

PRISONERS RIGHTS IN INDIA

Smt. Rashmi.A.H
Asst.Prof in law
Vidyodaya Law College
Tumkuru

Introduction

The objective principal of international human rights bills is to protect the basic rights of individual who is the member of human society. The human rights are core important rights of everyone for dignified life. A positive society is from protected rights of human beings. According to D.D. Basu “Human rights are those minimal rights, which every individual must have against the State or other public authority by virtue of his being a member of human family irrespective of any consideration”. The Universal Declaration of human declaration of 1948 proclaimed the human rights as right which will deceive the status and dignity of individual, irrespective criteria.

Society is composed by distinctive persons who also included the condemned group the Prisoners. A prisoner is a person who entitled to enjoy certain basic rights as inmates. In pre independence India it was not possible to think about even the rights of under trail prisoners, when there was no rights to citizens. But developments in the international level after the establishment of UNO and adoption of Indian constitution prisoner’s right draw the attention of lawmakers along with the fundamental rights.

Article 7 of International covenant on civil and political rights and the convention against torture and other cruel, Inhuman or degrading treatment or punishment prohibits the inhuman treatment of prisoners. The guidelines of “United Nations Standard Minimum Rules for the Treatment of Prisoners” adopted by the U.N. Economic and Social Council in 1957. The “Beijing Rules” which elucidate the administration of juvenile administration and such other instrument on prisoner’s right adopted by the international community binds state parties towards reforming of prisoner. The ultimate aim of these entire instruments is to ensure the minimum rights of prisoner, requiring the reforming dignified life. The SC asserted that the mere detention does not deprive the convicts of all the fundamental rights enshrined in our constitution¹.

Who is the Prisoner?

It is very important to know the meaning of prisoner before analysing the rights of them.

The **Cambridge American English Dictionary** define that “a prisoner who kept in prison as punishment and A prisoner is also someone who is under the control of someone else and not physically free”.

¹ D.B.M.Patnaik v. State of Andhra Pradesh AIR 1974 (SC 2092)

Merriam English Dictionary:-“A prisoner is a person deprived of liberty and kept under involuntary restraint, confinement or custody”.

Section 1 of Prisoner Security Act of 1992 define that “Prisoner is a person for the time being in a prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody”.

Crime is sign of a diseased mind and imprisonment aims to treat a prisoner diseased mind and making him fit to go into society after release to lead an honest life. Prisoner is a person who is deprived of liberty against his or her will, under the order of a competent authority for reformation. The social transformation changes the object of prisonisation from subjecting prisoner to maximum torture, to reform them and started treat them as victims of social evils. The cardinal principal of modern penology expects the classification of prisoner according to their sex, age and gravity of offence.

Prisoners and their administration is governed by the Prisons Act of 1894 and Prisoners Act of 1900 are the Government of India act but now it is a subject of state under item 4 of state list of 7th schedule of Indian constitution. In Karnataka it is governed by the Karnataka prisoners Act .1963 and Karnataka Prisons Act, 1963. The ultimate aim of all these legislations is that protect the rights of prisoners and reform them, instead of treating them as condemned and hated group, recognise them as the psychological victims of social evils. A crime does not reduce person in to the non person, the prisoners are entitled to enjoy certain basic human rights as inmates in bars provided by constitution and enactments. The Supreme Court of India held that prisoner is a human being, a natural person and also a legal person. Conviction does not reduce him or her into a non person, whose rights are subject to the whim of the prison administration and therefore, the imposition of any major punishment within the bars administration is upon the absence of procedural safeguards.²

I. Convicted prisoners rights:-

Section 3(3) of The Prisons Act,1894 define a “convicted prisoner” means any criminal prisoner under sentence of a court or Court marital, and includes a person detained in prison under the provisions of Chapter 8th of Code of Criminal procedure ,1882 or under the prisoners Act,1871.

II. Under trail prisoner:-

Under trail prisoners are those persons who are facing trails in the competent courts. Technically they are deemed to be under judicial custody but they are kept in the common prison in India.

III. Civil prisoner:-

A prisoner who is not a criminal prisoner is civil prisoner. The civil prisoners are those who are arrested and detained in civil jail unless the prisoner pays the decretal amount to the decree holder. The civil prisoner is arrest and detained under the Code of Civil Procedure, 1908.

² .Sunil Batra v. Delhi Administration, AIR 1978 SC 1675

IV. Women prisoner:-

Women prisoners shall be rigidly secluded from men prisoners and they are kept in separate prison meant for women.

V. Lunatic prisoner:-

A prisoner who has become insane after conviction for whose detention in or removal to a prison or other place of safe custody (asylum), an order has been under the Code of Criminal procedure 1973 or section 30 of The Prisoners Act 1900.

VI. Prisoners under special enactments:-

The prisoner who are detained and imprisoned under preventive detention laws in India for security of society and the nation.

Prisoner's rights under Indian Laws:

The Constitution of India under part III provides Fundamental rights to citizens of India, including the prisoners with an auspicious object of human rights principles. It is the duty of government to act as protector and guard of fundamental rights.

Article 14 which enshrine the principal of equality against the arbitrariness. The terms 'equality before law' and 'equal protection of law' protects prisoners from arbitrary hands of uncivilized authority in obtaining basic necessities for their reforming life as inmates. Subjected to the restrictions under procedure established by law, prisoners are entitled to certain basic rights.

Article 15(3) empowers the state to make special provision for women and children. This is the protective discrimination with an object to take special care of the women and children. Article 15(3) women prisoners are administered by special rules in separate prison as inmates. Children who committed crime should be treated as juvenile and state should provide asylum along with basic necessities like food, cloth shelter health care, and education in juvenile home.

Out of six freedoms under article 19(1) the freedom of speech and expression(Article 19(1)(a)) and freedom of an association(Article 19(1)(c)) are available to prisoner through which a prisoner has right to information, express his opinion any prescribed method and to become a member of an association.

Article 20 provides for protection in respect of conviction of offences. It lays down certain safeguards to the person accused of crimes, specially the following safe guards meant for under trial prisoners.

- a. **Ex post facto law:** No prisoner shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence.
- b. **Double jeopardy:** It prevents prisoner or accused from being tried again on the same charges and on the same facts.

- c. **Right against self incrimination:** No under trail prisoner or accused of any offence shall be compelled to be a witness against himself.

Article 21 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 life and principle of liberty. The right to life does not mean only for physical existence but it is beyond that towards dignified life³. The principle of liberty is subjected to prison rules available to a prisoner. It is clear that certain following implicit rights under article 21 available people behind the prison:-

- ✓ Right to speedy trial⁴
- ✓ Right to free legal aid⁵
- ✓ Right to fair trial⁶
- ✓ Right against torture, cruel and unusual punishment⁷
- ✓ Right against custodial violence and death⁸
- ✓ Right of protective homes to inmates⁹
- ✓ Rights against solitary confinement, handcuffing¹⁰
- ✓ Right to meet his or her family members, friends and lawyer¹¹
- ✓ Right to reasonable wages in prison¹²

The Article 22 lays down certain procedural safeguards to arrested person. Clause (1) and (2) available to a person detained under common law as following:

- The detenu can not be in custody without being informed as soon as may be, of the grounds of his arrest.
- He should have given an opportunity to consult and be represented by a lawyer of his own choice.
- Arrested person has the right to be produced before the nearest Magistrate within 24 hours of his arrest.

The under trail prisoner is entitled enforce these rights as inmates.

Clause (4) to (7) of article 22 applicable to a detenu detained under preventive detention laws:-

- The detention of a person shall be reviewed by an Advisory Board
- Grounds of detention and representation opportunity should be ensure
- Procedure of Advisory Board regarding extension of custody.

³ Jeeja Ghosh v. Union of India, (2016) 7 SCC 761. And Maneka Gandhi v. Union of India

⁴ Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81.

⁵ M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544.

⁶ Rattiram v. State of M.P., (2012) 4 SCC 516

⁷ Jagmohan Singh v. State of U.P., AIR 1973 SC 947

⁸ D.K. Basu v. State of W.B., (1997) 1 SCC 416. and Nilbati behra v. state of Orissa

⁹ Upendra Baxi v. State of U.P., (1983) 2 SCC 308.

¹⁰ Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535. And Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

¹¹ Francis Coralie Mullin vs Delhi Administration 1981 AIR 746, 1981 SCR (2) 516

¹² Gurudev singh v. Himachal Pradesh

Article 25 which guarantee the religious right with an secular object is also accessible to inmates in prison with in walls. As like the persons out of walls the prisoners are equally entitled to freedom of conscience and to profess, practice and propagate religion provided to prison rules.

The heart and soul of our constitution i.e. right to constitutional remedies under article 32 is a part of prisoners' right. Prisoners are also persons and where the rights of a prisoner under the constitution or under other law are violated, the writ of the supreme court can and should protect his or her right.¹³

Apart from the above constitutional rights the prisoners are entitled to the following rights under The Prisons Act, 1894 and The Prisoners Act, 1990:

- Accommodation and sanitary conditions for prisoners. Women and lunatic prisoners are entitled to separate accommodation.(Section 4 of the Act, 1894)
- Appropriate medical care by the qualified medical officer according to the health condition of each prisoner. Both physical and psychological health of prisoner should be take care.(Section 24(2) of the Prisons Act, 1894)
- Separation of prisoners according to their nature on ground of sex, age and gravity of offence.(Section 27 of the Prisons Act, 1894)
- Provisions for parole and temporary release of prisoners. (Sections 31 and 35 of the Prisons Act, 1894)
- The declared unsound mind or a lunatic should be accorded with special care and proper treatment.(Section 30 of prisoners act ,1900)
- No prisoner should be subjected to any cruel, inhuman degrading treatment and any sort of exploitation.

The new **Prisons (Amendment) Bill,2016** has been passed by Parliament to amend the original Act of 1894 by inserting new provisions with an intention reform the prison environment and to ensure humanitarian consideration of prisoners so as to ensure that prisons do not create hardened criminals.

- By inserting Section 26 A special Provisions with respect to pregnant prisoners says that (1) In case of a pregnant prisoner, her diet and work allocation shall be determined as per medical advice.(2) 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."
- Section 58A. The State Governments shall establish separate prisons to keep habitual and hardcore offenders separately from the first time offenders and the offenders convicted for lesser crimes.
- Under section 58E the State Government shall provide skill training including computer classes, tailoring, carpentry, cooking, gardening, and language classes, in such manner as may be prescribed, to the prisoners.58F. (1) The officers of a prison shall conduct workshops and seminars on such subjects as would be helpful for rehabilitation of and for educating the prisoners. (2) The officers of a prison shall ensure active participation of prisoners in attending such workshops and seminars.58G. For the purposes

¹³ Sunil Batra v. Delhi Administration, AIR, 1980 SC 1579

of sections 58E and 58F, the State Government shall appoint adequate number of professionals, educators and counsellors in such manner as may be prescribed."

Conclusion

Punishment in civilized societies must not degrade human dignity of flesh and spirit. Recognition of the inherent dignity and fundamental rights of the society is foundation freedom, justice and peace in the world. The rule of law recognised the prisoner rights in a number of instances that they must be treated like human being and confirms basic standards of humanity and fairness. The basic principles of prisoner's justice are the security and reformation of prisoner. The insulted years behind the insensitive bars, must possess a hospital setting if correction is a social purpose, as Gandhiji insisted. Therefore in prison treatment and environment must be geared to psychic healing, release of stresses, restoration of self respect, apart from training to adopt oneself to the society. The present governments were trying to reform the prisons in India and working towards reforming the prisoner.

But this will happen only when the object of rules on paper came in to practice by prison authorities. The set of positive prescriptions of jail authorities are more important in ensuring an accused to turn new leaf. Securing basic rights without interference with positive prompt prescriptions will really mould them as a reformed person in the society. It is true the basic human rights of prisoners will give s better environment to the caged community.