



## Derelicting the rights of jail Inmates in India: A legal perspective

Dr. Sumeet Pal Singh Brar

Assistant Professor, Department of Law, Punjabi University, Patiala, Punjab, India

### Abstract

All human beings are born free and have equal rights. No human being, including a prisoner, shall be subjected to any form of torture or cruel treatment. Prisoners too are human beings and are entitled to an adequate standard of living. Prisoners have the right to food, water, lodging, clothing and a comfortable bed. During the British rule in India, the Prisons Act was introduced in 1894. However, the rights of prisoners were regularly violated as foreign and domestic prisoners were treated differently because of prejudice. A prisoner still being a person, the writers of the Indian Constitution decided to grant certain rights to prisoners when India achieved its independence. As a result, it can be said that prisoners are entitled to basic fundamental rights while in prison. Though the Constitution of India does not explicitly and implicitly protect the rights of prisoners, Article 14, Article 19, and Article 21 do so indirectly.

**Keywords:** Prisoners, Indian constitution, torture, under-trials, detainees

### Introduction

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”

Nelson Mandela <sup>[1]</sup>.

As with onset of 20<sup>th</sup> century much of voice was raised by many renowned legal expertise and human right functionaries for providing justified human rights to all human's irrespective of sex, caste, religion or nationality. But the situation is much devastating when a violation of such human rights is done by the state against its own persons. The prominent example of it is the derelictions of the rights of the jail inmates which includes various categories.

Prisons in India and their administration, is a state subject covered by item 4 under the State List in the Seventh Schedule of the Constitution of India. The management and administration of prisons falls exclusively in the domain of the State governments and is governed by the Prisons Act, 1894 and the Prison manuals of the respective state governments <sup>[2]</sup>.

Thus, states have the primary role, responsibility and authority to change the current prison laws, rules and regulations. The Central Government provides assistance to the states to improve security in prisons, for the repair and renovation of old prisons, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosures <sup>[3]</sup>.

Prison inmates lodged in Indian jails are categorised as Convicts, Under-trials and Detenues <sup>[4]</sup>. A convict is "a person found guilty of a crime and sentenced by a court" or "a person serving a sentence in prison". An under-trial is a person who is currently on trial in a court of law. A detenu is any person held in custody. Prison inmates lodged in Indian jails in relation to non-Indian Penal Code (IPC) crimes are classified as civil prisoners. They consist of Convicts and Under-trials. Beside the above mention a very few of that category of inmate is there who had undergone

their full imprisonment and are yet in jails, correctly saying; who are unjustifiably Detain <sup>[5]</sup>.

Thus the rights of these people are derelict as a casual affair neither the human rights organizations which are certainly pro-active in raising voice in case of human right violation come for their rescue, nor there is any ray of hope from the state mechanism <sup>[6]</sup>.

However the judiciary has played a much significant role in this sphere by providing numerous rights to the inmate which are fundamental in nature and are much required for an individual as a means of "Being human". It is the gist of this article to throw a lime light on various rights being conferred to the inmates and their derelict by the state administration and other authorities. <sup>[7]</sup>

### Constitutional perspective

The Indian Supreme Court has been active in responding to human right violations in Indian jails and has, in the process, recognised a number of rights of prisoners by interpreting Articles 21, 19, 22, 32, 37 and 39A of the Constitution <sup>[8]</sup> 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. Out of a range of rights the mainly vital are as follow

### Right to Expression

The very first Right under article 19 of the Indian constitution is Right to freedom of speech and expression which is the basic human right, it further includes to express oneself by writing or by any other means of communication thus the inmates also are been provided this right as In *State of Maharashtra V. Prabhakar panduranga*, <sup>[9]</sup> the court held that the right to personal liberty includes the right to write a book and get it published also and when this right was exercised by a detenu its denial without the authority of law is a violation of article 21 of the Indian constitution.

### Right to Access information and interview

The prisoners are entitled to access to information and interview with family members. In a recent landmark judgment In the case of *Francies Corale Mullin vs. the Administrator, Union Territory of Delhi & others*,<sup>[10]</sup> the Supreme Court explained the ingredients of personal liberty under Article 21. The case arose out of the rights of a detainee under COFEPOSA to have an interview with his family members and lawyers. The meeting with family members was restricted to one a month and the lawyer could be met only in the presence of an officer of the customs department. The Supreme Court ruled that the right to life and liberty included his right to live with human dignity and therefore a detainee would be entitled to have interviews with family members, friends and lawyers without these severe restrictions.

Further court taking a note of guidelines by NHRC issued certain recommendations to state administration and jail authorities for providing such facilities to jail inmates as follows:

- All prisoners should have access to such reading materials as are essential for their recreation or the nurturing of their skills and personality, including their capacity to pursue their education while in prison.
- Every prison should have a library for use by all categories of prisoners the library should be adequately stocked with both recreational and instructional books and prisoners should be encouraged to make use of them. Further the materials in the library should be commensurate with the size and nature of the prison population.
- Diversified programmes should be organised by prison authorities for different group of inmates. The educational and cultural background should be kept in mind when developing such programmes. Special attention should be paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate.

### Right to equitable wages

The Supreme Court in *State of Gujarat vs. High Court of Gujarat*<sup>[11]</sup> held that the State concerned to make law for setting a part a portion of the wages earned by the prisoners to be paid as compensation to the deserving victims of the offence. It is imperative that the prisoners should be paid equitable wages for the work done by them. Remuneration, which is not less than the minimum wages, has to be paid to anyone who has been asked to provide labour or service by the state. The payment has to be equivalent to the services rendered, otherwise it would be forced labour within the meaning of Article 23 of the Constitution. That is no difference between a prisoner serving a sentence inside the prison walls and a freeman in society.

### Right to Health

The Supreme Court of India in its landmark judgment in *Parmanand Katara v. Union of India & others*<sup>[12]</sup> ruled that the state has an obligation to preserve life whether he is an innocent person or a criminal liable to punishment under the law. With specific reference to health, the right to conditions, adequate for the health and well-being of all was already recognized in the Universal Declaration of Human Rights. The International Covenant on Economic, Social and Cultural Rights (ICESR) furthermore states that

prisoners have a right to the highest attainable standard of physical and mental health. The minimum standard rules for prisoners regulate the provision of health care for them. Apart from the civil and political rights, the so-called second generation economic and social human rights, as set down in the ICESCR, also apply to prisoners. The right to the highest attainable standard of health should also apply to prison health conditions and health care. This right to health care and a healthy environment is clearly linked, particularly in the case of HIV, to other first generation rights, such as non-discrimination, privacy and confidentiality. Prisoners cannot fend for themselves in their situation of detention, and it is the responsibility of the state to provide for health services and a healthy environment.

Beside this the Supreme Court further took the recommendations of NHRC and issued the guideline to be stressed upon in case of jail inmate suffering from mental illness which are as follows:-

- All jails should be formally affiliated to a mental hospital. Central and district jails should have facilities for preliminary treatment of mental disorder, Sub-jails should take inmates with mental illness to psychiatric facilities. Every central and district jail should have services of a qualified psychiatrist who would be assisted by a psychologist and a social worker trained in psychiatry.
- All those kept in prison with mental illness and under observation of psychiatrist should be kept in one barrack.
- Mentally ill persons, who are not accused of a criminal offence, should not be kept or sent to prison. They should be taken for observation to the nearest psychiatric centre, or if that is not available to the Primary Health Centre.
- Prevention of Mental Illness within Prisons, the state has a responsibility to prevent people from becoming mentally ill after being sent to prison, each jail and detention centre should ensure that it provides the following facilities:
- Daily programmes for prisoners that reduce stress and depression including organised sport and meditation, to ensure open environment, lawns, kitchen gardens and flower gardens.
- A humane staff that is not harsh, Officers of the institution should not use force except in self-defence or attempted escape.
- Prison officers should be given special physical training to enable them to restrain aggressive prisoners, and Prison staff in direct contact with prisoners should not be armed (except in special circumstances).

### Right to conjugal visits

A conjugal visit is a scheduled period in which an inmate of a prison or jail is permitted to spend several hours or days in private with a visitor, usually his/her legal spouse. The parties may engage in sexual intercourse. The generally recognized basis for permitting such visits in modern times is to preserve family bonds and increase the chances of success for a prisoner's eventual return to life after release from prison.

The Right to conjugal visit is given in various countries of the world such as Australia, Canada, Denmark, and Germany. However in India yet the right to conjugal visit is in a limbo.

In *Jasvir Singh & another v. State of Punjab & others* [13] the Punjab and Haryana High court taking a further step cleared its view and issued following guideline to be taken in view and duly pursued in-course for making such visits

- The State of Punjab is directed to constitute the Jail Reforms Committee to be headed by a former Judge of the High Court. The other Members shall include a Social Scientist, an Expert in Jail Reformation and Prison Management amongst others.
- The Jail Reforms Committee shall formulate a scheme for creation of an environment for conjugal and family visits for jail inmates and shall identify the categories of inmates entitled to such visits, keeping in mind the beneficial nature and reformatory goals of such facilities.
- The said Committee shall also evaluate options of expanding the scope and reach of 'open prisons', where certain categories of convicts and their families can stay together for long periods, and recommend necessary infrastructure for actualizing the same.
- The Jail Reforms Committee shall also recommend the desired amendments in the rules/policies to ensure the grant of parole, furlough for conjugal visits and the eligibility conditions for the grant of such relief.
- The Jail Reforms Committee shall also classify the convicts who shall not be entitled to conjugal visits and determine whether the husband and wife who both stand convicted should, as a matter of policy be included in such a list, keeping in view the risk and danger of law and security, adverse social impact and multiple disadvantages to their child.

However in the absence of the enacted provisions of law to provide for effective enforcement of the right to conjugal visit cannot be granted. yet the scope of this petition was enlarged in the larger public interest beyond the relief sought by the petitioners and the issues raised or answered are equally relevant keeping in view their pari materia Statute(s) or policies, it is directed that the directions issued here inabove shall apply to the state of Punjab, to the State of Haryana and Union Territory of Chandigarh as well.

### **Dereliction of rights**

The Supreme Court has made it very clear in ample judgments that except for the fact that the compulsion to live in a prison entails by its own force the deprivation of certain rights, like the right to move freely or to practice a profession of one's choice, except it a prisoner is otherwise entitled to all the basic freedoms guaranteed by the Constitution [14]. However in reality such rights remain to the pages of the book's then finding a surface on ground. The jail inmates were not provided with much of basic fundamental rights such as mention above it would be erroneous to state that nothing is done for jail in-mates but in real much more is require.

The penal jurisprudence has evolved to a great extent by landmark cases such as *Hussainara Khatoon v. Home Secretary, State of Bihar* [15] for Right to Speedy Trial, *Rudal Shah v. State of Bihar* [16] for Right to Compensation; *Suk Das v. union territory of Arunachal Pradesh* [17] for Right to Free Legal Aid, *D.K Basu's* [18] case Right against Illegal Arrest, Detention and custodial violence, the most prominent was *Sunil Batra (No1) v. Delhi Administration* [19] for Right against Freedom from Torture, Inhuman and

Degrading Treatment, then Right against solitary confinement [20].

Yet a number of violations of all above rights are been recorded at high peak every year the question of effectively enforcing these rights even in respect of indigent and poor persons has been considered in several cases by the Supreme Court. Today human rights jurisprudence in India has Constitutional Status thus the dereliction of right's of jail inmates is a harsh blow on Basic Structure of Indian constitution the courts should not forget the core principles and a wider interpretation should be given to the Rights of jail Inmates providing them Such Basic rights which a entity owns as a reason of its 'Being Human'

### **Conclusion**

To conclude, the decisions of the Indian Judiciary regarding the protection of Rights of Jail inmates indicates that the judiciary has been playing a role of saviour in situations where the executive and legislature have failed to address the problem not only this a much of guidelines are been put forth by the judiciary to not only safeguard the rights of jail inmates but also to built new ones. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature. It has, through judicial activism forged new tools and devised new remedies for the purpose of vindicating the most precious of the precious Right to jail inmate and avoiding its dereliction. Indian Judiciary has played a key role in enforcing justice and made legal system more responsive to the diverse needs of various rights of jail inmates. It is therefore much corrective to state that this is indeed a welcome trend.

### **References**

1. H.M Seervai, *Constitutional Law of India*, 558 (Universal Law Publishing, New Delhi, 4<sup>th</sup> edn., 2015)
2. Misty Kifer, and Craig Hemmens, "The goals of corrections: Perspectives from the line." 28.1 *Criminal Justice Review* 47 (2003).
3. *Ibid.*
4. Available at: <http://ncrb.nic.in/PSI-2011/CHAPTER-3.pdf>, visited on November 7, 2021.
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*
8. The Constitution of India 1950.
9. 1966 SCR (1) 702.
10. 1981 SCR (2) 516.
11. (1998) 7 SCC 392.
12. 1989 SCR (3) 997.
13. Punjab and Haryana High Court Judgment, CWP-5429 of 2010.
14. Charles Shobraj v. Superintendent, Tihar Jail, AIR 1978 SC 1514
15. AIR 1979 SC 1360.
16. (1983) 4 SCC 141.
17. (1986) 25 SCC 401.
18. AIR 1997 SC 610.
19. AIR 1978 SC 1575.
20. Sunil Batra v. Delhi Administration, AIR 1980 SC 597.