



Fundamental rights for all: Ensuring equal protection for prisoners and free persons

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Abstract

Prisoners are individuals who have been deprived of their freedom and confined to a specific place, usually a correctional facility or prison. In India, prisoners are entitled to certain fundamental rights inherent in Articles 21 and 22(1) of the Constitution, such as the right to legal aid, speedy trial, protection against torture, and the right to meet friends and consult lawyers. Despite these rights, there are various issues of concern regarding prisoners in India. These issues include overcrowding, inadequate living conditions, lack of access to medical care, and abuse by authorities. These issues have been raised by human rights activists and organizations, and it is essential to address them to protect the rights of prisoners. To protect the human rights of prisoners, solutions such as improving living conditions in prisons, providing access to medical care, and establishing effective grievance redressal mechanisms can be implemented. The Indian judiciary also plays a crucial role in protecting the rights of prisoners by enforcing these fundamental rights and providing appropriate remedies for violations. Various methods can be used to enforce the human rights of prisoners, such as filing writ petitions in courts, engaging in public interest litigation, and advocating for policy reforms to improve prison conditions. The author aims to highlight the importance of protecting the fundamental rights of prisoners in India and the need to address the various issues of concern. The article aims to provide an overview of the fundamental rights of prisoners, the issues facing them in India, and potential solutions to protect their human rights and also emphasizes the role of the Indian judiciary in protecting the rights of prisoners.

Keywords: fundamental rights, protection, prisoner, imprisonment, court, constitution

Introduction

The Indian Constitution upholds the principles of democracy by placing great emphasis on safeguarding the liberty and fundamental rights of individuals. The Fundamental Rights enshrined in the Constitution are not only meant to protect the interests of individuals but are also based on crucial public policy considerations. These rights have been granted to the people of India to empower them to fully participate in and benefit from the democratic system. As such, they serve as a cornerstone of democratic governance and play a crucial role in ensuring the well-being and prosperity of the Indian society.

The Constitution of India is the supreme law of the land and lays out the fundamental principles that guide the functioning of the country. One of the most important aspects of the Constitution is the set of Fundamental Rights enshrined in Articles 12 to 35. These rights are granted to all individuals, whether they are citizens or foreigners, and serve as a bulwark against any form of discrimination or infringement upon personal liberty. The Indian Constitution outlines the fundamental principles that guide the functioning of the country which are grouped under seven different categories.

The Right to Equality, which includes Articles 14 to 18, is one of the most important categories of Fundamental Rights. Article 14, in particular, is considered the cornerstone of this category. The Right to Freedom, comprising Articles 19 to 22, guarantees several freedoms, the most important of which is the freedom of speech. Another category of Fundamental Rights is the Right against Exploitation, which consists of Articles 23 and 24. The Right to Freedom of Religion is also guaranteed by the Constitution under Articles 25 to 28. Cultural and Educational Rights are

secured under Articles 29 and 30, while the Right to Property, although now significantly diluted, is still partially secured by Articles 30-A, 31-A, 31-B, and 31-C. Finally, the Right to Constitutional Remedies, secured by Articles 32 to 35, provides individuals with the means to enforce their Fundamental Rights. Of these, Article 32 is considered the most crucial.

While certain Fundamental Rights such as those enshrined in Articles 14, 20, 21, 21A, 22, 23, 24, 25, 26, 27, and 28 are available to all, regardless of citizenship, others such as those in Articles 15, 16, 19, 29, and 30 are exclusively granted to Indian citizens.

It is important to note that the Constitution also empowers the legislature to impose reasonable restrictions on the exercise of these rights in the interest of public order, morality, or the security of the state. Nevertheless, the protection of Fundamental Rights remains a cornerstone of India's democratic system and ensures that all individuals, irrespective of their background or identity, are guaranteed basic human dignity and liberty. The Indian Constitution, through its comprehensive protection of Fundamental Rights, ensures that the democratic principles of the country are upheld at all times.

Who are Prisoners?

In the Indian legal system, a prisoner is someone who has been deprived of their liberty and is held in confinement or custody due to committing an act prohibited by law. This individual may also be referred to as an inmate. The concept of a prisoner is based on the idea of depriving a person of their freedom as a consequence for committing a crime. However, it is important to note that even though an individual has committed an offense, they still retain their

basic human rights. As per the Indian socio-legal system, every individual is entitled to human dignity, respect, and non-violence, irrespective of their actions. Therefore, it is essential that prisoners are treated with dignity and respect while they serve their sentence. They should not be subjected to any form of inhumane treatment, and their basic needs such as food, shelter, and medical care should be met. While prisoners are deprived of their liberty, they still have the right to be treated with humanity and to have their human rights upheld. This not only benefits the prisoner but also ensures that the principles of justice and fairness are upheld in the legal system.

Do Prisoners have Fundamental Rights?

In the Indian legal system, even after being convicted and imprisoned, a prisoner does not lose all their fundamental rights. The Constitution of India protects the rights of prisoners and ensures that they are not deprived of their life or personal liberty except as per the due process of law. Although a convict may be deprived of certain fundamental freedoms such as the right to move freely throughout India or the right to practice a profession, they still retain other important rights. For instance, the Constitution guarantees the right to acquire, hold, and dispose of property to prisoners.

In a landmark judgment, Justice V.R. Krishna in the case of *Charles Sobhraj v. Superintendent, Central Jail* (AIR 1978 SC 1514) observed that being imprisoned does not mean that a prisoner loses their fundamental rights. The Supreme Court of India has also held in the case of *Rustom Cowasjee Cooper v. Union of India* (AIR 1970 SC 1318) that prisoners retain all the rights enjoyed by free citizens except for those that are lost due to confinement. This means that prisoners have the right to be treated with dignity and respect while they serve their sentence. They should not be subjected to any inhumane treatment, and their basic needs such as food, shelter, and medical care should be met. Additionally, prisoners have the right to legal representation and can challenge any violations of their fundamental rights through the established legal procedures. Although prisoners may have limited freedoms due to their confinement, they still have fundamental rights that must be respected and upheld by the legal system.

Fundamental Rights of Prisoners inherent in Article 21 and 22(1)

Right to Legal Aid - The right to legal aid is a fundamental right that is available to every individual, including prisoners. However, when a prisoner is sentenced to imprisonment, he may not have the means to exercise his constitutional and statutory right to appeal due to a lack of legal assistance. Therefore, to ensure that justice is not denied to prisoners on the grounds of financial incapacity, the court is obligated to assign a competent counsel for the prisoner if they are indigent. The prisoner has the right to object to the lawyer assigned to them, provided they are competent. This ensures that prisoners have access to legal assistance, which is essential to ensure that their rights are protected and that justice is served.

Right to speedy Trial - The right to speedy trial is an essential aspect of the fundamental rights of a prisoner that is implied in Article 21 of the Indian Constitution. It is crucial that the guilt or innocence of an accused person is

determined as soon as possible in the interest of justice. However, the administration of justice in India has not always lived up to this standard. In the case of *Hussainara Khatoon v. State of Bihar* (1979 SCR (3) 532), it was revealed that numerous men, women, and even children were kept in custody for years without trial, even for minor offenses that would warrant only a short sentence.

This situation highlights the significant shortcomings in India's legal and judicial system, which often denies justice to the poor by subjecting them to lengthy pre-trial detention. The bail system, in particular, is highly unsatisfactory and operates unfairly against the poor, as only the non-poor can afford to take advantage of it and secure their release on bail. Therefore, there is a pressing need to reform the bail system and ensure that every person, regardless of their financial status, has access to a speedy and fair trial.

Right against Solitary Confinement, Handcuffing and Protection from Torture

Solitary confinement refers to the practice of confining a prisoner to a cell or space, where they have little or no interaction with other people, either as a form of punishment or for their own protection. However, this practice can have detrimental effects on the mental health of prisoners, leading to depression, anxiety, and other psychological problems. Sadly, torture is still being used by some law enforcement agencies to extract information or confessions from suspects. This violates the fundamental rights of individuals and is a violation of international law. The police are supposed to protect the civil liberties of citizens, but instead, they sometimes become the violators themselves. Furthermore, it is important to note that the use of handcuffs on arrested or under-trial prisoners should only be done under justifiable circumstances. For example, if the accused has a tendency to escape or pose a threat to others, handcuffs may be necessary. However, if the individual is an educated person, working for the public good, and has no history of escaping, handcuffing them is unnecessary and violates their dignity.

In a landmark case of *D.K. Basu v. State of Bengal* (1997) 1 SCC 416, the Supreme Court of India issued guidelines that must be followed by law enforcement agencies in all cases of arrests and detentions until specific legal provisions are made for the same. The guidelines aim to prevent the violation of an individual's fundamental rights during arrest and detention.

1. The first guideline states that all police personnel involved in the arrest and interrogation of the detainee should wear visible and accurate identification tags that display their name and designation. The particulars of all police personnel handling the interrogation must be recorded in a register.
2. The second guideline requires the police officer carrying out the arrest to prepare a memo at the time of the arrest, which must be attested by at least one witness, who could be a member of the detainee's family or a respectable person from the locality. The memo must contain the date and time of the arrest and must be countersigned by the detainee.
3. The third guideline states that the detainee has the right to inform one friend, relative, or any other person known to him or having an interest in his welfare about his arrest and detention.
4. The fourth guideline requires the police to notify the time, place of arrest, and venue of custody of the

detainee to the legal aid organization in the district and the police station of the area concerned telegraphically within 8 to 12 hours of arrest if the detainee's friend or relative lives outside the district.

5. The fifth guideline emphasizes that the detainee must be informed of his right to have someone informed of his arrest or detention as soon as he is put under arrest or detained.
6. The sixth guideline requires the police to make an entry in the Case Diary at the place of detention regarding the arrest, which should also include the name of the friend or relative who has been informed of the arrest, as well as the names and particulars of the police officials in whose custody the detainee is.
7. The seventh guideline requires the police to examine the detainee at the time of arrest and record any major and minor injuries present on his/her body. The inspection memo must be signed by both the detainee and the police officer, and a copy must be given to the detainee.
8. The eighth guideline states that the detainee must be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of the concerned State or Union Territory. The Director, Health Services should prepare such a panel for all Taluks and Districts as well.
9. The ninth guideline requires the police to send copies of all documents, including the memo of arrest, to the magistrate for record.
10. The tenth guideline permits the detainee to meet his attorney during interrogation, although not throughout the interrogation.
11. The eleventh guideline requires the establishment of a Police Control Room at all district and state headquarters, where information regarding the arrest and the custody of the detainee shall be communicated by the Officer who was in charge of the arrest within 12 hours of effecting the arrest. The information should be displayed on a visible notice board in the Police Control Room.

These guidelines provide a safeguard to the fundamental rights of detainees and aim to prevent the violation of their rights during arrest and detention. The guidelines are a significant step towards protecting the civil liberties of the citizens and ensuring justice is served.

Right to Reasonable Wages in prison -

The right to reasonable wages is a fundamental human right that applies to all individuals, regardless of their status or circumstances. This includes individuals who are serving a sentence in prison. According to the Indian Constitution's Article 23, anyone who is asked to provide labor or services must be compensated with remuneration that is not less than the minimum wage. This ensures that prisoners are not subjected to forced labor, and that their work is valued equally to that of a free person in society. It is essential to ensure that the payment for labor rendered is equivalent to the service provided. Failure to do so would be considered forced labor and a violation of the constitutional right to work without coercion. Therefore, the Indian government must ensure that prisoners are compensated adequately for their labor and services. The payment of reasonable wages in prison is crucial as it can provide prisoners with a sense

of self-worth and dignity. It can also help in their rehabilitation by teaching them new skills and providing them with work experience, which can be useful upon their release. Moreover, this can also reduce the likelihood of prisoners being exploited and subjected to inhumane working conditions.

Right to meet Friends and Consult Lawyers -

The Indian judiciary has recognized the importance of maintaining the rights of prisoners and ensuring that they are treated fairly and humanely. One such case is *Sunil Batra v. Delhi Administration* (1980 SCR (2) 557), where the Supreme Court of India acknowledged the right of prisoners to receive visits from their loved ones, including friends and relatives. The Court upheld the principle that prisoners should have the right to maintain their relationships and connections with the outside world. However, it also acknowledged the need for security measures to be in place to ensure that these visits are conducted in a safe and controlled manner. To this end, the Court allowed for searches and other disciplinary measures to be implemented to prevent the smuggling of contraband or other security breaches.

Issues of concern regarding prisoners in India

The Indian prison system is plagued by numerous issues, as highlighted by the Hon'ble Supreme Court of India in the case of *Ramamurthy v. State of Karnataka* ((1997) 2 SCC 642).

1. One of the major issues is the delay in trial, which often results in prolonged detention of prisoners without a verdict. Shockingly, approximately 80% of prisoners in India are under-trial, awaiting their day in court. Even when bail is granted, prisoners may not be released due to bureaucratic red tape or other issues.
2. Another significant concern is the lack of adequate medical facilities and care for prisoners. The prison authorities often exhibit an insensitive attitude towards the well-being of inmates, with insufficient provisions for medical aid, leading to prisoners suffering unnecessarily.
3. The punishment meted out by jail authorities is often not in line with the punishment given by the court, which is a violation of the principle of proportionality. Moreover, prisoners are subjected to harsh physical and mental torture, which can have long-lasting effects on their mental and emotional health.
4. Access to proper legal aid is also severely lacking, with many prisoners not being able to afford or access legal representation. Corruption and other malpractices within the prison system further exacerbate the situation, leading to an unjust and inhumane treatment of prisoners.

Overall, these problems highlight the need for urgent reforms in the Indian prison system, ensuring that prisoners are treated with dignity and respect, and their basic rights are safeguarded. It is crucial to address these issues to ensure that the principles of justice, fairness, and equality are upheld, even within the prison walls.

Solutions for protecting Human rights of Prisoners

The right to liberty is a fundamental human right that is deprived when an individual is sentenced to imprisonment.

However, the deprivation of liberty does not imply the restriction of other basic human rights. Therefore, it is essential to reform prison systems to ensure the protection of prisoners' human rights.

In order to manage a prison system in a just and humane manner, national legislation, policies, and practices must adhere to international standards developed to safeguard prisoners' human rights. Prison torture, in all its forms, is prohibited by several international conventions and declarations, including the Universal Declaration of Human Rights (UDHR) of 1948, the 1949 Geneva Convention, the International Convention on Civil and Political Rights of 1977, and the United Nations Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment of 1988.

It is the responsibility of prison authorities to ensure that the treatment of prisoners is consistent with the rule of law. However, national legislation and rules guiding the management of prisons are outdated and in dire need of reform to meet international standards for the protection of prisoners' human rights.

Role Played by Indian Judiciary in Protection of Prisoners Right

The Indian prison system has been under scrutiny by the Supreme Court in India due to the cruelty and insensitivity experienced by prisoners. The Court has broadened the scope of Fundamental Right of Personal Liberty guaranteed by Article 21 in order to improve the system. The Court has emphasized that Articles 14, 19, and 21 are available to prisoners as well as free men, and that prison walls do not restrict Fundamental Rights. (*T.V. Vetheswaran v. State of Tamilnadu*, AIR 1983 SC 361 : (1983) 2 SCC 68).

The Supreme Court has consistently asserted that prisoners do not lose their humanity and therefore retain all their fundamental rights, including the right to life guaranteed by the Constitution, (*State of Andhra Pradesh v. Challa Ramakrishna Reddy*, AIR 2000 SC 2083: (2000) 5 SCC 712) The Court has criticized the practice of causing physical harm to prisoners in the name of prison discipline and has stressed that fundamental rights extend beyond prison gates. Prisoners should not suffer personal harm or punishment without the opportunity to remedy the situation before an impartial agency. The goal of imprisonment should be to not only be punitive but also restorative, with the aim of rehabilitating offenders.

In the case of *Sunil Batra V. Delhi Administration* (AIR 1978 SC 1675 : (1978) 4 SCC 494), the Supreme Court criticized the practice of placing a petitioner sentenced to death in solitary confinement pending his appeal before the High Court. The Court has stated that the law must be just, fair, and not arbitrary, otherwise the requirements of Article 21 would not be satisfied. The Court has also held that a conviction for a crime does not reduce a person to a non-person, vulnerable to punishment without due procedural safeguards. The Supreme Court has expressed disapproval of the practice of keeping prisoners condemned to death in solitary confinement and declared it invalid under Article 20(2). The Court has also condemned the continued detention of persons as criminal lunatics for long periods, even after they have become sane. Additionally, the Court has emphasized the need for an adequate number of institutions for looking after mentally ill persons (*Veena Sethi v. State of Bihar*, AIR 1983 SC 339).

The Supreme Court has also frowned upon the practice of keeping women in prison without being accused of any crime. In the *Hussainara case* (AIR 1979 SC 1360,1367 : (1980) 1 SCC 93), the Court characterized "Protective Custody" as "really and in truth nothing but imprisonment." The Court has therefore highlighted the need for prison reforms to ensure the protection of the human rights of prisoners.

Various methods for enforcement of Human rights of Prisoners

It is crucial to introduce prison welfare schemes worldwide to provide productive activities for prisoners, discouraging them from engaging in further illegal activities and utilizing their time constructively. Jail authorities should aim to provide an environment that compels prisoners to engage in productive work and diverts their minds from negative thoughts. In order to achieve this goal, several initiatives can be implemented. Firstly, prisoners can participate in games and sports activities within the prison. A popular event is the 'Tihar Olympics', which takes place during winter sports festivals. These activities provide a healthy outlet for inmates and help them develop a positive attitude towards physical fitness and teamwork. Secondly, prisoners can be involved in various factory work or industries to understand the importance of work and develop a strong work ethic that they can carry with them once they leave prison. Such work opportunities may include manufacturing, farming, or even skilled labor, depending on the facility's resources. Thirdly, recreational facilities such as vocational training, education, computer courses, and games can be provided to inmates, both adults and youths. These activities can help inmates change their behavior patterns and develop skills that they can use once they are released back into society. In particular, education can be a valuable tool in helping prisoners gain new skills and knowledge that can help them find employment and rebuild their lives after release.

The right to healthcare and the right to health is a fundamental human right that applies to all prisoners. It entails that all inmates have the right to receive the same quality of medical care that is available in the wider community. However, prison health services are often plagued by a lack of funding, understaffing, and sometimes non-existence. As a result, prisoners often do not receive adequate medical care, leading to a range of health problems. The right to health is not limited to access to medical care. It also includes access to underlying determinants of health, such as safe drinking water, adequate sanitation, safe food, adequate nutrition and housing, safe health and dental services, healthy working and environmental conditions, health-related education and information, and gender equality. Improving prison management and conditions are crucial in developing a sustainable health strategy in prisons. Additionally, prison health is an integral part of public health, and improving prison health is crucial for the success of public health policies.

In conjunction with advocates and social activists working across India, we should strive to secure the release of prisoners, particularly indigent ones who have been undergoing trials for extended periods and are languishing in prison. To this end, we can provide economic and social assistance to poor prisoners by filing bail applications and surety bonds. In cases where indigent prisoners cannot

afford these payments, we can provide monetary assistance through collaboration with NGO initiatives across India. By working together, we can ensure that prisoners' rights are respected, and they are given the opportunity to live healthy, fulfilling lives upon their release.

Conclusion

The Constitution of India guarantees human rights to all its citizens, including those who are incarcerated in prisons. However, the application of these rights is subject to certain restrictions. There are two categories of prisoners - the accused and the convicted. The accused are those who are awaiting trial, and they should be treated as innocent until proven guilty. The courts should expedite their trials, and they should not be subjected to inhumane treatment during their time in prison. On the other hand, convicted criminals have had their liberty restricted due to their criminal acts. However, this restriction should be carried out humanely, within the bounds of the rules and regulations of the prison. The goal of imprisonment is not just to punish, but also to rehabilitate. Convicted criminals should be made aware of the consequences of their actions, and they should be given the opportunity to learn and reform.

Unfortunately, there have been instances of police brutality and other forms of human rights violations in prisons, which should not be tolerated. It is also a concern that some prisons have become a hub for future criminal planning and groupism. It is crucial to address these issues and come up with a new prison system that is effective in ensuring that prisoners are treated humanely, while also preventing future criminal activities.

To achieve this goal, a committee should be formed to study the current prison system and identify its loopholes and flaws. Based on their findings, a draft policy on prison reform should be formulated and debated, with the aim of creating a more humane and effective prison system. This policy should also address the issue of corruption among prison authorities and cops, and ways to prevent it. In conclusion, while prisoners have been stripped of their liberty, they are still entitled to human rights. A reformed prison system should aim to protect and respect these rights, while also ensuring that those who have committed crimes are held accountable and given the opportunity to reform.

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