



## LEGAL RIGHTS OF PRISONERS IN INDIA

<sup>1</sup> Sukhwinder Singh, <sup>2</sup> Dr. Arpana Bansal

<sup>1</sup> Research Scholar, Faculty of Law, Guru Kashi University, Talwandi Sabo, <sup>2</sup> Associate professor Faculty of Law, Guru Kashi University, Talwandi Sabo

*Abstract: -Crime is the outcome of a diseased mind and jail must have an environment of Hospital for treatment and care.*

*Mahatma Gandhi*

The Constitution of India at the time of its enactment was with the aim to provide equality to each person. So far as the scope of right to equality for each person is concerned, the principle of equality before the law or equal protection of laws within the territory of India. In this instance, 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>1</sup> The Courts of India i.e. from the Supreme Court to the Lower Court have recognized the basic rights to prisoners. In this instance, the Supreme Court on inhuman conditions held that, “there could be several factors that lead a prisoner to commit a crime but nevertheless a prisoner is required to be treated as a human being entitled to all the basic human rights, human dignity and human sympathy.”<sup>2</sup>

**Key Words:** Criminal prisoner, Civil prisoner, under trial or convicted prisoner, international conventions, and treaties.

### I. INTRODUCTION

The term prisoner means any person who is confined in the prison under the order of competent authority because he has committed an act which is prohibited by law of land. So far as categories of prisoners are concerned, there are following types of prisoners provided under the Prisons Act, 1894:

- i. **Criminal Prisoner:** Section 3 (2),<sup>3</sup> defined ‘Criminal Prisoner’ as 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.
- ii. **Civil Prisoner:** Section 3 (4),<sup>4</sup> means any person who is not Criminal prisoner.

Civil Prisoner	Criminal Prisoner
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<sup>1</sup><https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/05/2023050195.pdf> (Visited on 17.09.2023 at about 08:15 Am).

<sup>2</sup> WP(C) No.406 of 2013.

<sup>3</sup> See The Prisons Act, 1894.

<sup>4</sup> Ibid.

A Civil Prisoner is a prisoner who has been imprisoned for an offence that is not crime.	Criminal prisoner is a prisoner has been imprisoned for committing a crime.
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- iii. **Convicted Criminal Prisoner:** Section 3 (3),<sup>5</sup> means any Criminal prisoner under sentence of a Court or Court-Martial and includes a person detained in prison under the provisions of Chapter-VIII of the Code of Criminal Procedure, 1882 or the Prisoners Act, 1871.
- iv. **Convict prisoners:** The Model Prison Manual 2016 defined convict as “Any prisoner under sentence of a court exercising jurisdiction or court martial and includes a person detained in prison under the provisions of chapter VIII of the Code of Criminal Procedure, 1973.”
- v. **Under-trial prisoners:** The Mode Prison Manual 2016 defined that “the Under-trial prisoner as a person who has committed by to judicial custody pending investigation or trial by a competent authority.”

### RIGHTS OF PRISONERS UNDER INTERNATIONAL LAW

- i. **The International Convent on Civil and Political Rights, 1966**, is the main instrumental treaty on the rights of prisoners. India ratified the Covenant in 1979. The following rights provided to the prisoners under this convention:
  - a. No one shall be cruel, inhuman, or degrading treatment or punishments.
  - b. Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest of detention.
  - c. All persons deprived of their liberty shall be treat with humanity and with respect for the inherent dignity of the human person.
  - d. No one shall be imprisoned merely on the grounds of inability to fulfil a contractual obligation.
- ii. **The Geneva Convention of 1949** is formed for treatment of prisoners of war:
  - a. The Geneva convention in its Part-I covers the rules of management of institutions.
  - b. The rules are applicable to all categories of person including criminal or civil prisoners, untried or convicted prisoners.
  - c. The prisoners which are ordered by Court Justice for corrective measure are also covered in the Part-I.
  - d. Under the Geneva Convention, declares that no discrimination on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, property, birth, or other status.
- iii. In the year 1980, anti-torture campaign led by Amnesty international advocated a set of binding international prohibitions on torture.

<sup>5</sup> Ibid.

- iv. Body of Principles for the protections of all persons under any Form of Detention or imprisonment adopted by the United Nations in the year 1980.
- v. The United Nations further adopted the principles for the treatment of prisoners in 1990.

### **RIGHTS OF PRISONERS UNDER THE PRISONS ACT, 1894**

The prisons Act, 1894 is the first legislation which is regarding prison regulation in India. The provisions of this Act deal with the welfare and protection of prisoners. It is pertinent to mention here that the rights under the Prisons act are provided for both convict and under trial prisoners.

- i. **Right to accommodation for prisoners (Section-4).** The prisoners have the right to be provided accommodation constructed and maintained under the provisions of the Act, 1894. The model prison manual (2016) also mentions that living conditions in every prison shall be compatible with Human dignity in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical facilities etc.
- ii. **Right to shelter and safe custody of excess number of prisoners (Section-7).** If the number of prisoners in any prison is more than required and it is not convenient to transfer the excess number to some other prison, then shelter and safe custody should be provided in prisons to the prisoners. It is also relevant to mention here that if there is any outbreak of epidemic disease within any prison, prisoners should be provided temporary shelter and safe custody.
- iii. **Examination of prisoners by qualified Medical Officer (Section 24 and 26).** **Section 24(2)**, every prisoner shall be examined by the medical officer, and he shall enter in a book, to be kept by the jailer a record of the state of the prisoner's health and wounds or marks on his person and class of labour he is fit for it sentenced to rigorous imprisonment and any observations which the medical officer may think fit. **Section 24(3)**, every female prisoner shall have the right to examined by a lady matron under the special or general orders of Medical Officer. The provisions of (Section-26) imposes obligation upon the medical officer or the Jail authority. **Section 26(2)**, no prisoner shall be removed from one prison to another unless the medical officer certifies the prisoner in free from any illness rendering him unfit for removal. **Section 26(3)**, no prisoner shall be discharge against his will from prison, until in the opinion of the medical officer such discharge is safe.
- iv. **Solitary Confinement (Section-29).** No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison and every prison so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise shall be visited at least once a day by medical officer or medical subordinate.
- v. **Sick prisoners (Section-37).**  
The sick prisoners or who are appearing to be out of health in the mind or body who desire to see the medical subordinate shall without delay, be reported by the officer in immediate charge of such prisoners to the jailer. The jailer shall without delay call the attention of the medical subordinate to any prisoner desiring to see him or who is ill or whose state of mind or body appears to require attention and shall carry into effect all written directions given by the medical officer or medical subordinate respecting alteration of the discipline or treatment of any such prisoner.

**ALL INDIA COMMITTEE ON JAIL REFORMS-MULLA COMMITTEE**

- i. Right to Human Dignity: Right to treated as human being. The Supreme Court of India also in its judgments declared that no person shall be treated as non-persons.
- ii. Right to integrity of body i.e. immunity from use of repression and personal abuse either by custodial staff or by other prisoners.
- iii. Right to integrity of mind i.e. immunity from aggression whether perpetuated by the staff or fellow prisoners.
- iv. The prisoner has also one incidental right while he is in custody that he shall not be deprived from all fundamental rights as provided by the constitution of India.
- v. Right to basic Minimum-Needs: Every prisoner has right to get basic human needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic condition of living accommodations, sanitation and personal hygiene, adequate clothing, bedding and other equipment.
- vi. Right to communication: Right to communication with the outside-world.
- vii. Right to periodic interviews, right to receive information about outside world through communication media.
- viii. Right to access to law: Right to effective access to information and all legal provisions regulating conditions of detention.
- ix. Right to consult or to be defended by legal practitioner of prisoner's choice.
- x. Right to access to agencies, such as state legal aid boards or similar organizations providing legal services.
- xi. Right to be informed about legal right to appeal, revision or review either in respect of conviction or sentence.
- xii. Right to receive all courts documents necessary for preferring an appeal or revision or review of sentence or conviction.
- xiii. Right to effective presentation of individual complaints during confinement in prison to appropriate authorities.

**CONCLUSION**

The supreme Court of India recognized the law despite giving direction to the legislature by amendment inserting them directly to the constitution of India. The Hon'ble Supreme Court laid down important rules for the protection of prisoners' rights by its precedents. There were two aims in this regard one is that the role of courts cannot be ignored and the second is to elaborate the scope of article-21 i.e. right to life. It is every important to mention here that as we have written constitution but there is still violation of law at the time of Release of prisoners by jail authorities when prisoner has been released on bail by the Hon'ble Court on the furnishing of bail bonds in the court. In this instance, it is relevant to mention here that the code of criminal procedure provides the provisions for bail as well as furnishing bail bonds. On furnishing bail bonds in the Court, the confined person shall be released from custody. As per law, the detention of accused after furnishing of bail bonds shall be deemed to be illegal.

**References:**

1. <https://www.legalservicesindia.co>
2. <https://www.un.org>.
3. UDHR, 1948, Article.1
4. ICCPR, 1966, Article.10
5. Standard minimum rules for treatment of prisoners, adopted by Aug.30,1955 Rule 6(1).
6. Prison Laws in India: A socio-legal study by Mudasir A. Bhat

