



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Solitary Confinement: A Paradox in The Constitution of India

NAME: MANAS RANJAN PADHI

DESIGNATION: BA.LLB (H), 6TH SEMESTER

ADDRESS: AMITY BOYS HOSTEL, MATH, KHARORA, PIN CODE: 493225

NAME: ARYAN PUJHARI

DESIGNATION: BA.LLB (H), 2TH SEMESTER

ADDRESS: AMITY BOYS HOSTEL, MATH, KHARORA, PIN CODE: 493225

UNIVERSITY NAME: AMITY LAW SCHOOL, AMITY UNIVERSITY, RAIPUR, CHHATTISGARH

ABSTRACT

India is regarded as a secular federal republic which is governed in a democratic parliamentary system. The Constitution of India is regarded as Suprema Lex of the land. Which does not only confine to the statutes made by legislature or judiciary but also deeply rooted into the culture, tradition, norms, values of the Indian society its self. And hence Indian criminal justice system is largely influenced by REFORMATIVE THEORIES.

Solitary confinement is something less of reformation and more of a punishment. Solitary confinement is an isolation of a prisoner from other co-prisoners where a prisoner experience complete segregation from the society. In solitary confinement the prisoner experience stressful conditions which may lead to potential harmful health effects that may be physical and mental. The Constitution always strives to protect the rights of individual even behind the bars.

The supreme courts in few of the leading cases highlighted solitary confinement as against Article 19 and 21. As article 21 speak more of life and less of liberty and complete solitude

is Against natural principle of human life as well as against freedom by contrast It may also result in arbitration of the authority upon the prisoner which would absolutely breaks the rule of law as well.

This paper deals with constitutional validity of solitary confinement and its effects in the life

Of prisoner and put forward other reformatory majors. Promoting public awareness is the point of utmost importance of this paper.

Keywords: solitary confinement, the constitution of india, Reformative theory

INTRODUCTION: -

Human rights are regarded as basic rights which are inherited to all human beings, are inalienable and are basis fundamental rights which are crucial for the human beings in the society. Thus, it is the duty of a welfare state to protect these rights. The Charters of the United Nations and the Universal Declaration of Human Rights in consonance with the provisions of the Constitution tries to protect these human rights. In every society, it is an established fact that it's not only the citizen about whom; the whole of human rights jurisprudence is based on but also large number of persons who are categorized as accused, suspects, criminals, wrongdoers, prisoners are also considered as an inseparable part of the society and they are too equally subjected to the same protection which are provided by the state and the Constitution of India. Mere fact that they are behind bars doesn't reduce their status from human beings to animals.

Moreover, the institution of prison is not made to make them suffer and punish. But it is made to provide treatment/reform/rehabilitation to the prisoners. It is relevant to address here that the basic ideology behind the institution of prison is to reduce the chance of the offender to repeat their criminal activity and to change their attitude toward the other fellow human beings and to provide them with proper opportunity so that they may be rehabilitated in the society in appropriate manner when they are set free. Keeping an offender in the prison is itself detrimental to the right of the individual and again putting the same individual segregated from other prisons is a cruel face of punishment in a so called reformatory criminal justice system.

Solitary confinement means "confinement of prisoners for 22 hours or more a day without meaningful human contact"¹ (as per the United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the 'Mandela Rules').

¹ Available at: < [https://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Abolish%20Solitary%20Confinement%20\(31.10.15\)%20\(English\).pdf](https://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Abolish%20Solitary%20Confinement%20(31.10.15)%20(English).pdf) > Accessed on: 21 December 2019.

Thus, solitary confinement is sort of detention where the detainee is disengaged from any human contact, except for individuals from imprison specialists, for 22–24 hours day by day, with a sentence beginning from days to weeks. As for the most part used as a variety of social control on the far but it's kind of a paradox to criminal justice system. For a better mental and physical health, a person needs an environment with basic commodities such as interaction with other individuals. When an individual break any rules of the prison and is being put in solitary confinement there is only probability but no certainty that the individual wouldn't commit such behavior again but when an individual is put in isolation the chance of that individual developing severe distress and loneliness can amount to even more cruelty.

ORIGIN OF SOLITARY CONFINEMENT:

The origin of solitary confinement is traced in the late 18th century, Quaker advocated it as a means of separating inmates from the whippings and public humiliation in common back then. It was also found that in 1829, Pennsylvania's Eastern State Penitentiary began isolating prisoners in stone cells with solely a Bible which they used to kill the time and to repent, pray and realize their faults and mistakes, but they found inmates committing suicide or becoming socially dysfunctional, and so eventually they abandoned the practice. But after a decade in 1934, solitary confinement was tried again in ALCATRAZ, where the most problematic prisoners were sent to block d where they were isolated.

The use of solitary confinement still remained rare until 1983, it was until two prison guards were killed by detainees around the same time, in discrete episodes, at Illinois' Marion Federal Prison.. Now, after the killings, all of the facility's prisoners were put into solitary confinement and were kept there, considerably after things had calmed down. Thus, Marion became America's first "supermax" prison, where all inmates were kept in their cells 23 hours per day.

Soon after that superman facilities or otherwise known as control unit prisons were built across the country. After that president Bill Clinton marked a crime bill which offered federal monies to states that increased prison sentences. It was the effect of the bill that even more states started constructing supermax prisons and hence the number of prisoners confined increased by a great number.

SOLITARY CONFINEMENT:

Solitary confinement is defined as the act of separating an individual in a closed cell for 22-24 hours per day, free of any human contact for a timeframe going from days to months. Few detainee frameworks utilize the expression "solitary confinement" for alluding to jail of isolation or position in limiting house. This discipline is given under Section 73² and 74³ of Indian Penal code.

Terms in solitary confinement depend on charges that are required, settled and upheld by jail authorities with next to zero outside oversight. Numerous jail frameworks have a hearing procedure; however, hearings are regularly spur of the moment. Jail authorities fill in as prosecutors, judges and juries, and detainees are seldom permitted legitimate portrayal.

LIMITATION OF SOLITARY CONFINEMENT UNDER SECTION 73 AND 74 OF IPC:

In a capital punishment a sentence of isolation can issued by the court, then such containment ought to for no circumstance outperform fourteen days on end, with stretches between the hours of single of not less period than such periods; and once the confinement allowed may outperform three months, and the isolation ought not outperform seven days in a single month of the full confinement without a doubt, with breaks between the hours of solitary of not less range than such periods. 3 months in the whole (Section 73).

- I) 14 days on end with between times of in any event 14 days.
7 days in multi month with between times of under 7 days if the confinement allowed is more than 3 months (Section 74).

² 73. Solitary confinement.—Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say— a time not exceeding one month if the term of imprisonment shall not exceed six months; a time not exceeding two months if the term of imprisonment shall exceed six months and 1[shall not exceed one] year; a time not exceeding three months if the term of imprisonment shall exceed one year.

³ 74. Limit of solitary confinement.—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Thus, we can summarize the punishment of solitary confinement in the following chart:

Not more than	(i) 6 months	1 month of solitary confinement
	(ii) 1 year	2 months of solitary confinement
More than	1 year	6 months of solitary confinement

REASONS FOR PLACING THE PEOPLE UNDER SOLITARY CONFINEMENT:

Detainees can be put in separation under the isolation for some, reasons, as for instance any genuine infractions, for example, keeping them from battling with another prisoner, to minor ones, such as sassing a gatekeeper or getting captured with a pack of cigarettes, intending to bring down a watchman and so on. Different occasions, detainees are tossed into the isolation for not disrupting any guidelines whatsoever. Penitentiaries have utilized isolation as a device to oversee gang war or isolating people for simply talking to a suspected gang member. Prisons have also used solitary confinement as a retribution for political activism.

THE EFFECT OF THE LONG-TERM SOLITARY CONFINEMENT:

Not only in case of confinement even if a person when left alone and lonely he deters with his mental well-being and start behaving abnormally from this it could be imagined that when a person firstly kept isolated secondly with in four walls for a longtime, what will be the condition of such a prisoner. A person in such case just eat, sleep and repeat with in a much smaller space which sometimes lack good lighting condition which make him sick. They have nothing to do , not even any educational or vocational courses are given to the person which means it only play as a punishment and reformation is defenestrated from the system , which means there is sufficient probability that the same action could be repeated by the prisoners once left outside . "The detainees vouched for being kept in isolation in 5×8 feet cells without fans, from where they were let out for just a couple of moments daily for filling water and cleaning the territory outside.

This had prompted social issue like uneasiness, sadness and dissatisfaction, bringing about some of them turning forceful⁴ It may result in the following medical consequences –

- Visual and auditory issues
- Insomnia
- Regular irritation resulting in Aggression
- Suicidal tendencies
- Post-traumatic stress disorder

COMPARATIVE STUDY-

On December 11 Of 2014 Canadian government rejected to take any precaution and alternative major in replacement of solitary confinement. In the death of Ashely Smith it was recommended by a jury to limit to 60 days in a year. These recommendations made by the statements by the Canadian Medical Association, retired Supreme Court justice Louise Arbour, and the UN Special Rapporteur on torture.

Ruler George II of England actualized a type of it as to sentenced killers in a demonstration that was repealed by William IV for its severity. In the early American experiments were utilized solitary confinement almost exclusively, with the notion that criminals should have the solitude moment to realize their wrongs, and to come into closer contact with God. It was quickly seen, however, that the actual results of these segregation were much more negative, leading Alexis de Tocqueville, visited such a prison in 1826, to state: "This experiment ... devours the victims incessantly ; it does not reform, it kills."⁵ Towards 1890, the U.S. Supreme Court had authoritatively witnessed that the extent of mental harm caused by solitary confinement, And, in 1933, Canada had officially limited the use of solitary confinement as a disciplinary practice to three days. in 2003, Japan used this instrument on a 60-day limit on solitary confinement, although conditions during confinement remain much stricter. In Chinese jails, isolation is an acknowledged discipline in any event, for minute misbehaviour, although it is theoretically controlled under law to 15 days.⁶

The United States, meanwhile, has practiced the act of permanent solitary confinement at a max level , to such an extent that an expected 80,000 individuals were in isolation in the US in 2000 which is very enormous in number .Shane Bauer, who went through 26 months in Iran's famous Evin Prison, calls attention to that here and there conditions in American penitentiaries are in reality more awful than those he confronted: he was given an appropriate bedding, a

⁴ Available at: < <https://www.indialegallive.com/top-news-of-the-day/legal-eye-articles/solitary-confinement-out-of-the-hell-hole-47928> >
Accessed on: 26 December 2019.

⁵ Ibid.

⁶ Ibid.

window, and constrained access to a telephone. On the same page.⁷

CONDITION OF THE CELL-

In *Wright v. McMann*⁸, a prisoner in solitary confinement sought injunctive relief. According to the complaint, his unheated cell had only a toilet and sink for daily refreshment which shows the condition a solitary prisoner goes through. During the winter, for periods of thirty-three and twenty-one days he was confined in this cell with no clothing but underwear (and not even that for the first eleven days), given with the unhealthiest meals, and supplied with no beds or soap. The Second Circuit declared that these allegations, if proved, constituted an adequate showing of cruel and unusual punishment and remanded the case for further proceedings. The allegations were later substantiated.⁹

INDIAN LANDMARK CASES WITH REGARDS TO SOLITARY CONFINEMENT –

- *Unni Krishnan & Ors. v. State of Andhra Pradesh & Ors*¹⁰, according to the judgement from Supreme Court —"Right against solitary confinement" is one of the rights that falls under Article 21 (Right to Life) of the Constitution. For this situation, the Apex court pronounces that the privilege against isolation falls under the Right to Life in Article 21 of the Indian Constitution.
- *Sunil Batra v. Delhi Administration*¹¹, Supreme Court obviously clarified that the singular or single cell repression is earlier for the dismissal of the benevolence petitions as like different cases by the President of India, and that was illegal. For this situation the isolation was given under the section 30 of sub class (2). Here the Supreme Court says that the aftereffects of long isolation are grievous to the physical and mental sick wellbeing for the individuals who are exposed to it. For this situation the court pronounces that the isolation is abrogated in UK yet it was as yet predominant in nation like U.S.A. Here they announce there are some act of isolation.
- *T.V.Vatheeswaran V State of Tamil Nadu*¹² . In the case of T.V Vatheeswaran, which the learned Senior Counsel for the candidate and the scholarly Amicus Shri Ram Jethmalani were put, the two-Judge Bench thought about whether

⁷ Ibid.

⁸ 257 F. Supp. 739 (1966)

⁹ CORNELL LAW REVIEW (volume 57) February 1972 (article 7) page 479

¹⁰ 1993 SCC (1) 645.

¹¹ 1980 AIR 1579, 1980 SCR (2) 557

¹² 1983 AIR 361, 1983 SCR (2) 348

the appealing party, who was indicted for the offense of homicide and was condemned to death in January 1975 and was also held in solitary confinement for over 8 years along with the commutation of 869 death sentence.

CONSTITUTIONAL ARGUMENTS AGAINST SOLITARY CONFINEMENT-

1. It violates the basic concept of natural human dignity.
2. It restrains the basic human rights of the people.
3. It causes many severe mental illness and physical pain and suffering.
4. It is of no worth in many of the cases.

ARGUMENTS MADE IN FAVOUR OF SOLITARY CONFINEMENT-

1. It is of high need to prevent some rare cases of suicides.
2. It is an additional measure play a vital role as a protection against other prisoners.
3. To compensate violations against the prison regulations.

PRISONERS' RIGHTS IN U.S. AND SOLITARY CONFINEMENT-

Each have certain basic essential rights that were ensured by the U.S. Constitution. This article clarifies their privileges, including the rights to be liberated from the brutal punishment and different serious punishment. Detainees were given with specific rights somewhat as an ordinary individual when they are inside the jail. These rights are given in the Constitution of India and the Prisons Act, 1894. These rights are given in the Constitution of India and the Prisons Act, 1894. Detainees are the people and they have a few rights and don't lose their privileges presented by the constitution. On account of *State of Andhra Pradesh v Challa Ramkrishna Reddy*¹³, it was held that the detainees are qualified for all his key rights except if his freedom has been unavoidably controlled. The Supreme Court said that a detainee, regardless of whether he is a convict or under-jail doesn't stop to be an individual, he appreciates all his fundamental rights ensured by the Constitution of India including the privilege to life identified under the Constitution. Article 14 of the Constitution of India frames that the State will not deny to any individual with their balance under the equality before law or the equal protection of laws inside the domain of India. Therefore Article 14 ought to be dealt with one of such with its constituents. The article 14 is of most extreme for all residents and reason for the jail authorities to decide the assortment of detainees in the jail. Article 19 of the Constitution of India have vested right around six freedom to each resident of India. Among every one of these freedom certain given opportunities are not permitted to appreciate by the detainees. Universal Journal of Pure and Applied Mathematics Special Issue 871 in light of the idea of these. But the freedom of speech and expression and the freedom to become member of an association. Article 21

¹³ (2000) 5 SCC 711 : AIR (2000) SC 2083

of the Constitution of India Is provided for each and every citizen of India which can't be seized even in proclamation of Emergency. This Article specifies two ideas i.e., right to life and individual liberty. By Article 21 of the Indian Constitution obviously it is accessible for the average citizens as well as to those individuals behind the jail.

CONTRASTING EFFECTS OF SOLITARY CONFINEMENT -

In spite of the specialist 's impacts by the isolation which is typically given as there are numerous mental and dysfunctional behaviour to the detainees, Samantha San in the investigation of Psychological Effects of isolation On Prisoners in 2014 learned about the isolation. This examination contrasts the discipline of isolation and the different sorts detainment of the detainees to discover the medical problems those are specific to isolation. That review was to check whether isolation detainees have dysfunctional behaviour by taking study all around the globe. One of such seat marks investigate was finished by Zinger and Wichmann (2001). Despite the fact that they followed the individuals who are discharged from isolation, there is no huge change in the wellbeing impacts. (Reiter and Koenig 2015). Their wellbeing was acceptable as other basic detainees. This was a finished differentiating research in the matter of strength of isolation. In any case, there was one issue in that the members were given just restricted privacy and not any more complete confidences. The prisoners might be in danger and they were not at most secure side.

ABOLITION OF SOLITARY CONFINEMENT-

A punishment is an agent which were administered to the transgressor to cause them for the acknowledgment of wrong they to have submitted and for entertainment of such social qualities with in them. Those punishments ought to be given in such a manner which should make the individual not to submit any wrong once more. In this way, the discipline ought to be learnable, it ought not make the detainees intellectually and truly lethargic and influence his physical or psychological wellness. Such a large number of individuals who experienced the punishment were mentioning to drop this sort of discipline. So as to cancel this punishment numerous analysts were into their examines against the idea and option of isolation. Brodsky and Scogin likewise called attention to that the social detachment is one of the fundamental drivers for the adverse psychological well-being impacts in single cell containment additionally there are probabilities that the individual will be habituated to such segregation sooner rather than later. Brodsky tested the impacts by taking 69 detainees and requested to finish Isolation Sentence-Completion Test was to learn about the psychological proclamation of the detainees. In the examination he discovered that two – third of the detainees have unforgiving psychological sickness condition, 45% of those were with the tension and 36% of them were outfitted with the incessant misery.

CONCLUSION-

Concerning to the above study and research it's to be concluded that solitary confinement is less of a nature of punishment and more of a torture. Solitude in no way is reformatory the more socialised a person is the more chances of reformation. Bars debar a person from being socialised and hence the criminal tendency raises at a higher scale. Along with the medical deformities a person faces it also violets various rights like- Right to life and personal liberty provided under article 21 and right to equality under article 14 etc. Hence even if the constitution allows for the same it's a major drawback in the criminal justice system. Rewards for good behaviours in terms of reduction of punishment and indulging the prisoners in spiritual knowledge is a positive alternative to solitary confinement. The system of age grouped cells must be constructed to protect them from the higher-grade criminals. Practicing these in the daily routine will must bring positive changes with in the criminal.

