leads to the adoption of expedient rather than ideal solutions. In addition, the law's main function is to control people when they are detained in accordance with court orders. In order to uphold order and control within prisons, those who have not been convicted of a crime are usually separated from convicted prisoners to the greatest extent feasible.

An optimal correctional program requires the appropriate categorization of offenders. To fulfill this requirement, contemporary penitentiaries employ modern classification techniques. By categorizing prisoners according to various factors such as age, gender, type of crime committed, and level of risk, correctional authorities can provide more effective treatment programs for inmates. This is important not only for the individual rehabilitation of prisoners, but also for the safety of the wider community.

¹⁰ Harry Elmer Barner and Negle K. Teeters in *New Horizons in Criminology* (1966) page.467

Classification in India

The categorization of convicts in India is based on several factors, including sex, age, & the type of sentence they have received. In Kerala, prisoners are divided into different categories, such as class A, class B, and regular inmates, along with female, youthful, lunatic, civil, undertrial, and death-sentenced prisoners. Contagious prisoners are not kept together with others. Female prisoners are classified based on their conviction status, age, behavior, and occupation. Additional safeguards are in place for female prisoners, such as being restricted to designated areas and not being allowed to leave except for specific reasons, including release, transfer, court attendance, or by order of the Superintendent. The Prisoners Act of 1900 also mandates the categorization of women prisoners.

If a male inmate is below the age of twenty-one, their treatment in prison is distinct from that of other prisoners. Furthermore, the treatment of civil and criminal prisoners, whether they have been convicted or are awaiting trial, also varies. In certain situations, further classification may be necessary among convicted prisoners, and they may be confined together or separately in cells or a combination of both. To maintain rules and order inside the jail, the prison superintendent is authorized under Section 28 of the Prisoners Act to segregate convicted prisoners through the use of individual cells and limitations on their movements.

The legality of Section 28 of the Prisoners Act, which sanctions the categorisation of detainees, was disputed in the lawsuit of *K. Valambal v. State of Tamil Nadu*. In a pioneering ruling, Justice Gokulakrishnan and Justice Venugopal of the Madras High Court concluded that the classification of prisoners does not violate Article 14 of the Constitution.

In *K. Valambal v. State of Tamil Nadu*, The individuals who filed the petition were involved in actions such as advocating for violent behavior and devising plans to flee from imprisonment. The court added that the actions of the petitioners warranted a distinctive classification and their segregation from other inmates for security purposes was not arbitrary. Consequently, the correctional officers didn't go against Article 14 of the Constitution. Furthermore, the tribunal maintained that the corrective partition enforced by the penitentiary warden could not be regarded as solitary confinement under Section 73 of the Penal Code, nor as incarceration in a cell or isolation with the purpose of chastisement under Sections 46(8) and 46(10) of the Prisons Act.

2. HISTORY OF PRISONS SYSTEMS

In recent times, there has been a growing recognition of inmates rights globally, with an increasing number of rights being acknowledged as a component of the wider movement for human rights. It is crucial to look at the historical development of prisoner's privileges in order to better comprehend the contemporary significance and scope of these rights.

The penal system of India has a lengthy past that can be retraced to the era of the Mughal emperors.¹¹ Prisons in India were first intended to keep people while they awaited trial, but over time, they evolved into sites of punishment for criminals who had already been convicted.

The penal system went through a period of substantial development during the time of the British Raj. In the year 1829, the city of Calcutta, which is today known as Kolkata, became home to India's first ever modern prison.¹² The British colonial government in India was responsible for the establishment of the penal system, which placed a greater emphasis on the rehabilitative rather than punitive aspects of jail life. The goal of the rehabilitation programme was to prepare the inmates for successful re-entry into society once they were released.

The penitentiary system envisioned prisons as locations where prisoners would be forced to work hard, receive an education, and be instructed in proper conduct. The prisoners were obliged to engage in useful labour, such as weaving, carpentry, or farming, so that they could gain experience and make a living. They were also encouraged to follow religious and moral principles, and they were taught how to read and write as part of their education.

However, the prison system has its fair share of issues throughout its history. The conditions in many Indian prisons were typically harsh and overcrowded, with poor sanitation, limited

¹⁰ Indian Prisons: A Study of Problems and Prospects. Shukla, S. K., & Sagar, R. (2017). *Psychosocial Research Journal*

¹¹ History of Prisons in India. Dikshit, R. K. (2019). *Indian Journal of Forensic Medicine & Toxicology*

food and medical treatment, and harsh penalties. Additionally, many Indian prisoners were subjected to severe physical abuse. A significant number of inmates passed away as a result of diseases and deplorable living circumstances.

Following the country's independence, the Indian government initiated a number of changes that were intended to enhance the country's penal system. The Prison Act of 1894 was superseded by the Prison Act of 1950, which was enacted with the intention of modernising the incarceration system and enhancing living circumstances for those who were incarcerated. There are still problems plaguing the correctional system in India, such as overcrowding and a lack of adequate cleanliness, although there are attempts being made to solve these problems.

The progression of the penal system in the UK :

Over the course of many centuries, the judicial system that governs prisoners in the United Kingdom has developed. It was during the mediaeval period in England when the first prisons were built for the purpose of holding individuals while they awaited trial or punishment. However, neither correction nor rehabilitative purposes were intended when they were built at the time.¹³

The penal system in Britain went through a period of tremendous development throughout the 18th and 19th centuries. In the latter part of the 18th century, the penitentiary system was established, which placed an emphasis on the significance of rehabilitating criminals.¹⁴ Under this concept, prisons were intended to be locations where inmates would be forced to work hard, receive an education, and be instructed in morality.

The implementation of a distinct system for male and female inmates during the middle of the 19th century was among the most important reforms that were made to the British penal system. Prisoners were confined to their own cells under this arrangement, and they were not permitted to interact or communicate with one another. This was done with the intention of preventing corruption as well as the dissemination of ideologies associated with criminal activity.

¹² King, P. (2016) in his : A Brief History of the UK's Prisons.

¹⁴ D. Faulkner, in 2005.

On the other hand, the separate system was criticised for being too harsh and causing psychological harm to the individuals who were incarcerated under it. The British penal system shifted towards a more rehabilitative approach towards the beginning of the 20th century, with a focus on education, vocational training, and rehabilitation as its primary areas of concentration.

The correctional system in the United Kingdom is now struggling with a of issues, including overcrowding and a lack of available staff. There are also issues over the efficiency of rehabilitation programmes and the high rate of recidivism that occurs among formerly incarcerated individuals after they are released. Despite the fact that efforts are being made to solve these difficulties, the topic of the prison system in the UK continues to be complicated and contentious.

2.1 CURRENT PRISONS

When an individual is imprisoned, their liberty is denied as a consequence of violating the law, which is a manifestation of societal disapproval. Imprisonment has a punitive component, as the prisoner is expected to endure some limitations, including the loss of freedom of movement. While it is unrealistic to anticipate that a prisoner's life in prison will mirror their life outside the prison, it is important for the justice system to acknowledge that a prisoner is a human being with essential human needs that must not be disregarded. While punishing the offender to serve the public interest, the system should also ensure that the prisoner is treated with dignity, which is in the general population's best interests. Hence, it is necessary for the law to endeavor to strike a harmony between these conflicting interests.

Both India and the United Kingdom have made great strides in creating more humane and effective prison systems in recent decades, particularly in comparison to prior eras.

The circumstances in India's prisons have been improved, and the country's prison population has been reduced.¹⁵ Over the past few years, the government has implemented several measures

¹⁵ Prisons in India: Challenges and solutions. India Today. (2022)

to upgrade and enhance the penitentiary infrastructure.¹⁶ These initiatives have included the renovation of facilities, the provision of better medical treatment, and the improvement of both the quality of food and hygiene standards. In addition, various rehabilitation and reformation programmes have been implemented throughout the nation in an effort to lower the recidivism rate among prisoners.

There are currently several different kinds of jails and prisons in India, including Central Jails, District Jails, Subb Jails, Jails for women, Open Jails, Juvenile Homes, and Borstal Schools. In India, the separate state governments are in charge of the management and administration of the country's many jails.

Over the course of its history, the judicial system in the United Kingdom (UK) has seen a number of shifts and adjustments.¹⁷ The advent of private prisons in the 1990s led to increased competition and innovation within the criminal justice system.¹⁸ This was one of the most significant changes that took place during this time period. Additionally, the United Kingdom has taken steps to alleviate prisoner overcrowding and improve their living conditions, which include expanding educational and healthcare options for those incarcerated there. In addition, there has been an increased emphasis placed on lowering the rates of repeat offenders through the implementation of rehabilitation programmes and community-based sentencing alternatives.

The responsibility for managing the imprisonment facilities in the United Kingdom lies with Her Majesty's Prison and Probation Service (HMPPS), which is an executive agency of the Ministry of Justice. In addition to Women's prisons and Young Offender Institutions, the United Kingdom is home to Category A, B, C, and D prisons, as well as other categories of correctional facilities. Additionally, there are immigration removal centres as well as short-term holding facilities for people who are being held for immigration violations.

In general, both India and the UK have made headway towards improving the current iterations of their respective jail systems.

¹⁶ In 2016 According to the Ministry of Home Affairs in Indian Prison System - An Overview.

¹⁷ Theodore Smith (2018). "The Evolution of the Judicial System". United Kingdom. Journal of Law and Society

¹⁸ NAO (2018). Transforming Rehabilitation: Progress evaluation, C&AG report. London: TSO

2.2 KINDS OF PRISONS IN INDIA

There are many distinct types of jail in India, each of which is used for a certain function. The following are some of the most common varieties of prisons found in India:

1. **Central jails:** These are the largest jails in the country and can be found in major cities across the country. Inmates who have been given sentences of life imprisonment or lengthy terms of incarceration are housed in central prisons.

*Sunil Batra v. Delhi Administration*¹⁹- This case dealt with the inhumane conditions in Tihar Jail. The SC has given guidelines for the safeguarding of prisoners' rights.

2. **District Jails:** These are more manageable prisons that are found in the district headquarters of each of India's states. Inmates who are awaiting trial, those who have been sentenced to lesser sentences, or those who are waiting to be transferred to central prisons are housed at these facilities.

In *Sheela Barse v. State of Maharashtra*²⁰- The Bombay HC ruled that it is illegal to detain undertrial prisoners beyond the legally prescribed time limit.

3. **Open Prisons:** Open prisons are minimum-security correctional facilities in which inmates are permitted to wander freely inside the premises during the day. These prisons are normally reserved for offenders who pose a low risk to the community.

In *Charles Sobhraj v. Superintendent*²¹ the SC held that prisoners possess a right to medical treatment & the state is bound to provide medical facilities to inmates.

4. **Women's Prisons:** Women's prisons are correctional institutions that have been created with the sole purpose of housing female inmates. These correctional facilities are staffed exclusively by female employees and have specialised amenities, such as creches for the convicts' young children.

¹⁹ 1978

²⁰ (1983)

²¹ Charles Sobhraj v. Superintendent (Central Jail Tihar) (1978)

In *Neeraja Choudhary v. State of UP*²², the SC has given the guidelines for the treatment of women prisoners, including separate living quarters, medical facilities, and vocational training.

5. **Juvenile Detention Centres:** Juvenile detention centres are places where adolescents who have been accused of committing crimes are detained until their trials or until they are sentenced.

*Sampurna Behura v. UOI*²³, - The matter addressed in this case pertains to the issue of overcrowding and poor conditions in juvenile homes. The state governments were instructed by the SC has taken steps to to enhance the conditions in these facilities.

6. **Borstal Schools:** Borstal schools are a type of juvenile detention facility that houses juvenile offenders between the ages of 16 and 21. These schools intend to assist formerly incarcerated juveniles in becoming productive members of society by providing them with an education as well as training in various trades.

7. **Special Prisons:** A special prison is a facility that is designed to house inmates who have specific needs, such as those inmates who suffer from mental illness or who are addicted to drugs. These correctional facilities offer specialised care and treatment to inmates in an effort to

assist them in overcoming their problems. It is important to highlight the fact that human rights organisations have voiced their concerns over the circumstances that exist within Indian prisons.²⁴

Rudul Sah v. State of Bihar²⁵: Here, the SC directed the state governments to set up special hospitals or facilities for the treatment of mentally ill prisoners and ensure that they are not housed with other prisoners.

22 1984

23 2015

24 The India Site, "Types of Prisons in India." www.theindiasite.com/types-of-prisons-in-india.html 25 1983

2.3 KINDS OF PRISONS IN UNITED KINGDOM

In the UK, there are various sorts of prisons. The major categories are as follows:

1. **Category A prisons:** These are maximum-security facilities where the most dangerous and notorious criminals are housed. They are built to prevent escapes and communication with the outside world, and they have the highest level of security.²⁶

A landmark case associated with Category A prisons is **Regina v Governor of Whitemoor Prison, ex parte Greenfield**²⁷. The Court of Appeal ruled that the human rights of prisoners were not harmed by the requirement of strip searches by the authorities at Whitemoor Prison.

2. **Category B Prisons:** These are high-security facilities that house inmates who aren't as dangerous as those housed in Category A prisons. Even while they provide greater possibilities for education and rehabilitation, they still maintain strong levels of security.

The Court of Appeal case, **R v Governor of Brockhill Prison, ex parte Evans** (1999), is notable for its association with Category B prisons. It was ruled that the Secretary of State had violated the law by failing to provide adequate washing and sanitation amenities for the inmates of Brockhill Prison.

3. **Category C Prisons:** These correctional facilities are classified as medium-security, and they house inmates who are considered to pose a lower risk to society. Despite being less secure than Category A and B prisons, they still impose limitations on inmates' mobility and their ability to interact with the outside world.

A landmark case associated with Category C prisons is **R v Secretary of State for the Home Department, ex parte Doody** (1994), in which the House of Lords held that the authorities at a Category C prison had an obligation to act honestly and consider individual circumstances before transferring a prisoner to a more restrictive regime.

4. **Open prisons** that house low-risk inmates who are reaching the end of their terms are known as Category D jails. They permit inmates to work outside the jail during the day and have the lowest level of security.

26 "Prisons and probation." Gov.uk, 16 August 2019

27 1995

According to the Supreme Court of Justice in **Regina v. Governor of Brockhill Prison, ex parte Evans** (1999), a case associated with Category D prisons, that the Secretary of State had acted unlawfully by not providing prisoners at Brockhill Prison with proper washing and sanitation facilities.

5. **Women's Prisons:** Prisons solely designated for female inmates exist and are classified based on the level of security required for the prisoners as either Category A, B, C, or D.

The Corston Report (2007) is a pivotal case concerning women's prisons that demanded a comprehensive transformation of the prison system for women in England and Wales. The report proposed the closure of certain women's prisons and advocated for the implementation of community-based alternatives to imprisonment.

6. **Young Offender Institutions:** These are jails where criminals under the age of 21 are housed. To assist juvenile offenders in getting their lives back on track, they offer education and training programmes.

The Court of Appeal ruled that the Secretary of State had breached the law by not providing adequate washing and sanitation facilities to the prisoners at Brockhill YOI in the case of **R v Governor of Brockhill Prison, ex parte Evans** (1999), making it a significant case associated with Young Offender Institutions.

7. **Immigration Removal Centres:** These are detention facilities for individuals who have been arrested by UK immigration authorities for a variety of offences, including exceeding their visa's validity or entering the country without authorization.

Each sort of prison has its own rules and requirements that are made to cater to the requirements of the inmates housed there.

The case of *R (Joint Council for the Welfare of Immigrants) v Secretary of State* for the Home Department, which was decided by the High Court in 2019, has important implications for IRCs.

3. PRISONERS RIGHTS UNDER INTERNATIONAL CONVENTION

Other citizens had their rights stripped away during the World Wars, and other prisoners were made to labour against their will or were killed in an unnecessary manner. Because of this, international prisoner law was modified as a result. The United Nations came up with a set of guidelines for the bare minimum in terms of how prisoners should be treated. It lays out requirements that mandate that detainees be provided with sufficient food, proper cleanliness, clean bedding, and access to medical facilities. You should make it easier to distinguish between the accused before and after the trial. The fundamental purpose of these treaties and conventions is to ensure that individuals imprisoned are not subjected to cruel or degrading treatment or torture.

In order to guarantee the safety and security of prisoners' rights all over the world, numerous international conventions and treaties have been drafted. Some of the most significant agreements and treaties pertaining to prisoners' rights are listed here:

- I. **The Universal Declaration of Human Rights (UDHR)** The Universal Declaration of Human Rights (UDHR) was approved by the United Nations General Assembly in 1948 and encompasses fundamental human rights that are applicable to everyone, including prisoners. Torture and other cruel, inhumane, or humiliating treatment or punishment are prohibited, as stated in Article 5 of the UDHR.
- II. **The International Covenant on Civil and Political Rights (ICCPR)**, In 1966, the GA of the UN's approved the ICCPR, which is also called the Covenant. The rights of those who have been imprisoned are covered in further detail in this document. All people who are denied their liberty shall be accorded dignity and reverence in accordance with Article 10 of the agreement, which states that. There are also rules pertaining to the right to an impartial hearing, the outlawry of torture, and the right to livable conditions while incarcerated.
- III. **Convention against Torture and Other Cruel, Inhuman, or humiliating Treatment or Punishment (CAT):** The Convention against Trauma and Any bad, unjust, or Deteriorating Therapy or Penalty (CAT) was ratified by the UN GA in 1984. This convention specifically forbids the practise of interrogation and all other forms of cruel, inhuman, or degrading penalty or detention. It instructs states to take all necessary steps to stop such crimes from happening and to offer suitable compensation to the victims. Additionally, it requires states to make sure that kids are protected from these kinds of behaviours.
- IV. The United Nations General Assembly sanctioned the initial form of the **Standard Minimum Rules** for the execution of Prisoners in 1955, is now recognized as the first version of the document. This text has undergone multiple modifications since then. The SMRs gives a set of regulations for the management of prisoners, covering various aspects such as the conditions of imprisonment, medical care, education, and rehabilitation. The document outlines specific guidelines for the management of prisons.
- V. **European Convention on Human Rights (ECHR):** In 1950, the ECHR was approved by the Council of Europe, providing comparable protections and rights to incarcerated individuals in Europe. The convention includes regulations related to the right to a impartial trial, the prohibition of cruel and inhumane treatment, including torture, and the right to suitable living conditions while in confinement, along with other rights.

By establishing a framework for safeguarding prisoners' rights, these treaties and conventions work to hold governments responsible for their treatment of incarcerated individuals.

3.1 RIGHTS IN INDIA

It cannot be stressed enough that a person's conviction should not define their worth in capacity of the human being. They are entitled to basic human rights that apply to all individuals, although they should not be regarded as a free person with unrestricted rights and privileges. It is necessary to impose reasonable rules and regulations to limit their freedom.

The SC of India has been in talks with federal and state govt. to address the deplorable living conditions of convicted persons, including overcrowding, lack of resources, and inadequate infrastructure. Therefore, it is essential to protect convicts' legal rights and protections.

In India, human rights are built upon the foundation of fundamental rights, which are the essential liberties that cannot be violated under any circumstances. Under national laws, A few of these privileges are also granted to convicts, such as Articles 14, 19, and 21, although they are not always able to fully exercise them. Article 21 grants prisoners the right to a fair trial, while Article 19(5) demands that restrictions are reasonable, and Article 14 prohibits these of arbitrary power that leads to unlawful discrimination. Both higher and subordinate courts have issued multiple rulings upholding these rights.

I. Right to privacy

The right to privacy is recognised as an important right in Article 21 of the Indian Constitution, which is highly valued by Indians and viewed as an essential part of the right to both life as well as individual liberty.

Over the years, Indian courts have delivered several landmark judgments that have further established the importance of privacy rights. These decisions have also extended the protection of privacy rights to inmates and criminal defendants.

The courts have recognized that privacy rights are crucial for protecting individuals from unwarranted state intrusion into their private lives. They've pointed out that although privacy rights are significant, they're not unconditional and can be restricted under certain conditions, such as protecting national security, deterring criminal activities, and securing the liberties and rights of others.

In the context of inmates and criminal defendants, privacy rights have been interpreted to include protection against arbitrary and intrusive searches of their person and belongings, the right to confidential communication with their attorneys, and the right to keep personal information confidential. These privacy rights are essential to safeguarding the dignity and autonomy of inmates and criminal defendants, and to ensuring that they are treated fairly and justly under the law.

- **Right to privacy of prisoners and their spouses**

The defendant in the case of *Rahmath Nisha v. Additional Director General of Prisoner and Others* was permitted to take a 10-day leave to visit his ailing spouse. However, upon reaching his house, he discovered that his wife had been admitted to the hospital's intensive care unit. Despite the seriousness of the situation, the police protection following the accused said that the permission they had issued was only valid for a visit to his residence and refused to let him meet his wife in the hospital. Consequently, a legal dispute arose with the defendant asserting that he should be allowed to see his wife while she was undergoing medical care.

In a ruling, the Madras Court stated that the defendant had the right to see his wife in the hospital without any monitoring or supervision. The court emphasized that the defendant's constitutional right to life and personal liberty, as outlined in Article 21 of the Indian Constitution, included the right to family life.

The court further emphasized that the right to family life has the right to visit and spend time with family members, particularly in critical situations such as medical emergencies. The court recognized that denying the convicts the right to meet his wife in the medical centre would be a violation of his fundamental rights and would cause undue emotional distress to both him and his wife.

Thus, the ruling in *Rahmath Nisha v. Additional Director General of Prisoner and others* reaffirms the importance of protecting the rights of prisoners, including their right to family life, and highlights the need for a fair and compassionate approach towards their treatment.

II. Right against solitary confinement and bar fetters

Solitary confinement refers to a type of imprisonment that involves segregating an inmate or convict from other prisoners and confining them to an individual cell. The person's communication with others is restricted, and their conduct and habits are closely observed. The primary objective of this form of confinement is to ensure discipline, particularly with notorious criminals, while also safeguarding other prisoners from them.

The permissibility of isolation was brought under the spotlight in the *Sunil Batra v. Delhi Administration* case, which was adjudicated by the SC. In its verdict, the court opined that solitary confinement ought to be reserved for extraordinary situations where the inmate is exceedingly aggressive or dangerous, and separation is absolutely essential. Furthermore, the court maintained that the constant confinement of prisoners reduces them to an animalistic state and adversely affects their mental wellbeing. Thus, Indian courts have voiced strong objections to the practice of solitary confinement, deeming it a highly dehumanizing and derogatory measure. They have further contended that such confinement violates the tenets enshrined in the Indian Constitution.

III. Right to life and personal liberty

The Indian SC has consistently upheld the significance of Article 21 and has applied its verdict in several cases. Field J. gave a broader interpretation of the term "life" in the historic *Kharak Singh v. State of UP* case. The court determined that the concept of "Life" does not only refer to animal life survival but encompasses all the senses and faculties that enable one to enjoy life. Additionally, the provision restricts the excision of body parts that serve as a medium of communication with the afterlife. Consequently, the right to life extends beyond an individual's physical existence.

IV. The right to live with human dignity

The right to live with respect is a crucial element of the right to life, which is safeguarded by the Indian Constitution and is applicable to all individuals, even prisoners. Despite being in confinement, prisoners have the same right to dignity as anyone else, as their incarceration does not diminish their humanity. This fundamental right is an essential feature of the Indian Constitution's right to life, and the judiciary has expanded its ambit under Article 21, with cases reflecting its application. In the *Maneka Gandhi v. Union of India* case, the SC of India redefined the "right to life or live" to encompass not only the physical being of an individual but also their right to live with respect.

V. Right to health and medical treatment

The right to health is an essential entitlement which is promised in the Constitution of India, ensuring that every person gets access to the best medical and psychological services available. Several judgments by the country's top court have established that healthcare is an essential aspect of Article 21. As per this provision, the State is obligated to safeguard the life of every individual.²⁸

As per the ruling in the *Parmanand Katara v. Union of India* case, doctors employed in public hospitals are legally bound to provide all necessary emergency medical assistance to save a patient's life. Furthermore, every medical practitioner has a moral responsibility to offer their professional expertise to any patient, regardless of their identity, with the aim of preserving their life.

VI. Right to a speedy trial

The adage "justice delayed is justice denied" is absolutely true. Regardless of the offence for which they were found guilty, each prisoner has a right to a quick trial. The delivery of criminal justice is thought to be completely dependent on swift trials. If someone is suspected of a crime, they must face quick trials to either convict them of it or clear them of it if they are not. Protracted trials are against the law and violate the defendant's rights, hence they shouldn't ever be imposed upon anyone. As a result, everyone now agrees that everyone has the right to a fast trial. Furthermore, Section 309 of the CrPC contains the right to a prompt trial.²⁹

VII. Right against Inhuman treatment

All prisoners are entitled to legal protection from any form of cruel or degrading treatment. The Indian SC has highlighted instances of such mistreatment in many cases and directed state and inmate authorities to take necessary measures to oversee and prevent such situations. The court further barred using tools to punish the prisoners, including handcuffs, chains, irons, and straitjackets. However, only in limited situations, are some additional forms of constraint acceptable. These situations are described below:

- a) According to this guideline, it is permissible to use restraint devices as a safety measure while transporting prisoners, but they must be eliminated when the detainee appears before a judicial or administrative authority.
- b) If a prisoner is deemed a threat to themselves or others and preventing harm to them or property is challenging, the director may allow the use of restraints following a consultation with a healthcare officer and getting approval from higher authorities. However, the use of restraints should only be based on valid medical reasons that have been approved by the medical officer.
- c) The central prison administration will determine how and in what patterns to utilize constraint devices. No more time than is strictly necessary may be spent using such equipment.

²⁸ Indian Constitution of 1950

²⁹ Development Of Prison Reforms In India. Arya Gaddam.(2022)

VIII. Right to Education

Each citizen should be able to obtain a quality education because it represents 1 of the nation's fundamental rights. It is essential to provide education, but also the right kind of education. In *Mohammad Giasuddin v. State of AP*, the court tried to limit the activities and academic offered to prisoners. It was ordered that the govt. look into the employment and training given to the inmates to make sure it was "not of a repetitive, arbitrary, mental or like kind combined with a title physical activity..." The court also ordered that inmates who want to continue their education while imprisoned must have access to online classes. The female inmates should also have access to basic vocational training in fields like making dolls, sewing, and embroidery. Qualified prisoners ought to be provided with an opportunity to engage in intellectual or physical productive activity.

➤ Voting Right of prisoners in India

The issue of granting voting rights to prisoners has been a topic of discussion in India for a significant time. Even though the Indian Constitution doesn't specifically reference prisoners' voting rights, it does recognise that all residents has the fundamental right to cast a vote. Additionally, inmates are not denied the right to cast their votes under the Representation of the People Act, 1950, that regulates how elections are conducted in India.

In 2013, the SC of India made a significant ruling on this matter as in case of *People's Union for Civil Liberties (PUCL) v. Union of India*. The court affirmed that voting is an essential component of a person's right to engage in the democratic process, and this right extends to prisoners as well. The Court also instructed the Election Commission to make necessary arrangements to allowing inmates to vote is a good idea.

Similarly, in 2019, the Madras High Court also recognized the voting rights of prisoners, including those who have been convicted of crimes. The Court points up that the refusal of the right to vote violates the constitutional rights of prisoners and directed the Election Commission to ensure that necessary facilities, such as ballots in various languages, are made available for prisoners to vote.

Therefore, based on these landmark judgments, it can be concluded that prisoners in India have the right to cast a vote, except for those who have been convicted of crimes and are serving their sentence in prison. The Election Commission of India has set up polling booths in prisons to enable prisoners to cast their votes, and prisoners who are under trial or in custody but have not been convicted can exercise their right to vote.

3.2 RIGHTS IN UNITED KINGDOM

Prisoners in the United Kingdom enjoy legal protections for a number of rights. Some of the most fundamental protections afforded to prisoners include the following:

I. Right to humane treatment

Convicts has a right to compassionate treatment. They are entitled to healthcare and ought to not be given harsh or humiliating treatment.³⁰

Landmark Case: *R v Governor of Brockhill Prison ex parte Evans* (No.2) (2001)

In this case, the court held that a convict's right to human dignity had been violated when he was subject to a strip search in front of prison staff of the opposite sex.

II. Right to religious freedom

Inmates has the right to freely practise their religion or belief and may have religious teachers visit them in prison.

Landmark Case: *R (on the application of Begum) v Head Governor of HMP Bronze field* (2006). Here, the court said that a prisoner's right to practice her religion had been violated when she was prevented from wearing a hijab in prison.

III. Right to family contact

Inmates have the right to visitation, telephone communication, and written correspondence with their loved ones outside of prison.

The 2010 case of *R (on the application of Gallagher) v Secretary of State for Justice* established a landmark ruling that the negation of a prisoner's request to attend his father's funeral infringed upon his right to maintain family ties.

IV. Right to education and training

Prisoners have the right to receive courses of study that fits to their individual requirements, skillsets, and career goals.

In Case: *R v Secretary of State for the Home Department*, ex parte Hardial Singh (1984) In this case, the court said that a prisoner's right to education had been violated when he was not provided with reasonable facilities to study for his exams.

³⁰ See Prisoners' Rights. Principles and Practices of Easton, S. (2011)

V. Right to work

Prisoners have the right to labour and be compensated fairly for their time and effort under specific circumstances.

VI. Right to a fair hearing

Inmates who are facing misconduct allegations are entitled to a fair and impartial hearing, and they may also file an appeal of any adverse rulings.

VII. Right to have a lawyer

Inmates have a constitutionally protected right to consult with and be represented by an attorney in all of their legal proceedings.

Landmark Case: *R (on the application of Sim) v Secretary of State for Justice*³¹

In this case, the court said that a prisoner's right to access to courts had been violated when he was not provided with legal advice and representation for his parole hearing.

VIII. Right to complain

Inmates have the legal right to file complaints in writing against the way they are treated or the state of their confinement, and to have those concerns fully examined.

IX. Right to privacy

Inmates have the right to privacy and to the safeguard of their private data within certain limits.

³¹ 2009

Landmark Case: *R (on the application of Begum) v Secretary of State for Justice*³²

In this case, the court said that a prisoner's right to privacy had been violated when his conversations with his solicitor were recorded without his knowledge or consent.

X. Right to access healthcare

Inmates have the same rights as the general public to receive medical care and appropriate medication, including being able to access medical treatment.

These privileges, however, are not permanent and may be revoked under certain situations, such as when inmates create a threat to jail security. But in general, offenders in the UK have these rights, which are meant to make sure they are treated properly and respectfully behind bars.³³

R (on the application of St George-Hyslop) v Secretary of State for Justice (2010)

Here, the court said that a prisoner's right to medical care had been violated when he was not provided with the medication that was necessary for his mental health.

➤ Voting Right of prisoners in UK

The voting right of prisoners in the United Kingdom has been a topic of debate for many years. The issue arose in 2004 when John Hirst, a convicted murderer, challenged the UK's blanket ban on inmates voting rights. Back in 2005, the European Court of Human Rights (ECHR) declared in the Hirst v. United Kingdom case that the prohibition of voting rights for prisoners in the UK was a breach of the European Convention on Human Rights.

Following the ruling, the UK government passed the Voting Eligibility (Prisoners) Act 2005, which maintained the ban on prisoners' voting rights but allowed for a review of the ban. In 2011, the UK government lost another case in the ECHR, in which the Court ruled that the UK's failure to implement the Hirst ruling was a violation of the Convention.

In response, the UK government initiated the Voting Eligibility (Prisoners) Draft Bill in 2012. This would have permitted convicts serving less-than-four-year terms the right to cast their votes. However, the Parliament did not pass the bill. As of 2023, the complete ban on prisoners' voting rights remains in place in the UK, although the government has indicated that it is open to considering changes to the law.

Therefore, while the ECHR has said that the blanket ban on inmates voting rights is a breach of human rights, the UK government has yet to fully implement the ruling. The issue remains controversial, with some arguing that prisoners' voting rights are an essential part of their recovery and incorporation back into society, while others argue that the loss of voting rights is a necessary consequence of imprisonment.

32 2015

33 Prisons and Punishment. Essentials (2nd Edition). D Scott. and Flynn

CONCLUSION AND SUGGESTION

Towards the end of the 19th century, new theories of crime causation emerged, which led to the belief that prisons could be utilized to reform offenders. These theories called for a more individualized approach to punishment. The perception of prisons has evolved, acknowledging that their purpose should extend beyond solely serving as a means of punishment and discouragement. Instead, prisons should be recognized as establishments where individuals are housed and cared for, and not as neglected members of society, but as people entitled to specific rights.

The executive was responsible for maintaining peace and tranquillity in society, which is why the administration of prisons was entrusted to them. In most common law countries, the courts adhered to the "hands off" doctrine concerning prison administration, as they believed that their only role was to impose punishments and not to be worried about the treatment of prisoners. This perspective was rooted on the belief that prisoners were a group of people who were not entitled to any rights.

As the international community started advocating for the humanization of prisons, the courts in common law countries gradually became more involved in ensuring proper treatment of prisoners. Initially, the "hands off" policy of the courts in England created obstacles for inmates who sought to challenge coercive methods implemented by the authorities. However, through various judicial interventions, the govt. acknowledged the significance of upholding the concepts of human rights and dignity for prisoners and began to extend various facilities to them.

The judiciary in India has made efforts to protect the rights of inmates over the years. Initially, the courts held a conservative stance towards prisoners' requests for demands that corresponded with fundamental rights. However, over time, their attitude shifted, and the courts began acknowledging and implementing human rights principles in favor of prisoners. The judiciary has recognised several rights of inmates through a number of court decisions, including the right to legal counsel, the right to a speedy hearing, the right to physical protection and security, the right to liberty of expression, the right to visitation with relatives, and the right to be free from abusive or cruel jail practises.

Overall, it is important to recognize that convicts are human beings with rights that must be upheld, even in the context of their punishment. The justice system should strive to provide humane treatment and rehabilitation for offenders to facilitate their successful reintegration into society after they complete their sentences.

The current prison system in our country is a legacy of British rule. During colonial times, The British designed the jail system with the goal of terrifying criminals into submission. The Indian criminal administration is responsible for prison administration as well. The fact that someone can become a criminal due to social and economic circumstances should not be overlooked. Therefore, the prison authority must provide proper food, shelter, and healthcare treatment to prisoners. Prisoners should be treated humanely because the main purpose of imprisonment is not punishment but to reform criminals, so that they can reintegrate into society after serving their sentence.

The punishment system in India is also established on the reformatory theory, but despite many reforms, there is still a need for further improvement because the condition of prisoners in prisons is deplorable. In addition, there is no strong legislation to protect prisoners, and cases of prisoner suicide or murder, as well as torture and beatings by prison officers, are increasing. Therefore, proper legislation is needed to protect prisoners' rights, as they are human beings and entitled to the same rights as other citizens. There is also a need for more jails or prisons, as the capacity of all prisons is less than the number of prisoners. Legislative members and jurists have suggested some reforms in the prison system.

To ensure the welfare of prisoners in contemplative situations, strict legislation and judge-made laws should be implemented to provide better protection. Due to the global epidemic, many non-violent offenders are being released from prisons. However, the criminal environment can drive them to reoffend, so it's important to focus on effective rehabilitation programs and periodic follow-ups. When an income-earning member of a family is imprisoned for fraud, the family suffers greatly, particularly in developing countries where financial support is lacking. These families cannot afford to hire a lawyer to defend their loved ones. Therefore, the State must ensure that fundamental rights are upheld and that prisoners are treated fairly.

The UNODC believes that prison reforms are necessary and that prison policies should be guided by prison authorities. The provision of adequate healthcare services should be affiliated with the prison system, and national laws should be in place to ensure compliance.

A new approach to correctional reform has emerged, emphasizing the reformatory and rehabilitative aspects of the justice system. It is now acknowledged that prisoners must not be left with the impression that the rule of law is not applicable within the prison premises. The primary objective of imprisonment is to train prisoners for lawful living in society, where they abide by the rule of law. However, this goal cannot be attained if the prison system is unjust or arbitrary. It is crucial to stress that prison facilities should not only serve to punish offenders but also in order to restore them.

Prisons, according to Dr. Sethna, should provide possibilities for re-education, but they shouldn't be constructed to be so inviting to inmates. Instead, inmates should be forced to engage in physically demanding and productive work that will be advantageous to both the state and the inmate after release.

A perfect prison should offer various facilities, including work, Occupational training, primary education, health care, and recreational activities for convicts. The management of prisons should be effective and functional. The present practice of imposing definite sentences on prisoners, without considering their rehabilitation and reform, should be reconsidered. For circumstances involving imprisonment, a sentence that is in with a reformatory goal should be used. Imprisoning people at the state's expense without achieving any objective that benefits society is pointless.

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