

**CONSTITUTIONAL HUMAN RIGHTS OF PRISONERS IN INDIA: AN ANALYSIS****Dr. Deepak Kumar**

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**Abstract**

*Human being is the best creature of the nature, having various specific features, like the presence of intellectuality. Human being by this intellectually has placed themselves in a paradise of specific rights and enjoying various rights irrespective of their caste, sex, religion and place of birth. Almost all the societies have given specific consideration to all these rights, required for the human development. India, in its Constitution has approved the all these rights in the category of fundamental rights. The rights are dynamic in nature, varies up to the needsof the society.*

*This paper seeks to analyze the concept and approaches of human rights for the prisoners in the Constitution of India. In this regard, the work is covering the aspects of constitutional human rights in early decades and development of the same including the role of judicial interpretations.*

**Keywords:** *Constitutional Provisions, Human Rights, Judicial Interpretation, Prisoners.*



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**Introduction**

The concept of human rights had a long history and the human being enjoyed various rights forages, but it was entirely different in the old days as we can see today. In the early ages the people were divided into various sections according to their wealth, caste and race, etc. hence rights were subjected to enjoy accordingly. Tracing the origin and evolution of human rights certainly invite a debate. <sup>1</sup>Therefore, it would be better to take references of the modern

<sup>1</sup> Upendra Baxi. *The Future of Human Rights (Third Edn.)*. Oxford University Press New Delhi, 2008.

development of human rights. During this period there was a gross violation of rights of vulnerable groups and slaves, but by the end of the 18<sup>th</sup> century the French and the American revolutions had given a meaning to rights for all without any discrimination. This period of revolution later spread the fragrance of human rights across the world. During the first and the Second World War a gross violation of human rights was reported in the history which had never seen in the past. The World is witness to that grave man-made human rights violations on the basis of nationality, place of residence, sex, ethnic origin, religion and colour. Resultantly, the United Nations Organization (UNO), adopted various Declarations like the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic and Cultural Rights (ICESCR) which have contributed more to spread the civil, political, cultural and economic rights of the people with its full of spirits and human beings are entitled to these rights equally and universally without any discrimination. After the adoption of these covenants the concept of human rights has widened and conferred more civil, political and economic rights to the people. The declarations also provided non-natural rights of the people like, Right to Education, Right to Nationality, and Right to Family etc. and established some agencies like, United Nations Human Rights Council, Human Rights Watch to watch the implementation among the member states. There is no doubt that each and every person has the right to basic human rights since his birth and nobody has the rights to curtail or abridge the rights on the basis of their race, caste, sex and religion etc.

In reference to the Constitution of India and human rights references are available since 1985. The Constitution of India Bill, 1985, popularly known as Home Rule Bill, the M. Chelmsford report, 1918, talks about certain fundamental rights. The Commonwealth of India Bill, 1925 and the Moti Lal Nehru Committee Report, 1928 also indicate about the efforts for human rights in India, but the real process started with the adoption of the famous Karachi resolution of 1931.<sup>2</sup> On December 13, 1946 the objective's resolution moved by Pt. Jawaharlal Nehru and the same were unanimously adopted by the Constituent Assembly on January 22, 1947.<sup>3</sup> The principles laid down in fundamental documents were duly considered and applied by the framers of the Constitution while drawing up the Indian Constitution.<sup>4</sup> The preamble of the Indian Constitution

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<sup>2</sup> Khwaja Abdul Muntaqim. *Protection of Human Rights: National & International Perspectives*, 27. Law Publishers (India) Pvt. Ltd, Allahabad, 2008.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Id* at 29.

has all the rights as guarantees and grants freedoms contemplated in the same document. Human Rights of the prisoners in India can be seen by two perspectives viz. Constitutional status and development of human rights and prison reforms to implement the constitutional human rights of prisoners. Keeping in view this paper covers both these aspects in brief.

### **Human Rights of Prisoners and the Constitution of India**

About human rights there is a common rule and well accepted universally that all human beings have the right to basic human rights without any discrimination. Prisoners are also not the exception to this principle. Since, the Indian social system is based on non-violence, respect and legal system is based on the rule of natural justice, including rule of law, therefore, prisoner's rights are subject matters of human rights and almost all basic human rights are conferred upon the individuals by the Constitution. Although there are no specific rights to the prisoners mentioned in the Constitution, the prisoners remain a person as per constitutional view, thereby the basic human rights of prisoners are protected by the Constitution itself. It has also made clear from the Indian judicial system that human beings are born equal in dignity and rights, so there can be no discrimination on the basis of any ground, though some restrictions may be imposed in some specific cases. It is the human life that necessitates human rights. These rights are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. The definition of word prisoner<sup>5</sup> is also not mentioned about any kind of negative impact or violation of human rights. Being in civilized society organized by law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. Even if the person is confined or imprisoned because of his wrong, he is entitled to their rights unaffected by the punishment for wrongs, simply because if a person under trial, his rights cannot be discarded as a whole. UDHR, 1948 also talks about that "No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment"

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<sup>5</sup> The word "prisoner" means any person for the time being in a prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody. A prisoner also known as an inmate is anyone who is deprived of liberty against their will. This can be by confinement, captivity, or by forcible restraint. "Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess." – Justice V.R. Krishna Iyer.

The Constitution of India has a vital role to formulate the basic human rights of the people and the Prisoners have also all basic human rights and these can't be taken away from them. Constitution of India has clearly mentioned the fundamental rights and duties to all its citizens. But neither it specifies any list of the rights of prisoners nor give any curtailment in the list fundamental rights. The prisoner also remains as a person or a citizen and are eligible for fundamental rights given by the constitution. The fundamental rights guaranteed under the Constitution is not absolute in nature the state has power to impose certain restriction on it. When a person who is a convict or incarcerated his status different from that of a common man, as he has to stay for a defined period in prison and prisons are considered as a closed institution. Due to this he cannot claim all the fundamental rights that available to a common man and the prison administration has the power to impose some restrictions to prisoners' rights within the limits of prison manuals. But it never means that the prison administration has powers to curtail prisoner's basic and fundamental human rights like right to life, medical assistance and equality etc. The judiciary while considering various cases clearly interpreted the various Articles and its implied meaning and conferred more rights to the people.

Article 14 of the Constitution of India, gives the right to equality and equal protection before the laws. So, prisoners have their own rights. If any excesses committed on a prisoner, by the police are considered as a violation of rights and it warrants the attention of the legislature and the judiciary. The right to meet friends, relatives and lawyers are provided under article 14 and article 21. Such rights are reasonable and non-arbitrary. Even prison regulations recognize the right of prisoners to have interviews with a legal adviser necessary, in a reasonable manner. The right to free legal aid is also provided under this article 14 and 21. In *Maneka Gandhi v. Union of India*<sup>6</sup> the Supreme Court held that the personal liberty of an individual can be restrained only on the basis of a law and a procedure established by that law. The procedure established by law should be just fair and reasonable. In this case the Attorney General stated that the Government was agreed to consider the representation of the petitioner. The Supreme Court held that since the defect of the order was removed, the right to go abroad of the petitioner was deprived only in accordance with the procedure established by law (Passport Act). So the order is not violating of Article 14, 19(1) (a) or 21 of the Constitution. In *Madhukar Bhagwan Jambhale v. State of*

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<sup>6</sup>AIR 1978 SC 597.

*Maharashtra*<sup>7</sup> it has decided by the court that Rule 17 (ix) of the Maharashtra Prison (Facilities to Prisoners) Rules, 1962, is discriminatory and violative of Article 14 of the Constitution and must therefore, be struck down. A prisoner is entitled to send welfare letters to prisoners in the prisons, whether such prisoners are relatives or not.

Article 15 of the Indian Constitution deals with the Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth. This Article says that the State shall not discriminate any person on the basis of his or her religion, race, sex, and place of birth or any of them. Under article 15 (3) & (4), the Government can make special provisions for women & children and for a group of citizens who are economically and socially backward. It is the rights of a prisoner to live inside the prison without discrimination. The Constitution of India guarantees Right against Discrimination to each person. Here the person also includes prisoners, so a prisoner has complete rights against discrimination on the ground of religion, race, caste, sex or place of birth.

Article 19 of the Constitution deals with the Rights to Freedom which includes six freedoms and all these are under reasonable restriction under various sub-clauses of the same Article. Among these freedoms right to freedom of speech and expression and freedom to become a member of an association are available to prisoners, but all other freedoms like right to movement, right to reside and settlement anywhere in India, right to profession occupation, trade or business cannot available to the prisoners. To handcuff is to hoop harshly and to punish humiliatingly. The minimum freedom of movement, under which a detainee is entitled to under Article 19, cannot be cut down by the application of handcuffs. Handcuffs must be the last refuge as there are other ways for ensuring security. Article 20(1) of the Constitution, protect the person from ex post facto laws or retroactive criminal legislation; Article 20(2), provides that no person shall be put into trouble twice, for the same offenses, (rights against double jeopardy) and Article 20(3), provides for the protection against 'testimonial compulsion. On the question of human rights in criminal administration in reference to handcuffs and fetters it can be considered that Articles 20, 21 and 22 of the Constitution are relevant to the administration of criminal justice.<sup>8</sup>

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<sup>7</sup> 1984 (2) Bom. Cr. Cases 709.

<sup>8</sup> .K. Sarkar's. *Public Interest Litigations and Public Nuisances* (Second Edn.) 761. Orient Publishing Company: Allahabad, 2009.

Right to life under Article 21 is also one of the important rights given by the constitution and guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatment to any person whether he is a national or a foreigner. Article 21 Protection of life and personal liberty as “No person shall be deprived of his or personal liberty except according to procedure established by law”. Here in context to deprivation Prison is treated as any place which has been declared by the Government, by general or special order, to be a subsidiary jail, or any reformatory, borstal institution or other institution of a like nature.<sup>9</sup> And Confinement in a prison refers to confinement in a prison, by whatever form of words, include references to confinement or detention in a prison under any law providing for prevention detention.<sup>10</sup> Thus the above contexted provision have not any type of violation of human rights of prisoners, further ‘life’ under Article 21 has extended meaning given to life to the word and those citizens who are detained in prison either as under-trials or as convicts, all are entitled to the benefit of the guarantees subject to reasonable restriction.<sup>11</sup> In *Maneka Gandhi v. Union of India*<sup>12</sup> the Supreme Court has widened the concept life under Article 21 and conferred more rights to lead dignified life e.g., the rights of speedy trial, right to practice religion and right to communication etc. but all these rights are subjected to restriction as prescribed under prison manual and Constitution. Right to speedy trial is a fundamental right of a prisoner implicit in Article 21 of the Constitution. It ensures just, fair and reasonable procedure.<sup>13</sup> In *Prem Shankar v. Delhi Administration*<sup>14</sup> the Supreme Court held that Handcuffing should be resorted to only when there is clear and present danger of escape from the police control. Handcuffing is held to be *prima facie* inhuman and therefore unreasonable and thus violative of Article 21. In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*<sup>15</sup> the Supreme Court held that the Right to Life protected under Article 21 is not confined merely to the right of physical existence but it also includes within its broad matrix the right to the use of every faculty or limb through which life is enjoyed as also the right to live with basic human dignity. In *Sunil Batra (II)*<sup>16</sup>, arising out

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<sup>9</sup> Section 2 (b), Prisoners (Attendance in Courts) Act, 1955.

<sup>10</sup> Id, Section 2 (a).

<sup>11</sup> *Sheela Barse v. State of Maharashtra*, 1988 (1) Bom. Ce. Cases 58 at 64.

<sup>12</sup> 1978 AIR 597.

<sup>13</sup> *Hussainara Khatoon (II) v. Home Secretary, State of Bihar*, (1980) 1 SCC 81.

<sup>14</sup> AIR 1980 SC 1579.

<sup>15</sup> AIR 1980 SC 1585.

<sup>16</sup> AIR 1981 SC 745.

of a letter written by Sunil Batra to one of the judges of the Supreme Court alleging that a warden in Tihar Jail had caused bleeding injury to a convict by name Prem Chand by forcing a stick into his anus, the Court liberalized the procedural rigidities of the writ of habeas corpus and employed the writ, following the American cases for the oversight of state penal machinery and for the condemnation of the brutalities and tortures inflicted on the prisoners. On the basis of this, the Supreme Court treated Batra's letter as a petition for habeas corpus and issued the writ to the Lieutenant Governor of Delhi and the Superintendent of Central Jail ordering that Prem Chand should not be subjected to torture and the wound on his person should receive proper medical attention.<sup>17</sup> In *Citizen for Democracy v. State of Assam*<sup>18</sup> the Court treated the letter as a petition under Article 32 and held that handcuffing and in addition, tying with ropes of the patient prisoners who are admitted in the hospitals, are violation of human rights guaranteed under Article 21 of the Constitution.

In *Hoskot*,<sup>19</sup> the Court held "If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave appeal, for want of legal assistance, there is implicit in the court under Article 142 read with Articles 21 and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code and allowed by Article 136 of the Constitution. The inference is inevitable that this is a State's duty and not Government's charity". After a period of six years the Supreme Court again said in *Khatri v. State of Bihar*<sup>20</sup> that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure a person accused of an offence and it is implicit in the guarantee of Article 21.

### **A brief on Prison Administration Reforms in India**

The history of the modern Indian prison system started from the beginning of the British colonial era in India. When the British conquered India, there was no uniformity in civil and criminal procedural system. The system of punishments differs from region to region and ruler to ruler. When the Britishers conquered different princely states, each state followed different punishment

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<sup>17</sup>M C Valsan. *Rights of Prisoners: An Evolving Jurisprudence*, 2013 58.(Unpublished Ph.D. Dissertation, Cochin University of Science and Technologies.

<sup>18</sup>AIR 1995 SCC 743.

<sup>19</sup> AIR 1975 SC 1548.

<sup>20</sup> AIR 1981 SC 928.



system. This was one of the issues faced by the Britishers. In order to overcome the issue, the then British government appointed a committee, namely Prison Discipline Committee under the Chairmanship of T B Macaulay in 1835. The Committee submitted the report in 1838 and recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendation new central prisons were constructed and wrong doers placed behind the bars.

Reformation through incarceration was the main objectives of the construction of new jails. As per the recommendation of T. B. Macaulay Committee the Government constructed the prisons and deprived various draconian punishment methods such as mutilation, branding etc. as a part of implementation of reformative methods they constructed Schools, Hospitals and Factories etc. The prison administration also established industries inside the prisons and assigned various kinds of works to the prisoners with remunerations.

Although the reformation was the main objectives of the prison administration in the British India, human rights violations was common in every prisons. Prisoners were subjected to severe tortures, even juvenile offenders were subjected to flogging and the prison administration discriminated the prisoners on the basis of caste, religion and race. The prison administration did not provided proper space to follow religious belief. In the name of discipline, the prison administration denied to religious rights and often confiscates their religious properties. In addition to this, the prison administration tortured the prisoners to provide harder works without providing proper remuneration.

India became a Republic on 26<sup>th</sup> January, 1950, and the Constitution of India, with a new spirit, was promulgated; but unfortunately, most of the pre-independence laws (the Indian Penal Code, 1860. The Prison Act, 1894, the Prisoners Act, 1900, the Identification of Prisoners Act, 1920 and the Punjab Jail Manual, 1898) though at variance with the spirit of the Constitution of India, continued in operation.<sup>21</sup> In 1952, Walter C. Reciles an American Expert on prison administration, was invited from UNO and a draft on Modal Prison Laws and manuals were prepared in 1954, but these could not become the part of law. A. N. Mulla Report, 1980-1983, were also appointed for the purpose of amending the prison laws. After that the government of India, under the severe criticism of violation of Human Rights, has appointed a National Human

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<sup>21</sup> S.K. Sarkar's. *Public Interest Litigations and Public Nuisances* (Second Edn.) 717. Orient Publishing Company: Allahabad, 2009.



Rights Commission and this has started an investigation for revamping the prison administration for systematic reforms. But in actual the reports of the above committees or commission could not get the approval of the legislature and could not become the part of the law of the land.<sup>22</sup> And finally the Judiciary has interfered in the matter and treated a letter as a writ petition and by an elaborate judgment allowed the petition and issued directions inclusive of one for taking suitable action against the erring official to the Ministry of Home Affairs and all State Governments.<sup>23</sup>

### **Conclusion**

Though the Constitution of India has a wide category of human rights for all. The prisoners are also protected under this category. At the time of implementation of Constitution of India, Constitutional Makers have taken appropriate steps by inserting chapter of fundamental rights. The Judiciary has also contributed more by developing the dimensions of fundamental rights and also tried to resolve the various issues being faced by the prisoners. The Supreme Court and High Courts while considering various cases clearly interpreted the various Articles and its implied meaning and conferred more rights to the prisoners. While considering petitions regarding the issues of prisoners the Supreme Court laid down various guidelines to be followed by the prison administration, police and other investigative agencies. Even the Court has considered the report of newspaper and letter sent by the prisoners in regard to the pathetic situations of prisoners as Writ petition and directed to the government to take proper actions to resolve the issues. If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, for want of legal assistance, there is implicit in the court under article 142 read with article 21 and 39 A of the Constitution, power to assign council for such imprisoned individual for doing complete justice. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so required, assign competent counsel for the prisoners defense, provided the party doesn't object to that lawyer. Role of the policy and lawmakers have also been remained considerable on the aspect of prisoner human rights. Various commission and committees have done redressal works for prisoners and also works for introducing the reformative measures by recommendinge-

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<sup>22</sup> Ibid.

<sup>23</sup> *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579.

governance system a step towards Jail reforms for ensuring the protection of human rights to the prisoners.

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