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# **HUMAN RIGHTS PERSPECTIVES FROM NATIONAL AND INTERNATIONAL LAW: SPECIFIC REFERENCE TO PRECEDENTS OF APEX COURT**

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## **Abstract**

*Human rights of prisoners from the point of view of international as well as national perspective it is necessary to first to know about the meaning and nature of human rights. Human rights are those rights which are essential for every human being either a normal human being or a prisoner. It can be said that human rights rests upon the idea i.e., every human being is entitled to enjoy his or her rights without distinction or discrimination of any kind like discrimination on the basis of caste, religion, race, nationality etc. Human rights are essential for the complete development of human personality, and for human happiness. Human rights when they are guaranteed by a written constitution are known as “Fundamental Rights” because a written constitution is the fundamental law of the state. Human rights of people have been protected by various international and national instruments including the Constitution of India. This paper will evaluate the various nuances of human rights dimensions along with the judicial precedents which have been set by time-immemorial cases. The apex court of the USA in the case of Charles Wolff v. McDonnell and the Supreme Court of India in its famous cases like DBM Patnaik v. State of Andhra Pradesh and, Sunil Batra v. Delhi Administration has emphatically stated that it must be realised that a prisoner is a human being as well as a natural person or a legal person. If a person gets convicted for a crime, it does not reduce him to the status of a non-person whose rights could be snatched away at the whims of the prison administration. Therefore, imposing any major punishment within the system of prison is conditional upon the absence of procedural safeguards.*

**Keywords** - Constitution, Fundamental Rights, Right to Privacy, Indian Constitution, International Organization, Prisoner, Rights, Violation and Remedial Measures, Human Rights, UDHR and etc.

## Introduction

According to *Durga Das Basu* “Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a ‘member of human family’ irrespective of any consideration.” As Per the Universal Declaration of Human Rights (UDHR), 1948, the term “human rights” means rights derived from the inherent dignity of the human person. In India, the Protection of Human Rights Act, 1993 defines the term “human rights” and as per this Act “human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India<sup>1</sup>.

In India, the Parliament enacted the Protection of Human Rights Act, 1993 to provide protection to every human being of their human rights which all they are entitled and to constitute National Human Rights Commission, State Human Rights Commission and Human Rights Courts for better protection of human rights.

- Human rights are inalienable
- Human rights are essential and necessary
- Human rights are in connection with human dignity
- Human rights are irrevocable
- Human rights are universal
- Human rights are never absolute
- Human rights are dynamic
- Human rights are necessary for the fulfillment of purpose of life

The international instruments like International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966 states that it is obligation of States to promote universal respect for and observance of human rights and freedoms. Similarly it has been stated under the Declaration of the Human Rights Defenders which has been adopted by the General Assembly of the United Nations on December 9, 1998 that each State has the prime responsibility and duty to protect, promote and implement all human rights by adopting necessary measures. Therefore, it can be said that the human right is a legal right.

**Defining the term “prisoner”** - The term “prisoner” has not been defined under the Prisons Act, 1894 but the Act itself classified the prisoners into two categories i.e., Criminal Prisoner and Civil

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<sup>1</sup>The Protection of Human Rights Act, 1993, Section 2(1) (d).

Prisoner. The term “Criminal Prisoner” means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial.<sup>2</sup>prisoner is a person legally committed to prison as a punishment for a crime or while awaiting trial. A prisoner is a person who is kept in a prison as a punishment for a crime that they have committed<sup>3</sup>.

‘prisoner’ means any person who is kept under custody in jail or prison because he/she committed an act prohibited by law of the land. A prisoner also known as an inmate is anyone who, against their will, is deprived of liberty. This liberty can be deprived by forceful restrain or confinement<sup>4</sup>. For the proper understanding of the human rights of prisoners we may divide it into two broad categories:-

- Rights of Prisoners guaranteed under various International Instruments.
- Rights of Prisoners guaranteed under various National Instruments including the Constitution of India.

### **Rights of Prisoners guaranteed under various National Instruments including the Constitution of India**

Prisoners are entitled to almost all the human rights as a normal human being in India but these rights are subjected to the reasonable restrictions as prescribed by law. The Indian State is a signatory to various international instruments of human rights, like the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights etc. and these international instruments guaranteed human rights to everyone including prisoner. So the Indian State is obliged to uphold and ensure observances of basic human rights of the prisoners as well as freemen. For the proper understanding of the human rights of prisoners as guaranteed by the various national instruments it can be divided into two parts which are as follows:-

- Rights of Prisoners under the Constitution of India
- Rights of Prisoners under the Prisons Act, 1894

Prisoners are entitled to all the constitutional rights unless their liberty has been constitutionally curtailed. 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

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<sup>2</sup>The Prisons Act, 1894, Section 3(2)

<sup>3</sup>Collins English Dictionary, available at <https://www.collinsdictionary.com/dictionary/english/prisoner>.

<sup>4</sup>Human Rights Violation of Prisoners in India, available at <https://blog.ipleaders.in/human-rights/>.

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. Article 21 casts an obligation upon the State to preserve the life of every person, whether innocent or guilty<sup>5</sup>.

The Indian Supreme Court, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners' rights to human dignity<sup>6</sup>. The Constitution of India does not expressly provide the provisions related to the rights of prisoners but in the case of *T.V. Vatheeswaran v. State of Tamil Nadu*<sup>7</sup>, it was held that the Articles 14, 19 and 21 are available to the prisoners as well as freemen. Prison walls do not keep out fundamental rights. Article 19 of the Constitution of India guarantees six freedoms to the all citizens of India. Among these freedoms certain freedoms cannot be enjoyed by the prisoners because of the very nature of these freedoms. The convicts by mere reason of their conviction are deprived of some of their fundamental rights such as right to move freely throughout the territory of India or the right to practice a profession<sup>8</sup>.

In the case of *People's Union of Democratic Rights v. Union of India* focused on the importance of human dignity by saying that the right to life guaranteed under Article 21 is not confined merely to physical existence or the use of any faculty or limb through which life is enjoyed, it also includes within its scope and ambit the right to live with basic human dignity and the State cannot deprive any one of this precious and invaluable right without just, fair and reasonable procedure established by law<sup>9</sup>.

the Supreme Court made the observation that the right to life is one of basic human rights and held that even a prisoner, be he a convict or under-trial or a detent continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. However, the convicts by mere reason of their conviction are deprived of some of their fundamental rights such as right to move freely throughout the territory of India or the right to practice a profession. It was also held that on being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights<sup>10</sup>.

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<sup>5</sup>*Paramanand v. Union of India*, (1989) 4 SCC 286.

<sup>6</sup> Dr. U. Chandra, *Human Rights* 113 (Allahabad Law Agency Publications, Allahabad, 8<sup>th</sup> ed., 2010)

<sup>7</sup>AIR 1983 SC 361

<sup>8</sup>*State of Andhra Pradesh v. Challa Ram Krishna Reddy*, AIR 2000 SC 2083.

<sup>9</sup>AIR 1982 SC 1473.

<sup>10</sup>*State of Andhra Pradesh v. Challa Ram Krishna Reddy*, AIR 2000 SC 2083.

it is important to know about the term “procedure established by law”, it was firstly held in the cases of *A.K. Gopalan v. State of Madras*<sup>11</sup> and *A.D.M. Jabalpur v. Shivakant Shukla*<sup>12</sup> that the term “procedure established by law” in Article 21 means procedure prescribed by law as enacted by the State and rejected to equate it with the American “due process of law” (due process of law means to enshrine the principles of natural justice). But in the case of *Maneka Gandhi v. Union of India*<sup>13</sup>, the Supreme Court pronounce protection under Article 21 against the legislature also and held that the procedure established by law for depriving a person of his life and personal liberty must be just, fair and reasonable and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirements of Article 21 would not be satisfied.

a landmark case<sup>14</sup> concerning the important suggestions for safeguarding the rights of the prisoners, suggestions were made by **Justice Krishna Iyer** -

- Prisoners ‘under sentence of death’ shall not be denied any of the community amenities, including games, newspapers, books, moving around and meeting prisoners and visitors, subject to reasonable regulations of prison management.
- Prisoners ‘under sentence of death’, if desires loneliness for reflection and remorse, for prayers and making peace with his maker, or opportunities for meeting family or friends such facilities shall be liberally granted.
- Reckless handcuffing and chaining in public degrades, puts to shame finer sensibilities and is a slur on our culture.
- Bar fetters should be for short spells, light and never applied if sores exist. Bar fetters should not be imposed arbitrarily. Victims should be given a hearing before imposing bar fetters and he shall be provided with grounds for fetters. And where the decision to fatter is made, the reasons shall be recorded in the journal and in the history ticket of the prisoner in the State language. If he is a stranger to that language it shall be communicated to him, as far as possible in his language.
- Bar fetters shall not continue beyond day time. The prolonged continuance of bar fetters, as punitive and preventive steps shall be subject to previous approval by Chief Judicial Magistrate or Sessions Judge.
- Legal aid should be given to prisoner to seek justice from prison authorities, and, if need be, to challenge the decision in Court in cases they are too poor to secure on their own.

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<sup>11</sup>AIR 1950 SC 27.

<sup>12</sup>AIR 1976 SC 1207

<sup>13</sup>AIR 1978 SC 597

<sup>14</sup>*Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675

## **Rights of Prisoners guaranteed under various International Instruments**

The provisions relating to the rights and treatment of the prisoners are contained in various international instruments like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the United Nations Basic Principles for the Treatment of Prisoners etc.

***Universal Declaration of Human Rights (UDHR)*** - The General Assembly of the United Nations (UN) adopted the Universal Declaration of Human Rights (UDHR) on December 10, 1948 to promote the human rights in the world. It has been stated under Article 1 of the UDHR 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. Article 2 of the UDHR provides that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It would be clear that the term “all human beings” used in Article 1 and the term “everyone” used in Article 2 also includes prisoners.

Article 3 of the UDHR states that everyone has the right to life, liberty and security of person. Right to life is one of the basic human rights and is available to both either to prisoner or to freemen. Prisoners are not subjected to torture, cruel, inhuman treatment in the prisons. It would be clear from the language of the Article 5 of the UDHR which states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

***The International Covenant on Civil and Political Rights (ICCPR)*** - Regarding the treatment of prisoners provisions are made in the International Covenant on Civil and Political Rights (ICCPR) which has been adopted by the General Assembly of the United Nations adopted on December 16, 1966 and came into force on March 23, 1976. Article 6(1) of the ICCPR grants every human being whether prisoner or freemen inherent right to life. This right shall be protected by law and no one shall be arbitrarily deprived of his life. It has been further provided under Article 7 of the ICCPR that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

*The United Nations Standard Minimum Rules for the Treatment of Prisoners* - It has been adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. The United Nations Standard Minimum Rules for the Treatment of Prisoners contains so many rules regarding the rights and treatment of prisoners but we can only provide some of them which are most important.

- Provisions relating to the separation of categories of prisoners
- Provisions relating to the accommodation
- Provisions relating to the clothing and bedding
- Provisions relating to the food
- Provisions relating to the exercise and sport
- Provisions relating to the medical services
- Provisions relating to the protection of prisoners against double jeopardy
- Provisions relating to the prohibition of corporeal punishment, punishment by placing in dark cell, and all cruel, inhuman or degrading punishment
- Provisions relating to the information to and complaints by prisoners
- Provisions relating to the rights of prisoners to contact with their family and reputable friends

There are so many ways in which the human rights of prisoners should be violated in worldwide. These are as follows:-

1. Disturbing conditions of the prisons.
2. Custodial death.
3. Physical torture.
4. Police excess.
5. Degrading treatment.
6. Custodial rape.
7. Poor quality of food.
8. Lack of water supply.
9. Poor health system support.
10. Not producing the prisoners to the Court.
11. Unjustified prolonged incarceration.
12. Forced labor.
13. Any other problem created by the Jail authorities

The Apex Court in the case of *Rama Murthy v. State of Karnataka*<sup>15</sup>, has observed that the prisons faced the following problems in the context of the rights and treatment of the prisoners-

- 80% prisoners are under-trials.
- Delay in trial.
- Even though bail is granted, prisoners are not released.
- Lack or insufficient provisions of medical aid to prisoners.
- Callous and insensitive attitude of Jail authorities.
- Punishment carried out by Jail authorities not coherent with punishment given by the Court.
- Harsh mental and physical torture.
- Lack of proper legal aid.
- Corruption and malpractices.

### **Conclusion**

The Supreme court of India has been deliberating with the central and state governments since a long time to improve the deteriorating condition of the prisoners which is fundamental because of the overcrowding of prisons, lack of training facilities, personnel and poor infrastructure, etc. Therefore, it is mandatory to invoke the rights and constitutional safeguards of the prisoners. Such rights of, unless they are propagated and implemented in each corner and the entire perimeter of the prism, are a nullity and betrayal of human faith on the criminal justice delivery system. It could be said that the judiciary of the country has played a crucial role in safeguarding the rights of prisoners whenever the legislative and executive have erred. It has acted as the savior of the convicts and upheld their fundamental rights time and time again. It has thoroughly exercised its powers through judicial activism and has repeatedly devised new remedies and tools to protect the human's right to life and personal liberty. However, much still needs to be done. In this regard, the wide circulation of human rights' available to prisoners, vast publicity of prisoners right in media and corner to corner surveillance in prisons could be some of the keys for upholding the rights of prisoners and ensuring their safe space in the prison.

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<sup>15</sup>(1997) 2 SCC 642