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# PRISONER'S RIGHTS AND LEGISLATIVE INSTRUMENTS ALIGNING WITH JUDICIAL PRECEDENTS

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## **Abstract**

*The Prisons in India are not considered as a house for incarceration to deter criminal behavior. On the subject of Crime, Mahatma Gandhi, our father of our nation, had once said "Crime is the outcome of a diseased mind and jail must have an environment of a hospital for treatment and Care." Indian Prison Administration is having a strong faith in this principle. Sentence of imprisonment would be justifiable only if it ultimately leads to social defense against crime. Such an aim could be achieved only if incarceration motivates and prepares the offender for a law abiding and self supporting life after his or her release. Imprisonment deprives the offender of his liberty and self determination and the prison system should not be allowed to aggravate the suffering already inherent in the process of incarceration. Hence the prison should endeavor to reform and re-assimilate the offender in the social milieu by giving them appropriate correctional treatment.*

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

## **Introduction**

Criminal Justice System is an organized reaction of the society against the crime and the criminal. Crime and punishment are interrelated to each other. Various theories of punishment were exercised at various times. The principal object of punishment is to protect the society from the potential wrong doer primarily through the process of removing the causes of crime.

In early history, punishment was never awarded with the object of correction and the criminals were treated as persons who cannot be corrected. But now the punishment in terms of imprisonment is regarded as a means of correction. The old theories of punishment have since been discarded and given way to the theory of reformation. The prisons are not functioning as penal institutions but as reformatories. The basic object of the correctional administration is to reform, rehabilitate, re-socialize and reintegrate the offender in the society. It is an accepted principle that the process of reformation and rehabilitation of offender commences from the date on which he enters the prison and it cannot be postponed till the date of release. It was **Gandhiji** who said that Prison should function as hospital as offenders are very much like sick people and need to be treated.

Lord Lytton in recently speaking about Jails to the Rotarians of Calcutta said that just as we send our sick in body to hospitals and not to Jails, so we must 'provide moral doctors and moral hospital' for sick in mind, i.e. criminals. His Excellency introduced his subject the ideal i wish to set before me, stated in the briefest and simplest form, is just this, - the substitution of reformation for retribution as the basis of our Penal Code.

Punishment can instill fear and enforce habits – it cannot inspire goodness. As a means of moral regeneration, therefore, it is worse than useless and should be abandoned. A morality which is only enforced by pains and penalties is a false morality, and those who would secure the acceptance of moral standards should employ other methods''.

Limitation of punishment Lord Lytton said: "Punishment, if resorted to at all, must always be aimed at teaching habits necessary for the well- being of the individual or discipline necessary to the well-being of a community, I do not say that punishment will always succeed; the form of punishment selected in any particular case may be well or badly suited for the attainment of its object. Again, I do not say that punishment is the only way of achieving this object, what I say is that those are the only objects which can be obtained by punishment

Gandhi on Prison Reforms-"Let it be remembered that we are not seeking to destroy jails as such. I fear that we shall have to maintain jails even under Swaraj. It will go hard with us, if we let the real criminals understand that they will be set free or be very much better treated when Swaraj is

established. Even in reformatories by which I would like to replace every jail under Swaraj, discipline will be exacted”<sup>1</sup>

## **Legislative Enactments**

Administration of the prisons-Prison administration is one among the four wings of the Criminal Justice System viz. Legislature, Judiciary, Executive and the Correctional Administration. The Prisons are placed as State subject under article 246 of the Constitution of India, including it in the Seventh Schedule, List II (i.e) State List, and Entry IV which read as follows: Prisons, Reformatories, Borstal Institution and other institution of the like nature, and person detained therein; arrangements with other States for the use of Prisons and Institutions.

For the purpose of carrying out the management of Prisons in India, the Government of India enacted The Prisons Act, 1894 and Prisoners Act, 1900 for guidance of all the State Governments. As per the power vested under section 59 of the Prisons Act, 1894, each State Government passed their own Rules for the management of their Prisons.

If any State does not have its own Prison Manual, the existing Central Act, i.e. The Prisons Act, 1894 is being followed. Model Prison Manual, 1960 is being taken as guidance in the Prison Administration.

The Existing Statutes-

- Indian Penal Code, 1860;
- The Prisons Act, 1894;
- The Prisoners Act, 1900;
- The Identification of Prisoners Act,1920;
- The Tamil Nadu Borstal Schools Act, 1925;
- The Exchange of Prisoners Act,1948;
- The Constitution of India, 1950;
- The Transfer of Prisoners Act, 1950;
- The Representation of People’s Act, 1951;
- The Prisoners (Attendance in Courts) Act, 1955;
- The Probation of Offenders Act, 1958;

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<sup>1</sup>Report of the All India Committee on Jail Reforms (Mulla) 1980-83 Vol.1 Preface, p.xx para 48.

- The Model Prison Manual, 1960;
- The Extradition Act, 1962;
- The Code of Criminal Procedure, 1973;
- The Mental Health Act, 1987;
- The Juvenile Justice (Care and Protection), 2000;
- The Repatriation of Prisoners Act, 2000

## **Fundamental Rights**

Prisoners are basically human beings. They being, human beings are to be entitled to human rights and constitutional rights except those that are to be necessarily denied because of their condition of imprisonment. The State is under a Constitutional obligation to honor and to protect their rights, particularly their right to live with human dignity.

The accused, under- trials, suspects and convicts do not cease to be human beings just because they are so named. Hence their rights as human beings are to be protected and respected. The fundamental rights, which are available to the prisoners, are not defined in the Indian Constitution in particular. The Judiciary, however, through the process of Judicial Activism has expanded the scope of various freedoms guaranteed to individuals in relation to prisoners by expanding the horizons of article 21 of the Indian Constitution and also taking into consideration the relevant provisions of International Covenants formulated for monitoring and supervising the prisoners.

- A. Right to Equality – Article 14,15,16,17, & 18
- B. Right to Freedom - Article 19, 20, 21, & 22
- C. Right against Exploitation – Article 23 & 24.
- D. Right to Freedom of Religion. - Article 25, 26, 27 & 28
- E. Cultural and Educational Right – Articles 29 & 30
- F. Right to Constitutional Remedies – Article 32.

## **Judicial Precedents**

**State Of Andhra Pradesh V. Challa Ramakrishna Reddy:** - In this case the deceased challa Reddy and his son was a offender, They were arrested and send to the judicial custody On 5th and 6th May 1977 some person miscreants inter into the jail and hurled the bomb as a result of which challa Reddy was dies after some day. The son file a petition for damages but the state denied by saying it was a sovereign function. But the court held that the right to life and personal liberty which has been given under article 21 of the Indian constitution does not exist, it also available

when the person send to the jail.

**Kharak Singh V. State Of UP** - The court in the aforementioned case decided that "life" refers to more than just an animal's existence. One could argue that the right to life extends beyond just an animal existence. It implies something more than just a being's physical survival.

**Mohammad Giasuddin V. State Of AP** - The state government was order to investigate the type of labour and work supplied to the convicts and also held that the work must "not of a monotonous, mechanical, intellectual or like type mixed with a title manual labour" The high court additionally ruled those convicts who are interested in pursuing higher or more advanced education must also be provided with the opportunity to connect via correspondence courses. Additionally, rudimentary education in areas like doll-making, needlework, and tailoring should be made available to the female convicts. Additionally, opportunities for mental-plus-manual productive labour should be provided for the educated convicts.

**Rajgopal V. State Of Tamil Nadu** - Gauri Shankar was sentenced to death penalty by the court for the murder of 6 people. While incarcerated at Chenglepat Sub-Jail in 1991, Auto Shankar penned his 300-page autobiography. With the knowledge and consent of the jail staff, he gave the autobiography to his wife, Smt. Jagdishwari, who then gave it to his lawyer, the prisoner asked his attorney to see that the petitioners' journal, Nakkheeran, published his memoirs. The same was accepted by the petitioners. In multiple letters to his counsel and the original petitioner, Auto Shankar expressed this intention. The prisoner's tight relationship with a number of IAS, IPS, and other officers, some of whom were actually his criminal partners is detailed in the autobiography. However after some time the jail official denied of permission which was given in the beginning and also impose restrictions on Publication on the ground of defamation.

The Supreme Court held that prisoner having right to publish its autobiography, if there will be anything which is not true about the person against whom he is written he may afterward file a suit for defamation.

### **A R Antulay V. Rs Nayak**

The Supreme Court established thorough criteria for those who were set up shamefaced in a felonious case, but it didn't specify a set quantum of time for the offense's trial. The court ruled that Article 21 gives rise to the right to a prompt trial, and that this right covers all phases of an

disquisition, including the inquiry, trial, appeal, review, and retrial. It was held by the court that a defendant's right to a speedy trial cannot be denied on the grounds that he didn't request one. It was also emphasized that the period for trial must be notified taking into account a number of factors, including the nature of the offence, the number of indicted the number substantiations. The court held that if the speedy trial of accused has been violated the charges against him should be quashes.

**Right To Legal Aid** - An indicted person awaiting trial, or any internee or con, for that matter, depends heavily on legal aid. Free legal services were fitted into the Indian Constitution as part of Composition 39A under the heading Directive Principles of State Policy by the 42nd Amendment (1976). The State is needed to bear this composition in mind while establishing laws and morals for detainees, malefactors, or cons.

In 1987, the Legal Services Authorities Act was passed by the congress, furnishing legal aid. Also, it instructed different state governments to produce Legal Aid and Advice Boards and design programmers intended to offer Free Legal Aid. This was done in order to give effect to Composition 39- A of the Constitution. Legal aid has a wider compass and is applicable in matters involving civil, executive, or fiscal issues as well as felonious bones according to the mortal rights law of India<sup>2</sup>.

Justice Krishna Iyer emphatically declared that “Right to free legal aid is the State 's duty and not Government's charity ”.

**A.K.Gopalan**<sup>3</sup> case -It examined the issue immediately after the commencement of the Constitution. It expressed the view that the prisoners are non- persons and fundamental rights under the Constitution are not available to them by their being incarcerated. The Court declared that a person loses his right to personal liberty by way of detention under valid law enacted by a competent legislature and so long as he remains under such detention, he ceases to be entitled to enjoy his other fundamental rights.

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<sup>2</sup>Prisoners Right, National Anti crime Human Rights council of India (NACHRCOI) <https://www.nachrcoi.co.in/our-services/prisoners-right/>

<sup>3</sup>A.K. Gopalan vs. State of Madras A.I.R 1950 827

In **Nilabati Behera vs. State of Orissa**<sup>4</sup>, the Supreme Court observed that “it is axiomatic that convict prisoners or under-trials are not denuded of fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. It is an obligation of the state to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. This right guaranteed by Article 21 of the Constitution of India cannot be denied to convict, under-trials or other prisoners in custody, except according to the procedure established by law.

### **International Covenants Regarding Prisoner’s Right**

- Third Geneva Convention (came into force in 1924 significantly amended in 1949).
- Charter of United Nations (1945).
- Universal Declaration of Human Rights (1948).
- United Nations Standard Minimum Rules for the Treatment of Prisoners (1955).
- International Covenants on Civil and Political Rights (1966).
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
- Basic principles for the Treatment of Prisoners (1990).
- Basic principles on the use of Force and Fire Arms by Law Enforcement Officials (1990).

### **Conclusion/Suggestion**

The Prisons in India are not considered as a house for incarceration to deter criminal behavior. On the subject of Crime, Mahatma Gandhi, our father of our nation, had once said "Crime is the outcome of a diseased mind and jail must have an environment of a hospital for treatment and Care." Indian Prison Administration is having a strong faith in this principle. Sentence of imprisonment would be justifiable only if it ultimately leads to social defense against crime. Such an aim could be achieved only if incarceration motivates and prepares the offender for a law abiding and self-supporting life after his or her release. Imprisonment deprives the offender of his liberty and self-determination and the prison system should not be allowed to aggravate the suffering already inherent in the process of incarceration.

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<sup>4</sup>Nilabati Behera vs. State of Orissa (1993) 2 SCC 746

- Incorporating the Principles of Management of Prisons and Treatment of Offenders in the Directive Principles of the State Policy embodied in Par IV of the Constitution of India.
- Including the subject of Prisons and allied Institutions in the Concurrent List of the VII Schedule of the Constitution of India.
- Enacting a new uniform and comprehensive Central Law by replacing the old Acts relating to Prisons and Prisoners viz. Prisons Act,1894, Prisoners Act, 1900, Identification of Prisoners Act, 1920, Exchange of Prisoners Act, 1948, Transfer of Prisoners Act,1950, and Prisoner (Attendance in Court) Act, 1955
- Revising the good old manuals of States / Union Territories where the revision has not been taken up on the lines of model prison manual.
- Extensive use of Probation Services in deserving cases by amending the appropriate provisions of the Probation of Offenders Act, 1958, adequately strengthening the infra structure of the Probation Services and arranging sensitization programmers regularly for judicial Officers, Prosecuting Officers and Police Officers.
- Insertion of a new Section 357-A in the Cr.P.C.,1973 for the payment of compensation to the victims of crime out of the earnings of the Prisoners under Wage Earning Scheme.
- Amending the existing section 320 (1) of the Cr.P.C., so as to declare more offences compoundable.
- Expediting the work carried out at present in different Jails regarding the renovation, repairs, construction of additional accommodation and new Jails.
- To assess the feasibility of constructing additional accommodation in the existing Jail and constructing new Jails in other areas wherever required.
- Diversification of institution should be evolved for the basic segregation and treatment of homogenous group of Prisoners
- Prison Work Programmers and Vocational training should be integrated with National Economic Plans.
- Public participation in prevention of crime and treatment of offenders should be made a part of the National Policy on Prisons.
- Relieving the Custodial Officer from all the clerical work as their primary duty is to supervise Prisoners and maintain security in the Prison.