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# **‘PRISONER RIGHTS: AN ANALYSIS INTO ITS EVOLVING JURISPRUDENCE’**

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## **ABSTRACT**

Humane conditions of prison systems are a question that has been under the fire for a long period of time. Several Human rights organizations have opposed the idea of the current prison system, but the system is one that has evolved over a long time of reform and modification. But jurisprudentially put, are prisoners forfeited of their rights fairly? How is the Constitution of our country invoked in such cases, and how are rights prescribed by the court of law, are what the paper seeks to address.

Historically, punishment did not pertain to the purposes it does today. Barbaric treatment of wrongdoers and subjecting them to harsh conditions were the norm, and the purpose was revenge and vengeance. Prisoners were not considered ‘persons’ then, but mere anti-social elements dangerous to the society they lived in. However, with the creation of various theories and philosophies, the human psyche and mental state was given priority, thus realizing that every human being, regardless of being lawbreakers, had to be subject to rights and duties. Their rights could not necessarily be enjoyed to the fullest; but it also could not be deprived of. Human rights watches came into the picture, and the status of prisoners also took a turn.

Although today prisoners undergo unfair treatment and torture, their conditions are taken into consideration and are put through various checks and analysis. Reformative facilities are given due importance, and the extent of restriction on their rights have been limited. The paper aims to justify the current prison system, and to understand its evolution over the centuries.

**KEYWORDS:** Conditions, Evolution, Human Rights, Jurisprudence, Punishment

## RESEARCH PROBLEMS

1. The deprivation of prisoner rights, fundamental and ordinary, through their confinement and imprisonment.
2. The conditions under which they are imprisoned, and the invocation of the judiciary to limit arbitrariness.

## PRISONER RIGHTS: AN ANALYSIS INTO ITS EVOLVING JURISPRUDENCE

### I. Introduction

Early history records systems of imprisonments at around 3<sup>rd</sup> millennia BC. The most prominent reason for such a system ever since was to detain people and to restrict the freedoms of convicts. Ancient Greek and Roman empires imprisoned wrongdoers in extremely narrow passageways or tight spaces. Initially, prisons were a prerequisite to a subsequent execution or perpetual life of misery and slavery. It was with the interference of the English legal system that legislations which reduced unreasonable imprisonment were introduced. The idea of a jury was significant in ensuring that persons were not unfairly detained and tortured. In the 12<sup>th</sup> century it was also propounded that no person can be detained and imprisoned without a fair trial.<sup>1</sup> Over time, with civilization and evolution of human beings and social settings, prison systems also evolved. They turned into systems of reformation and spaces for behavioural correction.

Such spaces were meant to serve wrongdoers to ponder upon their mistakes and re-think their actions. Retribution and putting the guilty through the consequences of their action was also a motive. Theories of punishment also went through its phase of modification and development, with retributive and deterrent theories put in the past by more modern concepts like the reformatory theory.<sup>2</sup>

The focus on just an individual wrongdoer was shifted to the society as a whole, with the role of societies in the cause of a crime and the creation of a criminal explained by various theorists. It was also with the growth of humanized approaches and the prominence of human rights that brought the conditions of the imprisoned and their places of reform into light and change them into places with a kinder purpose.

## II. Extinguishment of rights

A prisoner is deprived of certain rights while in prison. The obvious loss of freedom apart, some inalienable rights of the prisoner as a human being remain. Those rights can never be deprived, like the right to food and water, the right against violence and torture, etc. However liberty, freedom of movement, etc. is in direct violation while a person is incarcerated. The perception of prisoners as a threat to the harmonious social structure is what deprives them their right to vote. It is believed and justified that since they are doers of wrong against society, they should not have a say in the democratic process of voting. This is highly controversial, as the exclusion of a certain class of people can result in the violation of a lot of conditions under theories of equality, justice and democracy. This, however, is varying from country to country and between different legal systems.

Even though the journey to an alternate system to imprisonment is a long one, it is still in the process of refinement. Every legal system recognizes the deprivation and violation of many rights due to the very nature of prison as an institution itself, and seeks to reform this. A person who has been imprisoned does not necessarily undergo reformation or change in attitude. This contravenes the very purpose of a prison, and can also result in prisoners' lack of accommodation in society post their conviction period. Even after undergoing the harsh treatments within four walls, inhumane conditions and a repetitive, mechanical life, stepping out into a society

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<sup>1</sup> Prison History, <http://www.prisonhistory.net/prison-history/history-of-prisons/>

<sup>2</sup> iBlog pleaders, Raunak Chaturvedi, November 19 2020, <https://blog.ipleaders.in/theories-of-punishment-a-thorough-study/>

which neglects their presence and discourages their growth is a painful thought. The preservation of rights of a prisoner after their detention period is also necessary. How far has any country achieved with regards to the above? Are these ideas put into practice or are they a distant dream?

### **III. The jurisprudence of prisoner rights**

When the concept of imprisonment is exercised, a serious look into the right to liberty and freedom is important, and the balancing of the right of the state to take away one's right and the right of an individual in society to claim his fundamental right is of extreme concern. Every human being is vested with rights, and there have been several international organizations to reaffirm the status of human beings and their human rights. The Universal Declaration of Human Rights<sup>3</sup> for instance, states the rights of a detainee even though he is a person who has committed a crime or a wrong. Prisoner's rights hence has been a subject of wide interpretation and evolution, and the light to human rights around the world has put it into more meaningful change. Let us take a look into the contextualization of prisoner rights in India and the rest of the world.

### **IV. Prisoner rights in England**

Earlier, a criminal or wrongdoer was interpreted as being deprived of his rights in entirety. He was a menace to society, and any means of punishment against him could be justified. Prison administrators and officials were the sole authorizers of the prison, and anything could be done to the prisoners at their own will. The prisoner was treated according to the conditions and rules laid down by these very officials. No-one would question their acts, thereby giving way to corruption and torturous situations. However the beginning of the century threw light to the prevailing condition and demanded change. Civil rights were non-existent for a prisoner initially, but it was then contented that this forfeiting of rights can be fair only if it results in the direct safety of the general public and to reform and rehabilitate the convict.

Currently, the English legal system does not allow the automatic forfeit of a convict's rights.<sup>4</sup> Regardless of a person's sentence, his civil rights remain with him.<sup>5</sup> Prisons are inclusive and functions with all civil and criminal rights, and the officials are bound by them as well. One right taken away would be their membership to the House of Commons, which is a direct result of a sentence that extends beyond a year.

Prison systems include a lot of physical and mental disharmony between inmates, wherein there are possibilities of injury and sufferings to prisoners by inmates. Earlier, officials were not charged for any kind of negligence to the sufferings of prisoners. A prisoner did not have the right to sue for such inconveniences faced by him. However, recent amendments have resulted in the courts allowing persons who have been violated of prison safety rules to sue officials. The breach of duty of care of the prisoners by the prison heads would result in action against them, and the creation of these rules have instigated the legitimacy of their actions.<sup>6</sup> Wherein there has been a destruction to property by prisoners, action will be initiated against prison officials. The principle that even a prisoner remains and continues to be the Queen's subject, and does not become her enemy, has cleared way for justifications as to why a convict's rights cannot be forfeited completely due to his actions.<sup>7</sup> Thus, he continues to have the right to sue and initiate action against any breach of duty or care against him.

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<sup>3</sup> United Nations. (1948). Universal Declaration of Human Rights.

<sup>4</sup> 37 Halsbury's Laws of England (1982)

<sup>5</sup> Raymond v. Honey, [1982]

<sup>6</sup> Hancock v. Prison Commissioners, [1959]

<sup>7</sup> B.S. Sinha, Law of Torts (1976)

This legal position of prisoners in modern day England has been a result of various activists, protests and movements to ensure the sustenance of human rights with respect to incarcerated persons.

## **V. Rights of Prisoners in India**

Early legislations with regards to prisoner's rights include the Prisoner's Act 1894, Transfer of Prisoner's Act, 1900, etc. Currently, apart from these special legislations, the Constitution of India maintains certain fundamental rights which is also applicable to prisoners. Early legislations were a result of the retribitional approach that existed with regards to prison houses. They were means to oppress and make the inmate suffer. The concepts of reformation and rehabilitation was least touched upon, and the focus was on control of movement and action, and restriction. The British made use of their own legal system to relevantly apply it in India to imprison any politically opposing parties or anyone not adhering to their needs and demands. The lack of accountability of prison officials also allowed them to oppress and subjugate persons to pain if disobeyed. The Indian constitution also did not exist so as to create a system of trial and fair procedural aspects to ensure the reasonable treatment of prisoners. But legislations were further created so as to remove the arbitrariness of the British. In the landmark *Sunil Batra case*<sup>8</sup>, fundamental rights of the prisoner was reiterated, thus removing the arbitrariness and the exercise of full freedom by the prison heads.

Fundamental rights of prisoners have been subject to restrictions in India. The legal position of a prisoner in India is almost similar to that of England. However, sentence to prison results in the automatic loss of certain civil rights.<sup>9</sup> Voting rights have been suspended for a prisoner who has been sentenced, but only till the extent of the sentence. Post his release, he can continue exercising his right to vote. However, a prisoner in India does not possess a right to sue against another party, regardless of a civil wrong done against him.

## **VI. Constitutional approach and its jurisprudence**

While the Constitution of India grants fundamental rights like the right to life, right to personal liberty, etc., it is not absolute and has reasonable restrictions to its exercise. Through various landmark judgements, precedents have been created so as to put rights into context. For instance, Article 14<sup>10</sup> can be made relevant to this situation. According to Article 14, everyone should be treated 'equally' in the eyes of law, and this has helped the legal system to identify and differentiate between

various classes of prisoners and group them on the basis of needs, rights, punishments and restrictions. Even with respect to article 19, several freedoms have been granted to citizens. However, they are also restricted, as freedoms can always be equated to privileges and they can always be restricted under reasonable circumstances, imprisonment in this case. Freedom of trade, business and occupation cannot be practiced by prisoners, but it cannot be concluded as an unfair violation of this right. The rights forfeiture theory of punishment<sup>11</sup> justifies that a person, when committing a crime, relinquishes his right of not being subject to punishment and harsh treatment. It is but Article 21, that has been the centre of attention with regards to prisoner rights and discussions revolving it. Arbitrary actions have been curtailed with the landmark case of Maneka Gandhi v. Union of India<sup>12</sup>, and prison officials cannot initiate any self-willed actions against prisoners. The suspension of the above articles of the constitution must be assisted by a fair and reasonable

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<sup>8</sup> Sunil Batra (I) v. Delhi Administration, A.I.R. 1978 S.C. 1675.

<sup>9</sup> Section 10 (d) of the Citizenship Act 1955

<sup>10</sup> Constitution of India, Article 14 reads:- "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

<sup>11</sup> The Rights Forfeiture Theory of Punishment, Christopher Heath Wellman, Vol. 122, No. 2 (January 2012), <https://www.jstor.org/stable/10.1086/663791>

<sup>12</sup> A.I.R. 1978 S.C. 597

procedure by the court of law, and fair judgements must be the consequences of the results thereon. In the A.K. Gopalan case<sup>13</sup>, article 21 was put under a lot of contentions and argumentations to finally reach a result of fair and reasonable procedure as a pre-requisite to forfeit the liberty of persons. Liberty was not absolute, and it can be restrained in view of the larger public welfare as per the judgement in this case. This furthers the justification of incarcerated individuals' restrictions on movement and freedoms at the cost of the society at large. With the coming of several important cases, it was concluded that resistance and rights against unfair torture and treatment falls under the ambit of Article 21, although it is not explicitly mentioned.<sup>14</sup> In the Sunil Batra case, it was held that prisoners can at any time include the interference of the courts when their right to fair treatment was violated. The courts upheld this right of prisoners as they must satisfy the tests of the articles of the Constitution. It is necessary for the court of law to interfere in prisoner rights to ensure that the prison officials do not take matters into their own hands. Although they can differentiate between ordinary and dangerous prisoners, they cannot take any action that would cause unnecessary torture to inmates.

## **VII. Judicial evolution**

The courts have approved of the punishment of jail to convicts, resulting in the current prison system we have today. It is with this theory in mind that the courts can, by all means, create guidelines for the actions of prison authorities in case of change in behaviour of inmates. The jurisprudential justification of a prison and its punishment is the lawful sentencing of a person to reform himself and to rethink the actions which caused him his fate. It is not to avenge the guilty of his previous actions but to allow a judge, a lawfully authorized individual to decide his temporary suspension of otherwise state-provided rights. The state is also obliged to ensure a fair and speedy trial procedure to the guilty, so as to allow him to explain his state of actions. The theory of Natural Justice must be considered as under Article 21, and a reasonable trial, not an ordinary one is entitled to the accused.

## **VIII. Conclusion**

It is to be noted that deprivation of persons of certain aspects of his fundamental rights cannot be unreasonable, as in a social contract theory, a person receives rights from the State in return of certain duties to be performed by him. However, he can invoke the judiciary to ensure his right

treatment inside these confinement houses. A modern jurisprudential approach of rehabilitative and reformative imprisonment has been created, and has a long way to go in terms of finding alternatives and to better the conditions of prisons to ensure that the purpose of it is fulfilled. It is only a question of law to figure out a way to reduce the arbitrary use of power as it will delay justice to both the accused and the victim, and ultimately the society.

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<sup>13</sup> A.K. Gopalan v. State of Madras A.I.R. 1950 S.C. 27

<sup>14</sup> P.N. Bhagwathi, "Human Rights in the Criminal Justice System".