



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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RIGHT AND REALITY BEHIND THE BAR: A LEGAL ANALYSIS

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ABSTRACT

Even if someone is found guilty in India, they cannot be deprived of all their rights because they are safeguarded by the Supreme Court and the High Courts and are guaranteed by Article 21 of the Constitution. Any breach of them is considered to be a severe injustice to the victim. The everyday violations of prisoners' rights and the way they are treated in prison are a reflection of how ignored inmates are by higher authorities, and the numerous allegations of their inhumane treatment expose the police officers' hypocrisy in society. Treating inmates with such a lack of empathy will further damage the justice system if the fundamental concept of criminal justice in India is reformatory which essentially entails the care of inmates and the protection of their human rights. The article examines the circumstances of prisoners, the requirement for prison reform, and the actions done by the judiciary.

Keywords: Criminal justice, prisoner's rights, judicial interpretation, reforms, human rights.

1. INTRODUCTION

Human rights has finally grown to be a living, breathing issue in the free world over the last few decades. There have been many advancements connected to it, which are undoubtedly signs of the progress of humanity. Respect for human dignity while defending the life span and freedom that are guaranteed to each person by the Constitution. The records of international conventions also demonstrate this. Through the provisions of the Cr.P.C. and the Indian Constitution, the legislature attempted to guarantee the rights of the accused. Inmates had little legal protection for their lives within the prison until the 19th century. The ultimate aim of the criminal justice system was to punish the accused for previous misdeeds. During the English reign, reformatory legislation was implemented in India to regulate jail administration in relation to prisoners' rights. Human rights essentially refer to an individual's access to "capacity endowment"—provisions that raise their

chances of living longer—through constitutionally and legally recognised laws on a national level.

The structure of modern prison justice acknowledges that a person's basic human rights are not suspended when they are imprisoned. A person may be subject to a shift in jail if they are found legally responsible for committing any crime as a form of punishment. On the suspicion that a person will likely cause a law enforcement difficulty situation, they may face jail time. In such a situation, incarceration serves as a deterrent. Undoubtedly, the Supreme Court of India has started its battle for prison reform. But the truth is that inmates in India are typically denied access to humane treatment. As a result, while trying to prevent it, prisons actually encourage it. Fortunately, the Supreme Court chose not to remain a silent observer and sparked a movement to uphold inmates' basic rights.

Prisoners are individuals with certain rights, and although they are incarcerated, they do not lose their fundamental constitutional rights or their access to basic human rights. According to the Prisons Act of 1894 and Article 21 of the Constitution of India Act 1950, respectively, certain rights are guaranteed. Except in cases where constitutional restrictions have been made, a prisoner is entitled to all of his fundamental rights. The Apex Court has emphasised that a prisoner, whether a convict, an accused person, or a detainee, continues to be a human being and is entitled to all fundamental rights provided by the Indian Constitution, including the right to life, which is enshrined in Article 21. A person's remaining constitutional rights are nonetheless protected even if they are violated through the legal process of conviction and deprivation of liberty. Article 21 states “No person shall be deprived of his life or personal liberty except according to the procedure established by law”.¹ This article serves as a reminder of one of the most well-known provisions of magna carta: “No man shall be taken or imprisoned, disseized, or outlawed, or exiled or in any way destroyed save by the law of the land”.² This right has been considered as the cornerstone of our living constitution, the most organic and forward-thinking clause, and the starting point of our laws.³

¹ Narender Kumar, *Constitutional Law of India* (Allahabad Law Agency 2015).

² Durga Das Basu, *Introduction to the Constitution of India* (LexisNexis Butterworths Wadhwa Nagpur 2020).

³ I.R. Coelho v. State of Tamil Nadu, (1999) 7 SCC 580

2. PRISONERS AND HUMAN RIGHTS

A lot of emotion is stirred up by the subject of human rights and inmates. Why should someone who has been charged with or found guilty of a crime have any kind of human rights? It is important to comprehend the idea of human rights in general before diving into this query.

The idea of human rights is not novel. Over the course of human history, the idea of human rights has undergone steady change. We may trace its genesis to the development of natural law. The idea of "natural rights" was put out by philosopher **John Locke** in the seventeenth century. He argued that some rights are "natural" to people as human beings since they existed even in the state of nature before the construction of communities and the emergence of the state .⁴

The Tablet of Hammurabi is one of the earliest examples of a codification of laws that makes mention of individual rights. The tablet was made by the Sumerian monarch Hammurabi some 4000 years ago (1792-1750 BCE). One of the best cases of how human rights are protected is this. People are safeguarded from unjust prosecution and sanctions by precedent-setting documents with binding legal force.

The British Magna Carta, the great charter of 1215, first established the rule of law and laid the groundwork for fundamental liberties. Later came the British Bill of Rights, the American Declaration of Independence, the French Declaration of the Rights of Man and of the Citizen (1789), and the American Bill of Rights. The concept of outlining in writing the rights of individuals with respect to the governing authority can be traced back to these documents. Another important document in this area is the UN charter. Adopting The Universal Declaration of Human Rights in the year of 1948 can be marked as a strong move towards development and defence of human rights worldwide. Since then, the fundamental premise that every human being is born with the right to fundamental freedoms and human rights has gained widespread acceptance and been enshrined in numerous international agreements.⁵

The United Nations charter, which was adopted on June 25, 1945, contains the first documented use of the term "Human Rights." which gathered speed after the publication of the Universal

⁴Asia Human, Introducing Human Rights (Oxford University Press 2006).

⁵ S. Gopalan, India and the Human Rights, 3, Lok Sabha Secretariat, 1998.

Declaration of Human Rights in 1948, and the 10th of December 1948 is a significant date in history as it is marked as Human Rights Day.

3. CONSTITUTIONALLY GUARANTEED RIGHTS OF INMATES

The Indian Constitution is regarded as the supreme or fundamental law of the land and serves as the basis for all other legislation in the country. The Preamble, basic rights, and other constitutional clauses contain language aimed at protecting human rights. All navigators look to the Indian Constitution as their source of illumination, and all interpretations of it must follow its objectives and purposes. According to Article 21 of the constitution, "life" refers to the continued protection afforded to each and every person, even those who are detained for legal reasons and convicts. Additionally, they are only qualified to benefit from the assurances within a reasonable constraint. As a result, a felon has equal access to the fundamental constitutional rights.

3.1 Fundamental Rights of Prisoners

The Indian Constitution's Part III protects a few basic, common, and unassailable rights that are available to the general people of the country. The purpose of a pronouncement of fundamental rights is to make a few core human rights unassailable and to prevent them from becoming pompous in the face of shifting legislative majorities. The essence and definition of "state" in Article 12 of the Constitution have been generously and completely clarified by the courts. It includes every statutory or non-statutory authority that can be considered a state agency.

3.2 Right of Protection with respect to conviction of offences

A shield is provided under Article 20 in terms of criminal punishment. The seventh schedule of the article imposes limitations on the enclosed list. All types of people, including citizens and non-citizens, can access it. The prosecution of crimes under ex post facto laws is not prohibited. Due to this, Article 20(1) does not apply to laws that are passed after a crime has occurred and that set forth a different process than what is typically used for prosecution or trial. The safety measure contained therein would only be available if the ensuing conditions are met and the person in question has been charged with a "crime." It denotes "any conduct or omission" that is sanctioned by a current law. In addition to "double jeopardy," constitutional provisions also offers fortification. The article is based on the common law maxim "Nemo debet bis vexari," which states

that someone should not essentially be exposed twice to risk of committing the same offence.⁶

The person must have received punishment after being tried in front of a tribunal or a court. The defence in defiance of "double jeopardy" outlined in Article 20(2) would only be available if the suspect had been both impeached and punished following such a trial.

Analysis shows that in order to comply with Article 20(2), there must be both prosecution and punishment. It follows that if a person who has been impeached for misconduct is found not guilty, he may still be impeached for "similar wrongdoing." The supreme court ruled that the subsequent trial was not precluded since the facts and fundamental factors were different.

3.3 Right to Free Legal Assistance

The trademarks of Article 39-A include equal justice for all and free legal assistance. The Apex Court stated that "every step that makes the right of appeal fruitful is held obligatory and every action or inaction which stultifies it, is unfair and unconstitutional"⁷ while maintaining that the criminal procedure code's provision allowing for a first appeal from the Sessions Court to the High Court has been a fundamental element of fair procedure and civilised jurisprudence.⁸

3.4 Right to Bail

Due to the importance of bail as a fundamental right protected by Article 21 of the Indian Constitution, a delay in the trial's completion itself may be a basis for granting bail to an accused. The Supreme Court ruled in Babu Singh v. the State of U.P.⁹ that a person's "personal liberty" would be violated under Article 21 if bail was denied to an accused without good cause.

3.5 Right against handcuffing

It has been determined that handcuffing is fundamentally unjust, excessively harsh, and, on the surface, arbitrary. In Prem Shanker v. Delhi Administration,¹⁰ it was determined that it was unjustified and in violation of Article 21. In this regard, the Union of India was ordered by the

⁶ Yadav A, 'PRISONERS' RIGHTS in INDIA: AN ANALYSIS of LEGAL FRAMEWORK Some of the Authors of This Publication Are Also Working on These Related Projects: PRISONERS' RIGHTS in INDIA: AN ANALYSIS of LEGAL FRAMEWORK View Project'

⁷ Aslam M, 'Legal Dimensions of Prisoner's Right in the Light of Article 21 of the Constitution of India'

⁸ M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544

⁹ (1978) 1 SCC 579

¹⁰ (1980) 3 SCR 855

court to give suitable guidelines. In this instance, the Supreme Court unanimously overturned Paragraph 26.22 of the Punjab Police Rules, 1934 on the grounds that it violated Articles 14, 19, and 21.

3.6 Right against Bar Fetters

Although there are numerous meanings for "right" in the ordinary sense, it is typically understood to indicate "the norm of permissible activity within a specific domain." Its definition as a legal phrase is "the norm of legal permissible action."¹¹

The Supreme Court ruled in *Sunil Batra v. Delhi Administration*¹² that treatment of a human being that violated human dignity, subjected the subject to needless pain, or degraded him to the status of a beast would unquestionably be arbitrary and subject to scrutiny under Articles 21 and 14. Therefore, it would not be permissible to place a prisoner in bar fetters for an excessively lengthy time without taking into account the prisoner's safety and security.

3.7 Right against Solitary confinement

The right to interact with family and friends has been interpreted to fall under the definition of "personal liberty" in Article 21. Of course, this right is subject to any lawful prison regulations, which must comply with Articles 14 and 21 and be fair and non-arbitrary. It also includes the detainee's right to seek legal advice from a lawyer of his choosing for whatever reason, including obtaining release from custody or starting a writ petition or case, whether civil or criminal. This privilege is not just applicable to criminal defence.¹³

3.8 Right against Torture and Third Degree Treatment

All civilised communities have traditionally been quite concerned about violence in detention facilities. Third-degree tactics to obtain information could be used as forms of custody violence.¹⁴ In a number of cases, the Supreme Court expressed grave concern over the inhumane treatment of inmates and gave the prison and police officials the necessary instructions to protect the rights of those in custody, especially women and children. The worst type of human rights violation, according to some reports, is when someone is tortured, assaulted, injured, or even dies while

¹¹ Dr. B.N. Tripathi, *Jurisprudence-Legal Theory*, 271 (Allahabad Law Agency, Haryana, 18th ed., Reprinted 2010)

¹² (1978) 4 SCC 409

¹³ *Francis Coralie v. Union Territory of India*, (1981) 2 SCR 516.

¹⁴ *Re-Inhuman Conditions In 1382 .v. State Of Assam*, (2013) 5 GLT 602

being held by the police.

It is asserted that torture committed while a person is being held violates their fundamental human rights and is a violation of their dignity. Any civilised nation's reputation suffers as a result. Without decisive action, civilisation would be in danger of descending into absolute collapse, anarchy, and dictatorship that would be reminiscent of savagery.¹⁵

3.9 Right against Public Hanging

The execution of a death sentence by publicly hanging at the Stadium Ground or Ramlila Ground in Jaipur was ordered by the Rajasthan High Court. A further directive stated that the execution should take place following extensive media coverage. After receiving a certified copy of the aforementioned order, the Supreme Court ruled in *Attorney General of India v. Lachma Devi*,¹⁶ that the directive to carry out the death penalty was against Article 21 and hence illegal. Furthermore, it was made apparent that public hanging would be a cruel method of execution.

3.10 Right against delayed execution

It has been determined that prolonged confinement in order to await the execution of a death sentence is unjust, unfair, and unreasonable and violates Article 21. The Supreme Court ruled in *Shivaji Jaising Babar v. the State of Maharashtra*,¹⁷ that the death sentence must be changed to a life sentence of imprisonment since there was a more than four-year delay in the President deciding the mercy plea under Article 72.

3.11 Right to recover Damages caused by Violation of Article 21

In order to give a new dimension and dynamism to the fundamental rights contained in Article 21, the Supreme Court has recognized the right of victims to seek monetary compensation for violations of their rights.¹⁸ In the case *Kewal Pati v. the State of U.P.*, [31] the Supreme Court granted the petitioner compensation for her husband's passing by a co-defendant while the dead was serving his sentence under Section 302, I.P.C.¹⁹

¹⁵ *Smt. Shakila Abdul Gafar Khan v. V.R. Dhoble*, JT (2003) 7 SCC 749

¹⁶ (1989) (S1) SCC 264

¹⁷ (1991) 4 SCC 375

¹⁸ *Smt. A.V. Janaki Amma v. Union of India*, (2004) 1 ALD 19

¹⁹ (1995) 3 SCC 600

4. ABUSE OF RIGHTS OF PRISONERS

4.1 Custodial Torture

The procedure or approach utilised by the police to coerce an offender or a suspect into confessing to a crime is a blatant illustration of the superiority of strong people over the weak, with complete disregard for the rights of the offender or the suspect in any criminal case. The following incident included the police suspecting several individuals of committing the crime of theft and placing them under arrest. One of the suspects died as a result of torture while being questioned. According to the medical examiner, asphyxiation was the cause of death. The police investigator was given a life sentence after being found guilty under section 302 of the I.P.C. The court determined that torture committed while in custody violates Article 21. (Ragbir Singh v. State of Haryana, 1984). Torture in detention is a flagrant breach of human dignity and degrading, and it severely damages the victim's personal life. (D.K. Basu v. State of West Bengal, 1996)

The petitioner, a journalist, complained of custodial violation of women prisoners and they were assaulted by the police. The court held that women suspects should be guarded by female constables and interrogation must be carried out in front of the female police officer/constable. The session Judge should make surprise visits to the prison periodically. The prisoners should be provided legal assistance and the magistrate must inquire to the arrested person if there was any police torture when the person was in custody.²⁰

4.2 Solitary Confinement

Solitary confinement is among the cruellest and most excruciating forms of punishment. The petitioner, who had been found guilty of murder and was facing the death penalty, was kept in a single cell completely isolated from the other prisoners, violating the right against solitary confinement. He contested the quasi-solitary detention and claimed that section 30 of the Prison Act of 1894 violated the constitution's articles 14, 19, and 21. The court rejected the argument and determined that placing a prisoner in solitary confinement is not solitary confinement because it is simply a step in the process of carrying out a death sentence as indicative in the case of Sunil Batra v. Delhi Administration.²¹

²⁰ Amrit P and others, 'Prisoner's Rights and Prison Reform in India' [2022] International journal of health sciences 10933

²¹ ibid 409

4.3 Under trial Prisoners

In the present day, dealing with prisoners awaiting trial has reached a new degree of difficulty. There are many prisoners serving sentences that are longer than the maximum that they might have received who are waiting for trials or confessions. Nevertheless, a prisoner is entitled to a speedy trial under Article 21 of the Constitution. A person commits an offence against them if they are jailed without being found guilty of any crimes. The judiciary or police's incompetence or delay is one of the main factors contributing to the trials' hardship and suffering for those involved.

4.4 Police Encounters

One of the most heinous abuses of human rights occurs during police encounters. Every encounter raises the question of whether the action was required or justifiable. The police's actions are a clear breach of the law. According to the two-judge bench, deaths during police encounters undermine the legitimacy of the rule of law and the administration of the criminal justice system. They also clearly violate the right to life and the dignity of the person as guaranteed by Article 21 of the Indian Constitution.

5. ROLE OF THE HONOURABLE SUPREME COURT

In the last 15 to 20 years, the supreme court has played a noteworthy role in bringing forth imprisonment reforms that safeguard prisoners' rights. We are all aware that while incarcerated, inmates are still entitled to certain basic rights. He has the right to read the books and correct them.²² They are completely entitled to be protected against torture. Without noting what was decided in Mohd. Giasuddin v. State of A.P.,²³ where the corrective aspect was highlighted by stating that the state must rehabilitate rather than exact revenge, the judicial work performed on the issue at hand would not be complete. There is also the undeniable right of inmates who are awaiting trial to a prompt trial. These include releasing someone after a drawn-out trial.

Its pursuit of jail justice is likely a product of its efforts to restore liberty after putting it out of commission in the Habeas Corpus case. In reality, the Supreme Court had observed in that case

²² State of Maharashtra v. Prabhakar, (1966)1 SCR 702

²³ (1977) 3 SCC 287

during the emergency crisis that the detainees had received treatment that was almost maternal. In the case of *ADM Jabalpur v. ShivKant Shukla*,²⁴ The Supreme Court upheld the ruling that Article 21 is the only source of life and liberty and that, in times of emergency when liberty is suspended. In the case of *Prem Shankar Shukla vs Delhi Administration*,²⁵ The Supreme Court overturned a practice of the Punjab Police that made a distinction between rich and poor prisoners while deciding who should be handcuffed.

Additionally, the court has referred to Article-39A, which governs free legal assistance. By claiming that it is unable to provide the same due to financial and administrative reasons, the government cannot escape its obligation to provide "free legal assistance" to an individual. The unusual must also be seen by the court and informed that he has a chance for legal advice. During the trial and prior to it starting, the accused has the right to legal counsel. Granting someone bail does not eliminate the requirement of informing the person why he has been held.

The court has set forth a number of directives to enhance various aspects of jail administration and the situation of detainees. The tendency to keep people around for a long time even after they need to become mentally stable has been strongly condemned by the supreme court. The court has stressed that there should be enough amenities inside the prison for those inmates who are mentally sick. Additionally, since a detention facility is hardly a location for treating such people, it is best to avoid transferring someone with an unstable mind there for protection.

6. CONCLUSION

One of the main foundations of the Indian justice system, which embodies the principle of the reformatory justice system, is the criminal justice system. Prisoners are forced to live in an unpleasant, unsanitary, and hostile environment where their human rights are not respected, which results in abhorrent conditions. The guards at the prison treat them as inanimate objects with no existence or legal status. There must be a better atmosphere inside the prison walls that gives the inmates a better quality of life to flourish both physically and intellectually if they are to become better people and be accepted by the community. Prisoners have the right to live their life in conformity with the fundamental liberties protected by the Indian Constitution as fellow human

²⁴ (1976) 2 SCC 521

²⁵ *ibid* 85

beings. Prisoners who are not yet on trial, those who are, and those who have been found guilty each have unique advantages. Inmates continue to have access to their remaining constitutional rights even after being found guilty of the offence and deprived of their freedom in accordance with the legal process. The Supreme Court has made significant progress in defending their rights. However, the truth remains that in order for them to take prisoners' rights seriously, the officials and the prison administration need to be educated and trained. Any effort to change the criminal justice system must take into account human rights. The humanistic viewpoint should be considered by a penitentiary administration. The basic principles of the Indian Constitution are enhanced by safeguarding the prisoner's rights.

