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# **PRISONER'S RIGHT: AN ANALYSIS THROUGH THE PRISM OF HUMAN RIGHT**<sup>1</sup>

AUTHORED BY - NEHA BHARTI & NEELESH MANI TRIPATHI

*"The rights of every man are diminished when the rights of one man are threatened."*

— **John F. Kennedy**

## **Abstract**

In the era of globalization, any issue which is related to the violation of human right is very important to the world at large. Human Rights are inherent by humans by birth. Violation of human right of prisoners is not new phenomenon, it is the key issue which is always being highlighted. There are some provisions incorporated in Universal Declaration of Human Right, 1948 which specifically emphasized on the human rights of the prisoners. For protection of rights of accused certain provisions have been incorporated in The Constitution of India, 1950 which is in consonance with Universal Declaration of Human Right, 1948. Still there are certain issues which are unaddressed as we didn't have any specific legislation for the same like custodial torture, forced Narco analysis or polygraph test. Judiciary is very proactive in protecting the human right of the prisoners by giving broad interpretation to right to life and personal liberty. This article will deal with the human rights of prisoners given under Universal Declaration of Human Right and under Constitution of India. The loophole in laws which is unable to protect the human right of prisoners and how judiciary has stretched his hands for the protection of prisoner's human right.

**Keywords:** - prisoners, human right, police, right and violation.

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## 1. Introduction

From ancient times our attitude toward the wrongdoer or prisoners and their punishments are barbaric and brutal. If a person commits any crime or offence does not mean that we will ill-treat that person and subject them to cruelty. He /she is not cease to be a human being & that he cannot be deprive of all facet of life which constitute basic human right.

Human rights are those rights which are fundamental to all human beings. All the human beings are born free, they all have their own thoughts and ideas, and they all should be treated in the same way. Article 1 of UDHR (Universal Declaration of Human Right), 1948 also emphasizes the same that *“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”*<sup>2</sup>

Prisoners are also entitled to rights to some extent as a normal human being when they are behind the prison & their basic human rights should not be abridged by the State. In the case of *State of A.P. v. Challa Ramkrishna Reddy*,<sup>3</sup> 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 enjoys all his fundamental rights guaranteed by the Constitution of India including the right to life guaranteed by the Constitution. Even a person is convicted and deprived of his liberty in accordance with the procedure established by law; a prisoner still retains the residue of constitutional rights.<sup>4</sup> The courts in India have been recognizing and enforcing the human rights as natural rights of mankind or as Constitutional mandates or as rights of an Indian in an independent polity.<sup>5</sup>

## 2. Rights Guaranteed by UDHR to Prisoners or Accused Person

1. Article 5 of UDHR explains that *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

Torture is the basic mean & method used by police officers or investigating agency to take out truth from the mouth of accused person. Police officers who should be the protector of the civil liberties of the accused person they themselves violate the rights of citizen. An arrested person

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<sup>2</sup> Universal Declaration of Human Rights, 1948 Art 9

<sup>3</sup> (2000) 5 SCC 712; AIR 2000 SC 2083.

<sup>4</sup> Jain M.P., “Indian Constitutional Law”, 5<sup>th</sup> Edition, Vol. 1, Wadhwa and Company, Nagpur, 2003, p.1295.

<sup>5</sup> Dr. Gurubax Singh, Law Relating to Protection of Human Rights and Human Values, Vinod Publications (P).Ltd, 2008.

or under trail prisoner should not be subject to handcuffing unless there is any justifying circumstances exists. In case of **D K Basu v. State of West Bengal**<sup>6</sup>, the court opined that custodial violence including torture, death in lock up strikes a bow to rule of law. The Hon'ble Supreme Court has also laid down specific guidelines required to be followed while making arrests:

- I. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation & all such personnel who handle interrogation of the arrestee must be recorded in a register.
- II. That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
- III. A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- IV. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aids Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- V. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- VI. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclosed the name of the next friend of the person who has been informed of the arrest and the names land particulars of the police officials in whose custody the arrestee is.

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<sup>6</sup> (1997) 1 SCC 416.

- VII. The arrestee should, where he so request, be also examines at the time of his arrest and major and minor injuries, if any present on his /her body, must be recorded at that time. The Inspector Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- VIII. The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention.
- IX. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
- X. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- XI. A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.<sup>7</sup>

2. Article 9 of UDHR explains that “*No one shall be subjected to arbitrary arrest, detention or exile*”.<sup>8</sup>

A land mark judgment which was pronounced by the judiciary is the right to compensation in cases of illegal deprivation of personal liberty. The Rudal Shah case (**Rudal Shah V. State of Bihar**)<sup>9</sup> is an instance of breakthrough in Human Rights Jurisprudence. The petitioner Rudal Shah was detained illegally in prison for more than fourteen years. He filed Habeas Corpus before the court for his immediate release and, interalia, prayed for his rehabilitation cost, medical charges and compensation for illegal detention. After his release, the question before the court was “*whether in exercise of jurisdiction under Article 32, such an order in the nature of compensation consequential upon the deprivation of fundamental right.*” There is no expressed provision in the Constitution of India for grant of compensation for violation of a fundamental right to life and personal liberty. But the judiciary has evolved a right to compensation in cases of illegal deprivation of personal liberty. The Court granted monetary compensation of Rs.35000 against the Bihar Government for keeping the person in illegal detention for 14 years even after his acquittal. The Court departed from the traditional approach, ignored the technicalities while granting compensation. In this case the Apex Court

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<sup>7</sup> DK Basu V. State of West Bengal (1997) 1 SCC 416.

<sup>8</sup> Universal Declaration of Human Rights, 1948 Art 9.

<sup>9</sup> (1983) 4 SCC 141.

extended a new branch of Jurisprudence has emerged called compensatory Jurisprudence where in for the violations of the prisoners' rights to the executive action, compensation was awarded to the victim by the court. This concept changed the total scenario of Criminal Law. This humanitarian attitude of the judges has helped the poor, illiterate and needy victims who were victimized by the acts of the authorities.

3. Article 10 of UDHR explains that the right of fair trial and public hearing.

*“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.*<sup>10</sup>

In **Hussainara Khatoon Vs Home Secretary, State of Bihar**<sup>11</sup>, the court has observed that even under our constitution, though speedy trial is not specifically enumerated fundamental right, it is implicit in the broad sweep and content of Article of 21 as interpreted by the supreme court in **Maneka Gandhi's**<sup>12</sup> case. It is an integral and essential part of the fundamental right to life and personal liberty. Every prisoner is having a right to attend the case in trial. The speedy trial is an integral part of prisoner right to life and personal liberty guaranteed by the Constitution for them.

4. Article 11 of UDHR, 1948 explains that

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.<sup>13</sup>

This article explains that nobody should be blamed for doing something wrong until it is proved in the eyes of law. Presumption of innocence is considered in India.

### 3. Judicial Attitude Regarding Human Right of Prisoners in India

A society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and made available to them. It is the human life that

<sup>10</sup> Universal Declaration of Human Rights, 1948 Art 10.

<sup>11</sup> (1979) AIR SC 1360.

<sup>12</sup> (1978) I SCC 248

<sup>13</sup> Universal Declaration of Human Rights, 1948 Art 11.

necessitates human rights. Civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. Thus every right is a human right as that helps a human to live like a human being. Even the person is deprived some of his rights due to commission of some wrongs, he is entitled to their rights unaffected by the punishment for wrongs. Particularly the principles and objectives of criminology and penology are acquiring a human face the enforcement of human rights assume a very great relevance.<sup>14</sup>

Constitution of India does not expressly provide the provisions related to the prisoners' rights but in the case of *T.V. Vatheeswaran v. State of Tamil Nadu*,<sup>15</sup> it was held that the Articles 14, 19 and 21 are available to the prisoners as well as freemen. Prison walls do not take away the fundamental rights of the prisoner. The Supreme Court of India, by interpreting Article 21 of the Constitution India, 1950 has developed human rights jurisprudence for the preservation and protection of prisoners' right to human dignity. The origin of the prisoner rights in India, the roots can be found from the celebrated decision of *A.K. Gopalan vs. State of Madras*.<sup>16</sup> In *D.B.M. Patnaik vs. State of Andhra Pradesh*<sup>17</sup>, the Supreme Court said, "*A convict has no right, more than anyone else, to dictate, where guard to be posted to prevent the escape of prisoners. The installation of live wire mechanism does not offend their right. It is preventive measure intended to act as a deterrent and cause death only a prisoner causes death by scaling the wall while attempting to escape from lawful custody. The installation of live wire does not by itself cause the death of the prisoner.*"<sup>18</sup> The Supreme Court held that taking preventive measures like installation of live wire, for the protection of prisoners under Art 21 of the Constitution of India, 1950 deals with life and personal liberty is not violative of their rights. In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*<sup>19</sup> 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 life is enjoyed as also the right to live with basic human dignity.

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<sup>14</sup> Judicial activism under the Indian constitution', Address by Hon'ble Mr. K.G. Balakrishnan, Chief Justice of India (Trinity College Dublin, Ireland – October 14, 2009)

<sup>15</sup> (1983) 2 SCC 68

<sup>16</sup> (1950) AIR SC 27.

<sup>17</sup> (1974) AIR SC 2093

<sup>18</sup> Dr. Gurbax Singh, *Law Relating to Protection of Human Rights and Human values*, Vinod Publications (P).Ltd, Delhi

<sup>19</sup> (1981) AIR SC 746

In all aspect the judiciary is essential to defending prisoners' human rights because it makes sure they are treated with respect and dignity even when their freedom is being taken away. This function is especially important for maintaining legal and constitutional protections and furthering the ideals of equality and justice.

### 3.1 Recent Development

After a while, there are some programs that will assist in monitoring the inmates' human rights violations and enable the punishment of those who engage in torture or violence while in custody.

#### 3.1.1 Model Prisoners and Correctional Service Act, 2023

The "*Model Prisons and Correctional Services Act, 2023*" was sent by the Home Ministry to each State and Union Territory in May 2023 for implementation within their own borders. Appropriate provisions for inmate reformation, rehabilitation, and reintegration into society are included in the Model Act. As a crucial component of institutional care, it also includes provisions for "Welfare Programs for Prisoners" and "After-Care and Rehabilitation Services." It has been recommended that the States and UTs utilize the Model Act and implement the guidelines it contains in their own jurisdictions.<sup>20</sup>

"Prisoners may be granted prison leave on the condition of their willingness to wear electronic tracking devices for monitoring the movement and activities of such prisoners," the Act said, introducing the usage of electronic tracking devices on prisoners for the first time.<sup>21</sup>

#### 3.1.2 Report on Prison in India: Mapping Prison Manuals and Measures for Reformation and Decongestion

The report titled "*Prison in India: Mapping Prison Manuals and Measures for Reformation and Decongestion*" prepared by Centre for Research and Planning the Research Wing of Supreme Court of India. This report was released by Honorable President of India Smt. Draupadi Murmu on 5th of November 2024 at Rashtrapati Bhavan New Delhi.<sup>22</sup>

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<sup>20</sup> Soibam Rockey Singh, Time to unlock electronic tracking technology for under trial inmates Supreme Court report (16, Nov 2024) <https://www.thehindu.com/news/national/time-to-unlock-electronic-tracking-technology-for-undertrial-inmates-sc-report/article68875869.ece> .

<sup>21</sup> Ibid.

<sup>22</sup> "Prison in India: Mapping Prison Manuals and Measures for Reformation and Decongestion", Centre for Research and Planning, October 2024, P-2 <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110677.pdf>.

### Key insights of the Report

- i. **Stereotyping:** Prison handbooks frequently characterize necessary maintenance and sanitation tasks as "menial" or "degrading," upholding a hierarchical conception of employment.
- ii. **Rejection of Bail:** The percentage of bail applications denied is significant (32.3% in Sessions Courts and 16.2% in Magisterial Courts).
- iii. **Slow Trial:** In 2023, more than 52 percent of cases in which the accused had been detained for more than a year were still awaiting evidence.
- iv. **Others include:** Underutilization of open prisons; division of jail labor according to caste system (found unlawful in the Sukanya Shantha Case); and the continuation of manual scavenging in prisons.

In this Report, Chapter - V highlight the utilization of Technology in Prison Reforms which mainly focuses on two aspect one is electronic tracking of prisoners and second E-prisons. Technological aspects are as follow: -

- i. The National Informatics Center created e-prisons to combine all prison and inmate administration operations.
- ii. 2023 Model Correctional and Prison Services Act: established the requirement that inmates utilize electronic monitoring technologies before they can be granted jail freedom.
- iii. The Supreme Court's FASTER (Fast and Secured Transmission of Electronic Records) system fixed the issue of court-issued bail orders taking longer to reach prisons.
- iv. The Interoperable Criminal Justice System (ICJS) can decrease needless delays in custody cases and establish an automated line of communication between courts, law enforcement, and prisons.<sup>23</sup>

If these laws and models are followed in true sense then it will help to reduce the cases of human right violation of prisoners including under trial prisoners.

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<sup>23</sup> Supra Note 20 at p 238-244.

#### 4. Conclusion

The Supreme Court of India is working very actively against infringements of Human Rights of the prisoners by giving a liberal and comprehensive meaning to Article 21 i.e. life and personal liberty. Besides protecting the fundamental rights of prisoners and detenues, the Supreme Court has expressed its consciousness to eradicate the unhealthy atmosphere in prison settings full of mal-administration and torture. Under trial prisoners are those persons who are facing trial in any court, unable to furnish surety, and have no access to legal aids, are kept in prison for years together, which amounts to gross violation of their human rights. Police officers who should be the protector of the civil liberties of the accused person they themselves violate the rights of citizen. There should be a proper mechanism adopted by proper authority to look after the right of the prisoner as they are also human beings. Prisoner should get their right of fair trial, right of compensation, protection from torture & ill treatment in prison, right to free legal aid etc. New initiative i.e. *Model Prisons and Correctional Services Act, 2023*, *Report on Prison in India: Mapping Prison Manuals and Measures for Reformation and Decongestion 2024* in recent years will change the situation and this can be perceived by the data given by National Crime Record Bureau in upcoming time.

