

Changing Scenario of Rights of Prisoners under Law of India: A Study

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The concept of prison discipline has undergone a severe change in the modern administration of criminal justice system. The tendency shows a shift from the deterrent aspect to reformatory and rehabilitative one. The recommendations of the Jails Committee of 1919-20 concreted the way for the abolition of inhuman punishments for indiscipline. This resulted in the enforcement of the discipline in a positive manner. All India Jail Reform Committee 1980-83 has also recommended various rights of prisoners and prison discipline.

Thus, a gradual trend developed in the form of enforcement of discipline motivated and encouraged by inducements like payment of wages for labour rendered, remission of punishment due to good conduct, creation of facilities like canteen and granting the privilege of writing letters and allowing interviews with friends and relatives. It must be noted that most of these "benefits" are now recognized by judiciary as part of the basic rights of the prisoners.

Prisoners are also entitled to rights to some extent as a normal human being when they are behind the prison. These rights are provided under the Constitution of India, the Prisons Act, 1894 etc. Prisoners are persons and have some rights and do not lose their basic constitutional rights. In the case of *State of A.P. v. Challa Ramkrishna Reddy*², it was held that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. The Supreme Court has emphasized that a prisoner, whether a convict, under-trial or detenu, does not cease to be a human being and, while lodged in jail, he/ she enjoys all his fundamental rights guaranteed by the Constitution of India including the right to life guaranteed by the Constitution.

Prisons are built with stones of law, and so, when human rights are hashed behind bars, constitutional justice impeaches such laws. In this sense, courts which mark citizens into prisons have an onerous duty to ensure that during detention and subject to the constitution, freedom from torture belongs to the detenu. Therefore, the rights of the prisoners should not be stripped completely, though they may be curtailed.

In India, some observations suggested in the popular case *A.K. Gopalan v. State of Madras*,³ that as soon as a person is convicted under a penal law enacted by a competent legislature, he/she would forfeit his/ her forfeit his fundamental rights guaranteed under part III of the Constitution, so long as he remains behind the prison bars. But later decisions in India as in *U.S.A. (in Eve Bell v. Raymond K. Procunier)*⁴, "prisoners are still persons entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedure that satisfy all the requirements of due process) demonstrate that this need not happen as regards all the fundamental rights ; a prisoner may still be entitled to claim and exercise some of them to the extent that they may be exercised consistency with his status as a prisoner.

There is no specific guarantee of 'prisoners' rights in the Constitution of India. However, certain rights which have been enumerated in Part III of the Constitution are available to the prisoners too because a prisoner remains a person in the 'prison'. One of the important provisions in the Constitution of India which is generally applied by the courts is Article 14, in which principle of equality is embodied.⁵

According to Article 14: Equality before law.-The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Therefore, Constitution of India does not expressly provide the

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² AIR 2000 SC 2083

³ AIR 1950 SC 27.

⁴ P. 827 U.S. 817

⁵ Naresh Kumar, Constitutional Rights of the Prisoners: A Study of Judicial Trends, Mittal Publications Delhi

provisions related to the prisoners' rights but in the case of *T.V. Vatheeswaran v. State of Tamil Nadu*,⁶ it was held that the Articles 14, 19 and 21 are available to the prisoners as well as freemen. Jail walls do not keep out fundamental rights. Article 14 of the Constitution of India says that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. Thus Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation.⁷

Further, **Article 20 provides Protection in respect of conviction for offences**⁸-(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.(2) No person shall be prosecuted and punished for the same offence more than once.(3) No person accused of any offence shall be compelled to be a witness against himself.

Article 21 of the Constitution of India says that "No person shall be deprived of his life or personal liberty except according to procedure established by law". This Article stipulates two concepts i.e., right to life and principle of liberty. By Article 21 of the Indian Constitution it is clear that it is available not only for free people but also to those people behind the prison.

In *D.M.Patnaik v. State of Andhra Pradesh*⁹, the Supreme Court categorically asserted that convicts are not by the mere cause of their imprisonment, denuded of all the fundamental rights they acquire.

Ever since it gave in the **Gopalan case** restricted interpretation to the expression 'personal liberty' as embodied in Article 21 of the Constitution. The Supreme Court widening the scope of the Article 21. The SC accepted after a long period of 28 years the opinion that the 'law' as contained in Article 21 denotes fair and responsible law. The court turned Article 21 into an armour protecting 'life and personal liberty' against any unreasonable violation, by interpreting 'procedure established by law' as one which should not only answer the test of legislative competence and procedure but should also be 'right and just and fair and not a mere semblance of procedure prescribed by the State for the dispossession of life or personal liberty of individuals'¹⁰ Justice Krishna Iyer, in *L.Vijaya Kumar v. Public Prosecutor*¹¹ stressed the need to keep first offenders who were youthful away from the hardened criminals in jail, so as to provide the former with opportunities of reforming themselves into improved citizens.

Thus the Supreme Court of India has tried and is still trying to provide the minimum physical protection to the prisoners. Following are the rights of prisoners which are implicitly provided under the Article 21 of the Constitution of India:

1. **Physical Assault**¹²: the Supreme Court discussed the physical protection rights of the prisoners and issued a number of directions to the prison authorities to check and control the absurd business going in the jail.
2. **Handcuffing and Bar Fetters**¹³: The Supreme Court held that while transporting a prisoner under trial from the prison to the court; he should not be handcuffed unless there is clear and present danger of escape breaking out of the police control.
3. **Solitary Confinement**: the Supreme Court laid down in *Sunil Batra(1) v. Delhi Administration* that section 30 of Prison Act was never made for inflicting the solitary confinement as a punishment. Putting a solitary confinement amount to violation of the right to life and personal liberty as provided in the Part III of the Constitution.
4. **Right to be Represented in Court**¹⁴
5. **Right to Speedy Trial**.¹⁵
6. **Right to Compensation**.¹⁶

⁶(1983) 2 SCC 68.

⁷ Available at <https://legaldesire.com/rights-prisoners-indian-law/> assessed on 8 February 2019.

⁸ Constitution of India Bare Act

⁹ A.I.R. 1974 SC 2093.

¹⁰ *Menaka Gandhi v. Union of India*, AIR 1978 SC 597.

¹¹ A.I.R. 1978 S.C. 1485.

¹² *Sunil Batra v. Delhi Administration*, AIR 1980 SC 157

¹³ *Prem Shankar Shukla v. Delhi Administration*, AIR 1980 SC 1535.

¹⁴ *H.M. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548

¹⁵ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC1360

¹⁶ *Rudal Shah v. State of Bihar*, AIR 1983 SC 1086.

7. **In Re - Inhuman Conditions in 1382 Prisons**¹⁷, the SC held that the first effort relating to the rights of prisoners was made through the Report of the All India Committee on Jail Reforms, 1980-1983, commonly known as the Mulla Committee. Some of the recommendations made by the Mulla Committee were accepted by the Government of India, while some were not. But what is more important is the discussion relating to the purpose of punishment and the changes that should be brought about to achieve this purpose. These questions are valid even today and continue to demand an answer.
2. In 1987, the Justice V. R. Krishna Iyer Committee on Women Prisoners submitted its report, which dealt with issues concerning women prisoners as a marginalized group and gave several significant recommendations. The Law Commission of India also dealt with the rights of prisoners in its 78th Report particularly dealing with congestion of under trial prisoners in jails. The Bureau of Police Research and Development (BPR & D) also gave a report in 2007 under the Chairmanship of its Director General. Amongst other things, a National Policy on Prison Reforms and Correctional Administration was also framed.
3. Apart from the above, there have been some private and individual efforts, including a Report on Prison Visiting System in India by the Commonwealth Human Rights Initiative in 2005. The responsibilities of Visitors appointed for prisons was the subject matter of a decision of a Division Bench of the **Madhya Pradesh High Court in Ranchod v. State of M.P.**
4. Keeping this in mind and the dire necessity of reforms in prison administration and prison management despite earlier efforts, it was put to the learned Attorney General to consider the feasibility of appointing a Committee to look into the entire range of issues raised during the hearing on several dates and from time to time. The learned Attorney General accepted the suggestion of a Committee being appointed. Therefore, the following directions are issued: The Ministry of Home Affairs in the Government of India shall forthwith issue a notification constituting a Supreme Court Committee on Prison Reforms consisting of
 1. Hon'ble Mr. Justice Amitava Roy, former Judge of the Supreme Court as its Chair.
 2. Inspector General of Police, Bureau of Police Research and Development as its Member.
 3. Director General (Prisons) Tihar Jail, New Delhi as its Member.

The Committee will give its recommendations on the following issues as its Terms of Reference:

1. Review the implementation of the Guidelines contained in the Model Prison Manual 2016 by States and Union Territories (UT's).
2. Review the implementation by the States and UTs of the recommendations made by the Parliamentary Committee on Empowerment of Women in its report tabled in the Parliament titled 'Women in Detention and Access to Justice,' and the advisory issued by the Ministry of Home Affairs (MHA) in this regard.
3. To review the two training manuals for prison personnel prepared by Bureau of Police Research & Development (BPR & D), 'Training Manual of Basic Course for Prison Officers 2017' and 'Training Manual of Basic Course for Prison Warders 2017' and forwarded to States and UTs.
4. Review the recommendations made in the report of the Ministry of Women and Child Development in collaboration with the National Commission for Women and the National Law University Delhi on 'Women in Prisons'.
5. Review the recommendations made in the report of the National Commission for Women on 'Inspection of Prisons/Jails/ Custodial Homes housing Women'.
6. Review the implementation by States and UTs of the Guidelines contained in 'Living conditions in Institutions for Children in Conflict with Law' prepared by the Ministry of Women and Child Development (MWCD) and the Model Rules and Procedures prepared by the MWCD under the Juvenile Justice (Care & Protection of Children) Act, 2015 and Juvenile Justice (Care and Protection of Children) Model Rules, 2016.
7. Review the status of the implementation of the guidelines and advisories issued by MHA to the States and UTs.
8. The Committee may give its consolidated recommendations based on the above and suggest measures to improve the implementation of the aforementioned guidelines and advisories, subject to budgetary resources available with the States and the UTs.

17. Writ Petition (Civil) No. 406 of 2013. Available on <http://www.advocatekhoj.com/library/judgments/announcement.php?WID=10590> assessed on 12 March 2019.

9. To examine the extent of overcrowding in prisons and correctional homes and recommend remedial measures, including an examination of the functioning of Under Trial Review Committees, availability of legal aid and advice, grant of remission, parole and furlough.
10. To examine violence in prisons and correctional homes and recommend measures to prevent unnatural deaths and assess the availability of medical facilities in prisons and correctional homes and make recommendations in this regard.
11. To assess the availability and inadequacy of staff in prisons and correctional homes and recommend remedial measures.
12. To suggest training and educational modules for the staff in prisons and correctional homes with a view to implement the suggestions.
13. To assess the feasibility of establishing Open Prisons, the possibility of and the potential for establishing Open Prisons in different parts of the country and give effect to the recommendations.
14. To recommend steps for the psycho-social well-being of minor children of women prisoners, including their education and health.
15. To examine and recommend measures for the health, education, development of skills, rehabilitation and social reintegration of children in Observation Homes, Places of Safety and Special Homes established under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.
16. Generally, any other recommendation that the Committee may deem appropriate, fit and proper in furtherance of reforms in prisons and correctional homes¹⁸.

CONCLUSION

The courts have gone to the extent of saying that is no iron shutter between a prisoner and the Constitution of our country. Most of fundamental rights are accessible to citizens, the court have tried to recognize these rights for the prisoners also, except those, which they cannot enjoy due to the conditions of imprisonment.

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¹⁸ Ibid. Sampurna Behura v. Union of India, (2018) 4 SCC 433, Swaraj Abhiyan v. Union of India, (2016) 7 SCC 498. Mis-Governance: Common Cause v. Union of India, (2017) 3 SCC 501, Goa Foundation v. Union of India, (2014) 6 SCC 590, Manohar Lal Sharma v. Principal Secretary & Ors., (2014) 9 SCC 516