



# UNSHACKLED RIGHTS: A STUDY OF PRISONER PROTECTIONS AND REFORMS

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## ABSTRACT

This abstract provides an overview of the research on judicial activism in relation to the rights of prisoners, with a focus on a comparative analysis of approaches in different jurisdictions. The study examines the role of the judiciary in interpreting constitutional provisions and statutes, expanding legal protections, and addressing systemic issues within the criminal justice system. Specific attention is given to the Indian context, exploring instances of judicial activism by the Supreme Court and High Courts in safeguarding prisoners' rights. The research delves into the balance between judicial activism and the separation of powers, considering criticisms and debates surrounding this approach. The abstract highlights key themes, including the expansion of constitutional protections, considerations of international human rights standards, and the implications for prison conditions and reforms. This comparative analysis aims to contribute to a nuanced understanding of the dynamics between the judiciary and the rights of prisoners in different legal frameworks.

## INTRODUCTION

*“Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess.”*

- Justice V.R. Krishna Iyer (Sunil Batra

Vs. Delhi Administration., 1978)

A prison, jail or correctional facility is a place in which individuals are physically confined or detained and usually deprived of a range of personal freedom. These institutions are an integral part of the criminal justice system of a country. There are various types of prisons such as those exclusively for adults, children, female, convicted prisoners, under-trial detainees and separate facilities for mentally ill offenders.

Imprisonment or incarceration is a legal punishment that may be imposed by the state for the commission of a crime or disobeying its rule. The objective of imprisonment varies in different countries

and may be:

- a) Punitive and for incapacitation,
- b) Deterrence, and
- c) Rehabilitative and reformative

In general, the primary purpose and justification of imprisonment is to protect society against crime and retribution. In current thinking, punitive methods of treatment of prisoners alone are neither relevant nor desirable to achieve the goal of reformation and rehabilitation of prison inmates. The concept of Correction, Reformation and Rehabilitation has come to the foreground and the prison administration is now expected to function in a curative and correctional manner (Karnataka Prisons 2009). Human rights approaches and human rights legislations have facilitated a change in the approaches of correctional systems, and they have evolved from being reactive to proactively safeguarding prisoners' rights. The United Nations has also provided several standards and guidelines, through minimal rules or basic principles in the treatment of prisoners (United Nations 1977).

*“The said humanistic approach has not barred to the basic necessities of life like the right to live with dignity, right to education, health, labour welfare etc., but it has also underlined the other essential rights to live a dignified human life. The right to life includes the right to justice which includes a fair trial.”* It must be noted that these rights are now recognized by judiciary as part of the basic rights of the prisoners.

### **WHO IS A PRISONER?**

In simple terms, it can be said that 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 he has committed.<sup>2</sup>

The word ‘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 restraint or confinement.<sup>3</sup>

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 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>4</sup> And the term “Civil Prisoner” means any prisoner who is not a criminal prisoner.<sup>5</sup>

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<sup>1</sup> Debarati Halder, “Rights of women prisoners in India: A legal analysis” 28 IJCC 12-13 (2007).

<sup>2</sup> Collins English Dictionary, available at

<https://www.collinsdictionary.com/dictionary/english/prisoner>, (accessed on 16th Nov, 2019).

<sup>3</sup> Human Rights Violation of Prisoners in India, available at <https://blog.ipleaders.in/human-rights/>, (accessed on 16th Nov., 2019).

<sup>4</sup> The Prisons Act, 1894, Section 3(2).

<sup>5</sup> Ibid. Section 3(4).

## CHAPTER-2

### INTERNATIONAL INSTRUMENTS FOR PRISONERS

The provisions relating to the rights and treatment of the prisoners are contained in various International Instruments are:

#### **I. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948(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 states that, “in dignity and rights all human beings are born free and equal.”
- *Article 2* of the UDHR states that, “everyone shall have the right, without dissimilarity of any kind, to all the rights and freedoms provided for in this Declaration, such as race, colour, sex, language, religion, political or another 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, “every person has the right to life, freedom and personal security.” 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 cruel, inhuman or humiliating treatment or punishment.”

#### **II. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966 (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.
- *Article 10* of the ICCPR which is most important Article in respect of treatment of prisoners. It provides that all persons deprived of their liberty shall be treated with humanity and with respect

for the inherent dignity of the human person.<sup>6</sup>

- The distinction must be made between the accused persons and convicted persons. Accused persons must be segregated from convicted persons and must be accorded separate treatment.<sup>7</sup>
- Similar provisions are made for accused juvenile persons. They should be separated from adults and brought as speedily as possible for adjudication.<sup>8</sup>
- The essential aim of the treatment of prisoners should be their reformation and social rehabilitation.<sup>9</sup>

### III. THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS, 1957:

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. The United Nations Standard Minimum Rules for the Treatment of Prisoners contains so many rules regarding the rights and treatment of prisoners and some of them are as follows:

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<sup>6</sup> The International Covenant on Civil and Political Rights, Article 10, paragraph 1.

<sup>7</sup> Ibid. Article 10, paragraph 2(a).

<sup>8</sup> Ibid. Article 10, paragraph 2(b).

<sup>9</sup> Ibid. Article 10, paragraph 3.

- Provisions relating to the accommodation.<sup>10</sup>
- Provisions relating to the clothing and bedding.<sup>11</sup>
- Provisions relating to the food.<sup>12</sup>
- Provisions relating to the exercise and sport.<sup>13</sup>
- Provisions relating to the medical services.<sup>14</sup>
- Provisions relating to the protection of prisoners against double jeopardy.<sup>15</sup>
- Provisions relating to the prohibition of corporal punishment, punishment by placing in the dark cell, and all cruel, inhuman or degrading punishment.<sup>16</sup>
- Provisions relating to the information to and complaints by prisoners.<sup>17</sup>
- Provisions relating to the rights of prisoners to contact with their family and reputable friends.<sup>18</sup>

## **CHAPTER-3**

### **CONSTITUTIONAL STATUS OF PRISONERS IN INDIA**

Mr. Justice *Douglas* reiterated his thesis when he asserted: “*Every prisoner’s liberty is, of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him only*”

*the more substantial. Conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the prison system requires procedural safeguards.*” Mr. Justice Marshall also expressed himself clearly and explicitly in the same terms: *“I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate and I fully support the court’s holding that the interest of inmate.”*<sup>19</sup>

“The prisoners are no longer considered as an object or a slave of the nation, who the law would leave at the prison door and who would be convicted to civil death.”<sup>20</sup> It is progressively been established that a person does not disqualify to be a person just because he did an offence and put behind the bars.

In *Charles Sobraj v. Superintendent, Tihar Jail*,<sup>21</sup> Apex Court made it clear that, “except for the fact that the compulsion to live in a prison requires by its own force the lack of certain rights, like the right to move freely or to practice a profession of one’s choice, a prisoner is otherwise eligible to the basic freedoms guaranteed by the Constitution.” And, *“the convicted persons go to prisons as punishment and not for punishment.”*<sup>22</sup> *Fair procedure is the soul of Article 21, Reasonableness of the restriction is the essence of Article 19 (5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14.* Constitutional *karuna* is thus injected into incarceration strategy to produce prison justice.<sup>23</sup> Earlier, the Supreme Court held that

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<sup>19</sup> The views were observed by Justice Bhagwati in *Francis Corahe Mullin v. The Administrator, UT Delhi*, AIR 1981 SC 746

<sup>20</sup> DR. KURT NEUDEK, *THE UNITED NATIONS IN IMPRISONMENT TODAY AND TOMORROW- INTERNATIONAL PERSPECTIVES ON PRISONERS’ RIGHTS AND PRISON CONDITIONS* EDS., DIRK VAN ZYL SMIT AND FRIEDER DUNKEL; Kluwer Law and Taxation

Publishers, Deventer, Netherlands, (1st ed. 1991).

<sup>21</sup> AIR 1978 SC 1514

<sup>22</sup> JON VAGG, *PRISON SYSTEM- A COMPARATIVE STUDY OF ACCOUNTABILITY IN ENGLAND, FRANCE, GERMANY AND THE NETHERLANDS*, Clarendon Press, Oxford (1st ed. 1994).

<sup>23</sup> *Charles Sobraj v. Supdt Central Jail Tihar*, AIR 1978 SC 1514

conditions of detention cannot be extended to deprivation of fundamental rights.<sup>24</sup> Prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement.

### **RIGHTS OF PRISONERS UNDER INDIAN LEGAL SYSTEM**

## I. THE CONSTITUTION OF INDIA, 1948

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>25</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. Prisoners are entitled to all the constitutional rights unless their liberty has been constitutionally curtailed.

- **Right to equal protection of laws:** *Article 14* of the Constitution of India says that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. Thus Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation.<sup>26</sup>
- **Right to Fundamental Freedoms:** *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>27</sup>
- **Right to life & Personal Liberty:** *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 concepts i.e., right to

<sup>24</sup> State of Maharashtra v Prabhakar Pandurang Sanzgir, AIR 1966 SC 424

<sup>25</sup> AIR 1983 SC 361.

<sup>26</sup> Nitai Roy Chowdhury, Indian Prison Laws and Correction of Prisoners 75 (Deep and Deep Publications, New Delhi, 2002).

<sup>27</sup> *State of Andhra Pradesh v. Challa Ram Krishna Reddy*, AIR 2000 SC 2083.

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>28</sup> The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners' rights to human dignity.<sup>29</sup>

It is significant to note that an under trial or convicted prisoner cannot be subjected to a physical or mental restraint- a) which is not warranted by the punishment awarded by the court, or b) which is in excess of the requirements of prisoners discipline, or c) which constitutes human degradation.<sup>30</sup>

## II. RIGHTS OF PRISONERS UNDER THE PRISONS ACT, 1894

Prisons Act of 1894 is the first legislation regarding prison regulation in India. This Act mainly focus on reformation of prisoners in connection with the rights of prisoners. *In the year of 2016 the Parliament has been passed the Prisons (Amendment) Bill, 2016 to amend the Prisons Act, 1894 with a view to provide protection and welfare of the prisoners in the present context and in tune with the Constitution of India and to create an atmosphere to rehabilitate and socialize prisoners to enable them to re-enter the society.* Following Sections of the Prisons Act, 1894 [including the provisions of the Prisons (Amendment) Act, 2016] are related with the reformation of prisoners:-

- Accommodation and sanitary conditions for prisoners.<sup>31</sup>
- Provisions for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison.<sup>32</sup>
- Provisions relating to the examination of prisoners by qualified Medical Officer.<sup>33</sup>

<sup>28</sup> *Paramanand v. Union of India*, (1989) 4 SCC 286.

<sup>29</sup> Dr. U. Chandra, *Human Rights* 113 (Allahabad Law Agency Publications, Allahabad, 8<sup>th</sup> ed., 2010).<sup>30</sup> P.M. Bakshi, *The Constitution of India* 79 (Universal Law Publishing, New Delhi, 14<sup>th</sup> ed., 2017).<sup>31</sup> The Prisons Act, 1894, Section 4

<sup>32</sup> *Ibid.* Section 7.

<sup>33</sup> *Ibid.* Section 24(2).

- Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners.<sup>34</sup>
- Provisions relating to the prisoner's right to health.<sup>35</sup>
- In case of a pregnant prisoner, her diet and work allocation shall be determined as per medical advice.<sup>36</sup>
- A pregnant prisoner shall be entitled to grant of conditional parole for thirty days from the expected date of delivery or thirty days from the date of delivery if the delivery takes place while she is in prison.<sup>37</sup>
- Provisions relating to the maintenance of hygiene or sanitation in jail premises so the prisoners could maintain their health.<sup>38</sup>
- Provisions relating to the establishment of separate prisons to keep habitual and hardcore offenders separately from the first time offenders and the offenders convicted for lesser crimes.<sup>39</sup>

Provisions relating to the skill training in prisons<sup>40</sup> provided to the prisoners and conduct workshops and seminars<sup>41</sup> on such subjects as would be helpful for rehabilitation of and for educating the prisoners.



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<sup>34</sup> Ibid. Section 27.

<sup>35</sup> Ibid. Section 37 to 39.

<sup>36</sup> Ibid. Section 26A (1) [As inserted by the Prisons (Amendment) Act, 2016].

<sup>37</sup> Ibid. Section 26A (2) [As inserted by the Prisons (Amendment) Act, 2016].

<sup>38</sup> Ibid. Section 39A [As inserted by the Prisons (Amendment) Act, 2016].

<sup>39</sup> Ibid. Section 58A [As inserted by the Prisons (Amendment) Act, 016].

<sup>40</sup> Ibid. Section 58E [As inserted by the Prisons (Amendment) Act, 2016].

<sup>41</sup> Ibid. Section 58F [As inserted by the Prisons (Amendment) Act, 2016].

#### **CHAPTER-4** **JUDICIAL ACTIVISM VIS-À-VIS RIGHTS OF PRISONERS**

Judiciary has an obligation and a constitutional role to protect the rights of citizens of a country. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts.

The Indian judiciary, particularly the Supreme Court, in the recent past, has been very vigilant against violations of the human rights of the prisoners. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. Prisoners' rights have become an important item in the agenda for prison reforms.

In India, the judiciary plays a crucial role in safeguarding the rights of prisoners through constitutional interpretation and legal judgments. The Supreme Court and various High Courts have, at times, engaged in what can be characterized as judicial activism in addressing issues related to the rights of prisoners.

The Indian judiciary has, on several occasions, interpreted the fundamental rights enshrined in the Constitution to provide greater protection to prisoners. For example, the Supreme Court has emphasized the right to life and personal liberty under Article 21 as a broad and expansive right, encompassing various aspects of prisoners' rights.

Through its positive approach and Activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights. The Indian Supreme Court has been active in responding to human right violations in Indian jails and has, in the process, recognized a number of rights of prisoners by interpreting Articles 21, 19, 22, 32, 37 and 39A of the Constitution in a positive and humane way.

Given the Supreme Courts' overarching authority, these newly recognized rights are also binding on the State under Article 141 of the Constitution of India which provides that the Law declared by the Supreme Court shall be binding on all courts within the territory of India. By giving a liberal and



comprehensive meaning to “life and personal liberty,” the courts have formulated and have established plethora of rights.

- **Right to live with dignity:** The Supreme Court in the case of *People’s Union of Democratic Rights v. Union of India*<sup>42</sup>, 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<sup>43</sup> 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. Again in the case of *State of Andhra Pradesh v. Challa Ram Krishna Reddy*<sup>44</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 detenu continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution.
- **Right to Speedy Trial:** The provision of speedy trial of accused is on the primary motive of the criminal justice system. In *A.R. Antulay vs. R.S. Nayak*<sup>45</sup>, the Supreme Court has laid down following propositions which will go a long way to protect the Human Rights of the prisoners. In the instant case the Apex Court held that the right to speedy trial flowing from Article 21 of the Constitution is available to accused at all stages like investigation, inquiry, trial, appeal, revision and retrial. It is relevant to mention that if there was a delay in, directly constitute a denial of justice which is said to be “justice delayed is justice denied”

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<sup>42</sup> AIR 1982 SC 1473.

<sup>43</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, and followed in *Francis Coralie v. Delhi Administration*, AIR 1981 SC 746

<sup>44</sup> AIR 2000 SC 2083.

<sup>45</sup> (1992) 1 SCC 225

- **Right to free legal aid:** Regarding the right of free legal aid, *Justice Krishna Iyer* declared that “this is the State’s duty and not Government’s charity”<sup>46</sup>. If a prisoner is unable to

exercise his constitutional and statutory right of appeal including Special Leave to Appeal for want of legal assistance, the court will grant such right to him under Article 142, read with Articles 21 and 39A of the Constitution. The power to assign counsel to the prisoner provided that he does not object to the lawyer named by the court.<sup>47</sup>

- **Protection against instruments of restraint:** Instruments of restraint, such as handcuffs, chains, irons and straitjacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. In *Sunil Batra v. Delhi Administration*,<sup>48</sup> the Supreme Court has also reacted strongly against putting bar fetters to the prisoners. 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. The court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of the Constitution of India. In *Prem Shanker vs. Delhi Administration*,<sup>49</sup> the Supreme Court added yet another projectile in its armoury to be used against the war for prison reform and prisoner's rights. In the instant case the question raised was whether hand-cuffing is constitutionally valid or not? The Supreme Court discussed in depth the hand cuffing jurisprudence and banned the routine hand cuffing of a prisoners as a Constitutional mandate. The court opined that "hand cuffing is prima-facie inhuman and, therefore,

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<sup>46</sup> *MH Hoskot v. State of Maharashtra*, (1978) 3 SCC 544 : AIR 1978 SC 1548 ;

<sup>47</sup> *Suk Das v Union Territory of Arunachal Pradesh*, (1986) 25 SCC 401

<sup>48</sup> AIR 1978 SC 1675.

<sup>49</sup> AIR 1980 SC 1535.

unreasonable, is over harsh and at the first flush, arbitrary and repugnant to Article 21 of the Constitution”.

- **Rights against Solitary Confinement: In *Sunil Batra v. Delhi Administration*,**<sup>50</sup> The Supreme Court considered the validity of solitary confinement and held that imposition of solitary confinement is highly degrading and dehumanizing effect on the prisoners. The courts have taken the view that it could be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from the other prisoners.
- **Rights against Inhuman Treatment of Prisoners:** Human Rights are part and parcel of Human Dignity. The Supreme Court of India in various cases<sup>51</sup> has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners and persons in police lock-up. The Supreme Court read the right against torture into Articles 14 and 19 of the Constitution. The court observed that “the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14”. The life of an offender cannot be jeopardized by indulging in illegal physical torture by the jail authorities, it would definitely amount to violation of Article 21 of the Constitution.<sup>52</sup>
- **Right to meet friends / relatives and consult lawyers:** Prisoners’ rights have not only been recognized to protect them from physical distress or torture in person but to save them from mental abuse as well. The right to life and personal freedom protected in Article 21 cannot be limited to the simple existence of animals. It means more than simply physical existence. In *Dharmbir v. State of U.P.*, “the court ordered the state government to permit family members to visit the prisoners and, under guarded conditions, to visit their families for the prisoners at least once a year.”<sup>53</sup>  
In *Jogindar Kumar v. State of U.P.*, “the court held that the human rights horizon is expanding and, at the same time, the crime rate is also increasing and that the

<sup>50</sup> AIR 1978 SC 1675.

<sup>51</sup> Hussainara Khatoon vs. Home Secretary, State of Bihar – AIR 1979 SC 1369; DBM Patnaik v State of Andhra Pradesh, AIR 1974 SC 2092

<sup>52</sup> *Sheela Basre v. State of Maharashtra*, AIR 1983 SC 378

<sup>53</sup> (1979) 3 S.C.C. 645.

court received complaints about human rights violations due to indiscriminate arrests. The court observed that someone is entitled to be informed.”<sup>54</sup> The Hon’ble Supreme Court held that, the word personal liberty in Article 21 is of the widest amplitude and it includes the **Right to socialize** with members of family and friends, subject of course, to any valid Prison

Regulations which must be reasonable and non-arbitrary.<sup>55</sup>

- **Right against self-incrimination:** In *Selvi Vs State of Karnataka*,<sup>56</sup> the Supreme Court has declared Narcoanalysis, Polygraph test and Brain Mapping unconstitutional and violative of human rights. But the apex court further said that a person can only be subjected to such tests when he/she assents to them. The result of tests will not be admissible as evidence in the court but can only be used for furtherance of investigation. With advancement in technology coupled with neurology, Narcoanalysis, Polygraph test and Brain mapping emerged as favourite tools of investigation agencies around the world for eliciting truth from the accused. But eventually they were labelled as atrocity to human mind and breach of right to privacy of an individual. The Supreme Court accepted that the tests in question are violative of Article 20 (3), which lays down that a person cannot be forced to give evidence against himself.
- **Right to be released on due date:** No doubt, it is absolute right; all the prisoners shall be released from prison on the completion of their sentence. It is the duty of the prison staff to notify the releasing date of every prisoner in the register to be maintained by Jailer. If, any formality is needed to be done for releasing purpose, should be completed before the releasing date.
- **Right to compensation for wrongful arrest, detention and torture:** The Supreme Court granted interim relief amounting to Rs. 35,000 to petitioner and also right to file regular suit in the ordinary court to recover damages from the State and its erring officials for taking away his precious 14 years of independent life which could never come back. The court has directed the subordinate court to hear the case on merit basis.<sup>57</sup>

<sup>54</sup> A.I.R. 1994 S.C. 1349.

<sup>55</sup> *Francis Coralie v. Delhi Administration*, AIR 1981 SC 746

<sup>56</sup> (2010) 7 S.C.C. 263.

<sup>57</sup> *Rudul Shah v. State of Bihar*, AIR 1983 SC 1086 . (1983) 4 SCC 141

- **Right to education:** In *Mohammad Giasuddin v State of AP*,<sup>58</sup> The Hon'ble Supreme Court directed the State Government to see within the framework of the Jail Rules, that the appellant is assigned work not of a monotonous, mechanical, intellectual or like type mixed a title manual labour..." and said that the facilities of liaison through correspondence course should be extended to inmates who are desirous of taking up advanced studies. The prisoners who are well educated should be engaged in some mental-cum-manual productive work.
- **Right to reasonable wages for work:** In *State of Gujarat v Hon'ble High Court of Gujarat*,<sup>59</sup> The Hon'ble Supreme Court held that no prisoner can be asked to do labour without wages. It is not only the legal right of a workman to have wages for the work but it

is a social imperative and an ethical compulsion. Like any other workman a prisoner is also entitled to wages for his work. It is imperative that the prisoners should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations.

- **Right to interaction with society and Right to be interviewed :** The Supreme Court held that lawyers nominated by the District Magistrate, Session Judge, High Court and the Supreme Court will be given all facilities to interview, right to confidential communications with prisoners, subject to discipline and security considerations. Lawyers shall make periodical visits and report to the concerned court, results of their visits. Again, while showing importance of the right to free speech and expression relates to the press, the Hon'ble Supreme Court held that denial of permission to press for an interview of prisoner is a violation of press rights.<sup>60</sup>

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<sup>58</sup> AIR 1977 SC 1926

<sup>59</sup> AIR 1998 SC 3164

<sup>60</sup> *Prabha Dutta v. Union of India*, AIR 1982 SC 6

## **CHAPTER-6** **CONCLUSION**

It has been observed that a Convict (prisoner) is a person who is deprived of liberty against his or her will. This can be by confinement, capture, or by forcefully restraint, but he does not infringe his human rights as well as the rights being in the prison. They also have offered all the rights which an individual of the society has offered but with some reasonable restrictions. Being a prisoner that doesn't mean they are eligible to demand fundamental rights. Even if he is confined in prison, he can enjoy all his basic rights. The prisoners still have all their constitutional rights when they are convicted of a crime and deprived of their freedom in accordance with the procedure laid down by law.

The Apex Court has taken corrective measures and provides the executive and the legislature with essential guidelines. It is clear from the inspection of the above contribution that the Indian judiciary was very sensitive and keen to protect the human rights of the people.

However, the motive remains same that the police authorities and the prison authorities need to be trained and accommodated so that they take prisoner's rights seriously.