

## Fundamental Rights through the Lens of Prisoners

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### Abstract

*The term Imprisonment feature, directed from the correction technique of each sovereignty in the nation has been growing quickly over and over a long period.<sup>2</sup> Around 11.5 million prisoners across the nation, according to the “World Prisoners Population list” and in accord with “**National Crime Records Bureau Ministry of Home Affairs**” there are 1319 prisoner’s homes in the country (India) having 5,54,034 prisoners but at the same there are 547 inmates are in jail across the India in which 4,27,165 are undertrial and the convicts are 1,22,852 which could be a country’s population. While researching, “the researcher carried many case laws, books, journals etc. the paper aims to examine judicial attitude towards prisoners under Indian law”. The purpose is to analyse the fundamental rights of the prisoners. This Research focuses on primordial, law organisation, and legal provisions that are supported by the relevant case laws. All are born equal and are having some basic fundamental rights. The rights basically are right to life and liberty. Also, the Supreme Court’s decision in the case of Gideon v. Wainwright<sup>4</sup>, right to counsel was established under the 6<sup>th</sup> amendment, regardless of a defendant’s ability to pay for an advocate. The “Father of our Nation” Mahatma Gandhi was correct when he said, “Hate the Crime, but not the Criminal.”<sup>5</sup> Years and years ago, the situation of the inmates was even worse because they were treated like “animals” and had no access to provisioners. After a decade, society had discovered that there are some basic fundamental rights that should be given to the prisoners. If a person relegate a crime, it does not mean that he has quitted being human that he denudes off his life which consists of human dignity. And the reconstructing of prisons and their rights in India needs prime attention.*

**Keywords:** Crime, Record, Prisoners, Dignity, Denudes.

### Historical background and Indian Law

A prison is a properly organised site for lawbreakers who have broken the law and are kept for safe custody while on trial or being punished. The word prison does not mean “sudden force” or “to confine,” but rather an old age discovered. Initially, it served as a holding facility for wrongdoers awaiting trial and ultimate punishment. <sup>6</sup>The Indian Penal Code author “Lord Macaulay” wrote “imprisonment is the punishment to which we can chiefly trust”

If we move back to our preceding Indian history, <sup>7</sup>**Manu smriti** it states that king should decide the prison, were mostly all of the immoral and culprits are kept. In the **writings of Fa-Hein** how badly were prisoners dealt in the past is polished.<sup>8</sup> **The Prisons Act, 1894** on which

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<sup>2</sup> World Prisoner Brief (WPB), <https://prisonstudies.org> (last visited Feb, 10, 2023)

<sup>3</sup> National Crime Record Bureau, [https://ncrb.gov.in/sites/default/files/PSI-2021/Executive\\_ncrb\\_Summary-2021.pdf](https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf) (last visited Feb. 10, 2023)

<sup>4</sup> Gideon v. Wainwright, 372 U.S. 335

<sup>5</sup> Paridhi Verma, Rights of Prisoners under Indian Law, 2 PEN ACCLAIMS, 1-2(2018)

<sup>6</sup> A S Raj, *The Early history of the Modern prison System*, 22 Social Defence, 10-16(1987)

<sup>7</sup> *Id.*

<sup>8</sup> RPS Teji, The Prison, Object and Reforms, Delhi district court (Feb. 11, 2023, 4:32 PM), <https://delhidistrictcourts.nic.in/ejournals/RPS%20TEJI%20-%20PRISON%20OBJECT%20REFORMS.pdf>

prisons are managed and operated. The Act has not witnessed any important change over such a long period of time. In 1919-20 first-time **reformation and rehabilitation** were identified as the prison administrator. In 1951, the government of India also called up “**Dr. W.C. Reckless**, to undertake study on jail’s administration and suggest policy reform”.

**The Prisoners Act, 1990** is a duty of the government to withdraw the retarded prisoner under any order of the honourable court, a place where he could receive a proper care treatment.

**The Transfer of Prisoners Act, 1950** was passed to tackle the problem of overcrowding in the prison and sending them from one country to another for training and get rid of from overcrowding which is a blackout of the prison.

**The Model Prison Manual** was exhibited to the Indian government in 1960 for getting it into existence. In 1972, It also brought a report acknowledging the lack of nation-wide policies. It also recommended regarding the treatment of the prisoners.

**The Mulla Committee** was unveiled in “1980” under the chairman “**Justice A.N. Mulla**”. This committee reviewed the laws, rules and regulations and protecting the overall society. They submitted their report in 1983.

**The Krishna Iyer Committee** was formed in “1987” when the authority equipped "**Justice Krishna Iyer**" Committee to investigate the conditions of women prisoners. They specialise in tackling women and children.

### **Vital Notions about the Topic**

Likewise, all the “**HOMO SAPIENS**” fundamental rights prisoners are also entitled to an extent for their fundamental rights. Mostly the fundamentals are destitute when behind the bars, which should not be there. Although a person is at fault, no one may prevent them from practising their fundamental rights. To put back the prison rights, a political agenda variety of constituencies engaged in and knowledgeable about the range of penal issues.

In the Indian constitution, no provisions relate to the Rights of Prisoners but in the case where the petitioner was the Andhra Pradesh state and the respondent was <sup>9</sup>Challa Ramkrishnan Reddy, it was held that prisoners are also human being and they do have the right to profess basic constitutional rights. <sup>10</sup>The Honourable Supreme Court stated that a prisoner where a convict, undertrial, don’t quit being human, while in the jail he enjoys all the foundational rights as mentioned in the Indian Constitution, which includes Right to life (Article 21).

### **Overcloud blackouts of the prison system in India**

**VIOLENCE** – Prison has the frequent number of violence instances amongst the inmates. In 2010, there was an aggressive clash between the gangsters Abu Salem and Mustafa Dossa, accused of the 1993 Bombay Bomb Blast case. Dossa strike Salem’s Face with the sharp object and injured him severely. Many related such cases are seen in prison. <sup>11</sup>

**SEXUAL ABUSE** – Similar to a prison being the place where same gender people are kept together to assure their sexual requirement, they look for substitute ways like homosexual

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<sup>9</sup> State of Andhra Pradesh v. Challa Ramkrishnan Reddy, (2000) 5 SCC 712

<sup>10</sup> Paridhi Verma, *Rights of Prisoners under Indian Law*, 2 PEN ACCLAIMS, 3(2018)

<sup>11</sup> RPS Teji, *The Prison, Object and Reforms*, Delhi district court (Feb. 11, 2023, 6:22 PM), <https://delhidistrictcourts.nic.in/ejournals/RPS%20TEJI%20-%20PRISON%20OBJECT%20REFORMS.pdf>

where mostly young prisoners are targeted. They are sometimes also subjected to gang rape with the same sex partner. In context, many sexually transmitted problems are spreading. The young ones which suffer from this type of abuse sometimes commits suicide or in aggressiveness try this abuse with other next innocent people.

**HEALTH PROBLEMS** – Majority of the prisoners had come from the stumbling blocked sections of the society where there is no facility of medical services and diseases is there. People living together in the prison could transmit communicable disease to the other prisoners therein.<sup>12</sup>

**DRUGS** – In addition to homicide suspects and other serious, non-bailable offences. People are booked under anti-drug laws where a hike number of population is involved. Being away from the natural world and keeping them away from the drugs or other banned substances.

**OVERCROWDING** – People in jails are overcrowded and there is a lack of space inside the prison. As stated above there is a capacity of 4,25,609 prisoners in 1319 jails across the country. But at the end of the year prisoners are 5,54,034 which clearly shows the overcrowding in the jails.

**MENTAL ILLNESS** – It is observed that mental illness of the prisoners is higher than the people living in the community. Mental illness could be developed at the prison and continued even after they are released. This type of disorders could unfortunately develop by living in the prison due to its conditions like poor food, structures, lack of privacy etc. due to the torture in custody fundamental rights are violated.

**GROUP ACTIVITY** – Activities which is the source of safety in the dangerous environment, regulating social and economic affairs. To save them from feeling vulnerable, they turn themselves into groups and protect themselves from other inmates.

**PRIVATE PRISONS** – Lopsided between the prison inhabitants and the rich and poor members of the community in terms of class. Higher employee turnover means less security in the jail, which encourages inmates to commit crimes.<sup>13</sup>

## Statutory provisions under various Acts

### Rights under Indian Constitution

**Article 39-A** This article states the “**Right to free Legal Aid**” and prompt justice, on the basis of equal opportunity. It ensures that each and every one is getting the opportunity despite of being unable to get the scheme due to the disability or economic factors.<sup>14</sup>

**Article 21** – “No person shall be deprived of his life and personal liberty except according to procedure established by law.” It’s a valued right under the Indian constitution. It symbolises “**Right to live with Dignity**” and includes the assurance against the maltreatment by the state or its authority bodies.<sup>15</sup>

### Rights of Prisoners under Code of Criminal Procedure, 1973

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<sup>12</sup> Paridhi Verma, *Rights of Prisoners under Indian Law*, 2 PEN ACCLAIMS, 3(2018)

<sup>13</sup> Varsha Kumari Mishra, *Rights of Prisoners in India: Prisoner Rights Under Indian Laws and Judgment*, B&B Associates LLP, (Feb.15, 2023, 05:08 PM, <https://bnblegal.com/article/rights-of-prisoners-in-india-prisoner-rights-under-indian-laws-and-judgments/>)

<sup>14</sup> INDIA CONST. art. 39A, amended by The Constitution (Forty-second Amendment) Act, 1976

<sup>15</sup> INDIA CONST. art. 21

**Section 50 – “Person Arrested To be Informed of the Grounds of Arrest and Right to Bail”** - Every authorised person or Law savourers (police officers) who detains a person without a bond must give him full disclosure of the crime for which he is being detained or any further justifications.<sup>16</sup>

**Section 54 – “Examination of arrested by medical officer at the request of the arrested person”** - 1) When presenting the arrested person of any charge or allegation before the magistrate, or when examining the person's body during his detention in custody, will present evidence that disproves his board of any offence or establishes the task of any offence against his physique by any other person, if the apprehended person requests direct examination of such person's figure by a lodge medical practitioner, unless the magistrate orders otherwise.<sup>17</sup>

2) “When an examination is conducted in tendering with subsection (1), the lodged medical practitioners must provide a facsimile of the report to the apprehended person or the person recommended by the arrested person”.

**Section 55-A “Health and Safety of Arrested Person”** – It is the person in detention of an accused's responsibility to take logical care of the accused's health and safety.<sup>18</sup>

**Section 56 “Person arrested to be taken before Magistrate of Officer in Charge of police station”** - A law saviour (a police officer) who arrests someone without a lodge must immediately bring the apprehended before a magistrate with dominion over the case or the in-charge of a police station, subject to the terms and conditions of this section regarding bail.<sup>19</sup>

**Section 41-D “Rights of an Arrested person to meet an advocate of his Choice During Interrogation”** – Any arrested person has the right interrogation, that he can meet with an advocate of his own choice. However, not all over cross-questioning.<sup>20</sup>

**In the latest**, The High court of Calcutta has made the **section 41-D** of Code Criminal Procedure, 1973 clearly entitles an accused to meet an attorney of his option during questioning by the investigating agency and does not allow attorney presence throughout the investigation procedure.<sup>21</sup>

**“Section 304 Legal Aid to Accused at State Expense in Certain Cases”** – If an apprehended is not represented by a attorney during a trial and it appears to the court that the accused lacks the means to direct a pleader, the court must appoint an advocate at the expense of the state.<sup>22</sup>

## **The Prisoners Right Under Prisoners Act, 1894**

**Section 4 Housing for Prisoners** – The state authority shall provide accommodation in jails built and supervised in accordance with the act's conditions for the separation of prisoners in the territories.

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<sup>16</sup> Code of criminal procedure, 1973, § 50, No. 02, Acts of Parliament, 1973 (India)

<sup>17</sup> Code of criminal procedure, 1973, § 54, No. 02, Acts of Parliament, 1973 (India)

<sup>18</sup> Code of criminal procedure, 1973, § 55-A, No. 02, Acts of Parliament, 1973 (India)

<sup>19</sup> Code of criminal procedure, 1973, § 56, No. 02, Acts of Parliament, 1973 (India)

<sup>20</sup> Code of criminal procedure, 1973, § 41-D, No. 02, Acts of Parliament, 1973 (India)

<sup>21</sup> Live Law, <https://www.livelaw.in/news-updates/calcutta-high-court-s41d-crpc-arrested-person-right-advocate-ed-212937> (last visited Feb. 15, 2023)

<sup>22</sup> Code of criminal procedure, 1973, § 304, cl. 1. No. 02, Acts of Parliament, 1973 (India)

**Section 27 Separation of Prisoners** – According to this section, the accommodation of male prisoners, female prisoners, juvenile prisoners, unconvict and civil prisoners are kept separated in different buildings.<sup>23</sup>

**Section 31 Maintenance of certain accused from private Sources** – In this section of Prisoner’s Act, 1894 civil and unconvict prisoners shall be granted to nourish themselves, also to receive or purchase their private sources at proper hours, food, clothing, etc., but under examination and approval of Inspector General.<sup>24</sup>

**Rights against Cruel behaviour** - Human dignity is inextricably linked to human rights. In a series of decisions, the Hon’ble Apex Court has taken a serious writing of sadistic behaviour of prisoners and issued pertinent directives to jails and law saviour authorities to protect the rights of convicts and people in detention. Human treatment that sins human majesty, imposes preventable torment, and decreases man to the extent of a creature is unquestionably summary and can be challenged under “**Article 14 of the Indian Constitution**”.

### **Major shrewdness:**

**A.K. Gopalan v. Union of India** – “**Article 21 of Indian constitution**” is comprehensive. It is endowed with both substantive and personal liberty rights. It also includes fast trails, such as “**Right to Life**”.<sup>25</sup>

“**Charles Shobraj v. Superintendent, Tihar Jail**” – A jailbird is otherwise authorized the basic freedoms undertaken by the constitution, except that the mandate to live in the jail entail the murder of specific rights, such as the “**right to move freely**” or “**practise a profession of his choice**”.<sup>26</sup>

**Joginder Kumar v. State** – “No arrest can be made because it is lawful for the police authority to do so. The existence of the power of arrest is one thing. Reasonable satisfaction is required after investigation to get genuineness and bonafide complaint. Denying a person his liberty is a serious matter.”<sup>27</sup>

**M.H. Hoskot v. State of Maharashtra** is a leading case involving a SPL (Special Leave Petition) against the three-year sentences imposed by the High Court in the offence of Cheating. The bench directed that the “**right to legal aid**” is promised by the fundamental. The court determined that free legal aid at the hearings and supreme levels is an essential component of formal justice. And the state must pay for these services. If they are impotent to pay the bench money.<sup>28</sup>

**D. K Basu vs. State of West Bengal**, the chairman of Legal Aid Services of WB, DK Basu. Filed a letter before Honourable Apex Court of India inquiring about the death happened in the custody of police, published in the newspaper. The Court held that according to the article 21, prisoners should not be deprived of the rights. It’s the duty of the police authority to notify the family or friends of the apprehended person with 8 to 12 hours of arrest. The arrested person

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<sup>23</sup> Prisons Act, 1894, § 27, No. 9, Acts of Central Government, 1894 (India)

<sup>24</sup> Prisons Act, 1894, § 31, No. 9, Acts of Central Government, 1894 (India)

<sup>25</sup> A.K. Gopalan v. Union of India, AIR 1950 SC 27

<sup>26</sup> Charles Shobraj v. Superintendent, Tihar Jail, 1978 S.C. 1514

<sup>27</sup> Joginder Kumar v. State, 1994 (4) SCC, 260

<sup>28</sup> M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544



has the right to talk with his advocate during the inquiry by the authority. Infringement of any of the above procedure may result in contempt of court.<sup>29</sup>

In the case of “**Dharmbir v. State of U.P.**”, the honourable bench governed the state to allow family members of prisoners to come upon and guards to visit their families for jailbirds at least once annually.

“**People’s Union for Democratic Rights v. Union of India**” - The bench described that an individual provides services to another individual for a fee that is less than the minimum wage. When comparing the services he provides, it is clear that "forced labour" is prohibited under Article 23 of the Indian constitution. They will be given work in the prison and must be compensated fairly for their efforts.<sup>30</sup>

The Apex Court stated in “**State of Maharashtra v. Prabhakar Pandurang Sangzgir**” that the sole reason that someone is retarded cannot bereave one of his “Constitutional Rights” and that such situation is not to be extended to the extent of relieve the detained individual of his natural rights. The bench also ruled that every accused retains all of the rights enjoyed by taxpayers, except those that are necessarily off tracks results of confinement.<sup>31</sup>

## Conclusion

A convict (prison guard) is someone who has their liberty taken away from them against their will. This can be accomplished through incarceration, seize, or forceful control, but he violates both his own and those in the prison's rights. They have also provided all of the rights that an individual member of society would provide, with some reasonable limitations. Being incarcerated does not give them the right to demand fundamental rights. He retains all of his fundamental rights even if he is imprisoned. When convicted of a crime and detained in accordance with the legal procedure, prisoners retain all of their constitutional rights. The Supreme Court has issued important guidelines to the executive and legislature as well as taken corrective action.

The preceding contribution demonstrates that the law system was very diplomatic and eager to shield the people's natural rights.

The motivation, however, remains the same: police and prison command must be trained and living quarters in order for prisoners' rights to be taken seriously.

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<sup>29</sup> D.K. Basu vs. State of West Bengal, (1997) 1 SCC 416

<sup>30</sup> People’s Union for Democratic Rights v. Union of India, (1982) 3 SCC 235

<sup>31</sup> State of Maharashtra vs. Prabhakar Pandurang Sangzgir, 1966 SCR (1) 702