

# Indispensable Rights of Prisoners in the Modern Era

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**Abstract:** Human rights are those rights which are conferred upon an individual since his inception on this earth. These rights are inalienable and are available to every human being. It does not matter whether such human being is a male or female, old man or young boy, or a free-man or a prisoner. The state is under an obligation for protecting the human rights of its citizens as well as to protect the society at large, and is authorized to do so. A prison or jail is a place in which individuals are physically confined or detained and usually deprived of his personal freedom. Such an individual is called prisoner or detainee. Imprisonment is a legal punishment that may be imposed by the state for the commission of crime and disobeying its rule. Prisoners, however, are not by mere reason of conviction curtailed of their human rights. They are also human beings. Hence all such rights except those are taken away in the legitimate process of arrest still remain with him. In India, the idea of rights of prisoners was long suppressed under the colonial rule. The constitution of India, however, confers a number of fundamental rights upon citizens. India is also a signatory to various international instruments of Human Rights like UDHR, ICCPR etc. All these instruments specifically deal with various human rights of prisoners. The Indian freedom struggle played a crucial role in initiating the process of identifying certain rights of the prisoners. Article 21 of the Indian constitution also guarantees the rights of personal liberty. The Indian Supreme Court has also been active in responding to human rights violations in Indian jails and has, in the process, recognized a number of rights of prisoners by interpreting Articles 21, 19, 22, 32 etc. The Code of Criminal Procedure (CrPC) also guarantees certain rights to prisoners. In the due course of this paper, we will discuss about various human rights of prisoners at local as well as international level and role of judiciary in their protection.

**Keywords:** Human Rights, Prisoner, Constitution, Judiciary, Udhhr, Iccpr, Supreme Court.

## 1. Introduction

In India, the rights of prisoners was ignored & suppressed under the British rule. However, the constitution of India, vests a number of fundamental rights upon its citizens. India is also a signatory to various international instruments of Human Rights like UDHR, ICCPR etc. All these instruments specifically deal with various human rights of prisoners. The Indian Supreme Court has also been active in responding to human rights violations in Indian jails. But, to understand the concept of Human rights of prisoners, first it is important to know what Human Right is.

### Human Rights

Human rights are those rights which are conferred upon an individual since his inception on this earth. These are moral principles or norms that describe certain standards of human behaviour, and are regularly protected as legal rights in national and international law. They are applicable everywhere and at every time in the sense of being universal, and they are egalitarian in the sense of being the same for everyone. The doctrine of human rights has been highly influential within international law, global and regional institutions. Many of the basic

ideas that animated the human rights movement developed after the Second World War and the atrocities of The Holocaust culminating in the adoption of the Universal Declaration of Human Rights in Paris by the United Nations General Assembly in 1948.

**“All human beings are born free and equal in dignity and rights.”**

Ancient peoples did not have the same modern day conception of universal human rights. The true forerunner of human rights discourse was the concept of natural rights which appeared as part of the medieval natural law tradition that became prominent during the period of great philosophers like Hobbes, Locke, and Rousseau etc. From this foundation, the modern human rights arguments emerged over the latter half of the 20<sup>th</sup> century.

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

### **Characteristics of Human Rights**

1. The human rights universal in nature which mean it *exists everywhere*.
2. The human rights is inalienable as it cannot *be taken away from an individual*.
3. The human rights are *interdependent on each other*
4. The human rights are *indivisible in nature*.
5. The human rights are *equal and non- discriminatory in nature*.
6. The human rights can be depicted as *both rights and obligations* depending upon the circumstances.

### **Sources of Human Rights**

There are various sources of human rights as discussed under-

1. United Nation Charter
2. Universal Declaration of Human Rights (**UDHR**).
3. International Covenant on Civil and Political Right (**ICCPR**).
4. International Covenant on Economic, Social and Cultural Rights (**ICESCR**).
5. Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**).
6. Convention on the Elimination of All Forms of Racial Discrimination (**CERD**).
7. Convention on the Rights of the Persons with Disabilities (**CRPD**).
8. Convention on the Rights of the Child (**CRC**).
9. United Nations Convention against Torture (**CAT**).
10. This paper will specifically deal with Human rights of prisoners and Role of Judiciary in their protection.

### **Human Rights Of Prisoners**

1. A prison or jail is a place in which individuals are physically confined or detained and usually deprived of his personal freedom. Such an individual is called prisoner or detainee. These institutions are an integral part of the criminal justice system of a country. There institutions are an integral part of the criminal justice 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

2. Sunil Batra v. Delhi Administration

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

4. The objective of imprisonment varies in different countries and may be punitive, deterrent, reformatory etc. The primary purpose and justification of imprisonment is to protect society against crime and retribution. In current thinking, the punitive methods of treatment of prisoners alone are neither relevant nor desirable to achieve the goal of reformation and rehabilitation of prison inmates.

5. 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. Human Rights approaches and

human rights legislations have provided a change in the approaches of correctional systems, and they have evolved from being reactive to proactively safeguarding prisoners' rights.

### **Human Rights Of Prisoners In The International Sphere**

Prisoners' rights in international law are found in a number of international treaties. The events of World War I and World War II had a profound effect on international Law due to widespread denial of civil rights and liberties on the basis of racial, religious and political discrimination. The systematic use of violence, including murder and ultimately genocide, the use of slave labour, abuse and murder of prisoners of war, deportations etc.

*International documents, which have articulated the prisoners' rights are given below in the list:*

- International Conventions/Regulations on Prisoners' Human Rights;
- Standard minimum rules for The Treatment of Prisoners
- Convention against Torture (**UNCAT, 1984**).
- Body of the Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (**Principles of Detention, 1988**).
- Basic Principles for the Treatment of Prisoners (**UNPTP, 1990**).
- United Nations Standard Minimum Rules for Non-Custodial Measures (**The Tokyo Rules, 1990**).
- Declaration on the Protection of all Persons from Enforced Disappearance, General Assembly Resolution 47/133 (**UNDPPED, 1992**).
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (**The Beijing Rules, 1985**).
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (**UNVCAP, 1985**).

Over the proceeding decades, large scale changes began to occur in all areas of international law, and prisoners' rights were no exception. Now, there are numerous international instruments which lay down rules by which prisoners should be dealt with as we have shown in the above list.

Foremost amongst them are as follows:

### **Third Geneva Convention.**

The Third Geneva Convention defines humanitarian protections for prisoners of war. Prisoners of war may not renounce rights secured by the conventions.

Those rights include the rights to:

1. Humane treatment which prohibits specifically violence causing death or seriously endangering health, or physical mutilation or scientific or medical experiments;
2. Protection from acts of intimidation, insults and public curiosity;
3. Protection from reprisals;
4. Exercise, protection from physical and mental torture;
5. Adequate physical and psychological treatment;
6. To keep personal items including money;
7. To be evacuated if the territory in which they are held becomes too dangerous;
8. To adequate food, water, shelter and clothing;
9. Sanitary living conditions;
10. Religious freedom; and
11. To complain

### **International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights came into force 23 March 1976. Article 10 of this covenant provides that any person deprived of their liberty shall be treated with humanity and dignity. The article imposes a requirement of prisoner of prisoners in pre- trial detention from those already convicted of crimes, as well as specific obligation to separate accused juvenile prisoners from adults and bring them before

trial speedily. There is also a requirement that the focus of prisons should be reform and rehabilitation, not punishment.

### **Un Standard Minimum Rules for the Treatment of Prisoners**

The UN Standard Minimum Rules for the Treatment of Prisoners came into force in 1955. The standards set out by the UN are not legally binding but offer guidelines in international and municipal law with respect to any person to any person in any form of custody. They are generally regarded as being good principle and practice for the management of custodial facilities.

The document sets out standards for those in custody which covers:

1. Registration;
2. Personal hygiene;
3. Clothing and bedding;
4. Food; etc.

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.

### **Preliminary Observations**

1.The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2.In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

3.On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

4. (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.

(2)Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

5. (1)the rules do not seek to regulate the management of institutions set aside for young people such as Borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.

(2)The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

### **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force on 1 March 2002. The Convention establishes The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Committee is permitted to visit all places of detention, defined by the convention as “any place within its jurisdiction where persons are deprived of their liberty by a public authority”.

### **Convention on the Rights of Persons with Disabilities**

Convention on the Rights of Persons with Disabilities entered into force on 30 March 2007 and has 82 signatories. The Convention’s purpose is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Article 13 of the convention relates to access to justice for persons with disability. It provides that in order to “ensure effective access to justice for persons with disabilities.

### **Human Rights of Prisoners in India**

The Indian freedom struggle played a crucial role in initiating the process of identifying certain rights for the prisoners. After independence, the constitution of India conferred a number of fundamental rights upon citizens.

Article 21- Protection of Life and Personal Liberty; “No person shall be deprived of his life or personal liberty except according to procedure established by law”. 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 maintain human dignity.

### **Maneka Gandhi v. Union of India**

The Apex Court opened up a new dimension and lay down that the procedure cannot be arbitrary, unfair or unreasonable. *Article 21* imposed a restriction upon the state where it prescribed a procedure for depriving a person of his life or personal liberty.

### **Francis Coralie Mullin v. The Administrator**

It was upheld that “**Article 21** requires that no one shall be deprived of his life or personal liberty except procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful”. Any violation of this right attracts the provisions of Article 14 of the Constitution, which enshrines right to equality and equal protection of law. In addition to this, the question of cruelty to prisoners is also dealt with, specifically by the Prison Act, 1894 and the Criminal Procedure Code (CrPC). The Indian Judiciary, particularly the Supreme Court, in the recent past, has been very diligent against violations of the human rights of prisoners.

### **Rights of Arrested Persons under CrP**

- 1- **Section 50 (1) of Cr. P.C:** Right to be informed of ground of arrest.
- 2- **Section 50 A of Cr. P.C.:** Obligation of person making arrest to inform about the arrest etc. to a nominated person.
- 3- **Section 50 (2) of Cr. P.C.:** Right to be informed of right to bail.
- 4- **Section 56 of Cr. P.C.:** Right to be produced before the Magistrate without delay.
- 5- **Section 76 of Cr. P.C :** Right of not being detained for more than twenty-four hours.
- 6- **Section 57 of Cr. P.C.:** Right of not being detained for more than twenty-four hours without judicial scrutiny.

### **Gurmit Kaur v. State of Punjab**

Where an application for bail under proviso **to Section 167(2)** Cr.P.C. is presented by police, the accused is entitled to be released on bail under the proviso to Section 167(2) (if stipulated period under that section was over at the time of making of such application for bail).

### **Role Played By the Judiciary**

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, 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 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 the courts within the territory of India.

Following are the reasons cited in various case laws for which prisoners' rights were recognized and upheld by the Indian Judiciary:-

#### **Sunil Batra v. Delhi Administration**

a) It was held by Justice V.R. Krishna Iyer that "Convicts are not by mere reason of conviction denuded of all the fundamental rights which they otherwise possess".

#### **Charles Shobraj v. Superintendent**

b) Like you and me, prisoners are also human beings. Hence all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner

c) If a person commits any crime, it does not mean that by committing a crime, he/she ceases to be a human being and that he/she can be deprived of those aspects of life which constitutes human dignity.

#### **John Vagg book**

d) The convicted persons go to prisons *as* punishment and not *for* punishment. Prison sentence has to be carried out as per the court's orders and no additional punishment can be inflicted by the prison authorities without sanction.

e) Prisoners depend on prison authorities for almost all of their day to day needs, and the state possesses control over their life and liberty, the mechanism of rights springs up to prevent the authorities from abusing their power.

f) Imprisonment as punishment is now rethought of as "rehabilitative" punishment.

#### **NHRC guidelines**

g) Disturbing conditions of the prison and violation of the basic human rights such as custodial deaths, physical violence/torture, police excess, degrading treatment, custodial rape, poor quality of food, lack of water supply, poor health system support, not producing the prisoners to the court, unjustified prolonged incarceration, forced labour and other problems observed by the apex court have led to judicial activism.

h) Overcrowded prisons, prolonged detention of under trial prisoners, unsatisfactory living condition and allegations of indifferent and even inhuman behaviour by prison staff has repeatedly attracted the attention of critics over the years.

#### **Sunil Batra v. Delhi Administration**

A land mark judgment by Justice V.R. Krishna Iyer enumerated basic human rights of the prisoners. The judgment held that: "No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of the court.

#### **Rudal Shah v. State of Bihar**

Another land mark judgment pronounce by the judiciary is the right to compensation in cases of illegal deprivation of personal liberty. *The Rudal Shah case is an instance of breakthrough in Human Rights Jurisprudence.*

### **Certain Rights Of Prisoners In India Recoignized By Judiciary**

1. Right to be lodged appropriately based on Proper Classification.
2. Special Right of young prisoners to be segregated from adult prisoners.
3. Right to healthy environment.
4. Right to bail.
5. Right to speedy trial.
6. Right to free legal services.
7. Right to basic needs such as food, water and shelter
8. Right to have interviews with one's Lawyer.
9. Right against being detained for more than the period of sentence imposed by the court.
10. Right to protection against being forced into sexual activities.
11. Right against arbitrary use of handcuffs and fetters.
12. Right against torture, cruel and degrading punishment. .
13. Right against arbitrary prison punishment.
14. Right to air grievances and to effective remedy.
15. Right to be compensated for violation of human rights.
16. Right to visits and access by family members of prisoners.
17. Right to rehabilitation and reformative programmers.
18. Right in the context of employment of prisoners and to prison wages.
19. Right to information about prison rules.
20. Right to emergency and reasonable health care.

### **D.K. BASU v. State of West Bengal**

The Supreme Court while disposing of a public interest litigation considered the important issue of police atrocities and custodial violence in detail. A.S. Anand, J. (as he then was) while speaking for the Court observed:

"Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise."

### **The Court suggested two possible safeguards to check the abuse of police power-**

1. Transparency of action
2. Accountability.

### **The Supreme Court has laid down specific guidelines required to be followed while making arrests.**

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations
2. That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aids Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person.
7. The arrestee should, where he so request, be also examines at the time of his arrest and major and minor injuries.
8. The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctor appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

### Suggestions

In order to prevent the prisoners from arbitrariness of the police authorities, following measures are suggested:

1. There must be a **check on the police authorities**.
2. The prisoners must make **aware of their rights**.
3. **Human Right Commission** has to play its role more actively and stringently.
4. **Stringent laws** should be framed against the authorities in the case of custodial death.
5. The **health of the prisoners** should be first preference.
6. **Rehabilitative measures** should be taken rather than punitive measures.
7. **Need of strong enforcement machinery** to implement various national and international instruments.
8. Also, there is need to **avoid unnecessary remand time** by the police authorities.
9. The prisoners must be given **fair and reasonable treatment**.
10. It is also necessary to **know** about the **background of prisoner**
11. It is also necessary to **find out the reasons** and circumstances of his criminal act.
12. Mere conviction does not take away the right of prisoner to be a human being. Thus, it is the **duty of every individual not to attack on dignity of an individual**.

### 2. Conclusion

Arrest has far reaching consequences; the social status and dignity of an individual suspect becomes at stake, even his discharge cannot blot out the stigma consequent upon arrest. There are financial implications for the arrested person and his family. Naturally, it needs to be ensured that arrests are not affected in a frivolous manner and that the rights of arrested persons are fully guaranteed towards this effect, The Cr.P.C. lays down safeguards such that the rights of persons enshrined in Art. 21 and 22(1) are not violated. However, it has been some time before the statutory provisions have been understood in all its implication and they have been given effect too. The endeavor is to look into various rights of arrested persons, enshrined in statutes, conventions and judicial pronouncements.

Beside this, pointing out the other side, i.e., victims, they have either less rights or they do not have one. Our socialist, Court and even Cr.P.C. talks about the rights of arrested person, but there are no such provisions to safeguard the interest of the victim. They are ignored fully or partially, later they become the news of the media channels nowadays. Earlier or today itself, remedies are available to the accused and not to who against the crime is committed. There are some people who suffer because they are falsely implicated into a case, but there are also those people who are benefitted with these provisions. Hence, it can be concluded that, the police while investigating the case should be so particular e that the victim should not suffer. It is the duty of the Court of Law that it should not violates the right of liberty of any innocent person and at the same time also not infringe the rights of victims. The punitive measure is not only remedy for the prisoners. Authorities can be resorted to the rehabilitative and reformative measures. The movie “*Do AankheBarah Hath*” is based on real story and is a perfect example, how the prisoners can be reformed.

**“Mere Conviction Does Not Cease A Prisoner To Be A Human Being”.**

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