

# **HANDBOOK**

## **ON**

### **PRISONER'S RIGHTS & OBLIGATIONS**



**Bureau of Police Research and Development**  
**Ministry of Home Affairs**  
**NH-8, Mahipalpur**  
**New Delhi- 110037**

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**HANDBOOK**  
**FOR**  
**PRISONER'S RIGHTS**  
**AND**  
**OBLIGATIONS**

# INTRODUCTION

***“Human rights belong  
to each and everyone  
of us equally.”<sup>1</sup>***

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<sup>1</sup> <https://www.unicef.org/child-rights-convention/what-are-human-rights>

Every right implies correlated obligations. Prisoners have limited rights shadowed by penal obligations. While imprisonment certainly restricts one's enjoyment of rights including liberty and freedom, the law and policies of prison aims to protect rights of prisoners even within prison. Internationally various legal instruments are passed, obligating nations to ensure protection of human rights and other important rights of prisoners. India too has legal provisions that vests various rights upon prisoners. On the other hand, laws also obligates prisoners with certain duties and responsibilities. Balancing the concerns of protection of rights of prisoners and ensuring discharge of duties of prisoners are an important aspect of prison administration. This handbook covers legal aspects in relation to rights and obligations of prisoners.

Rights as already mentioned connotes 'entitlement'. One person's right is often another person's duty. Hence rights of a prisoner indicates a basis for imposition of 'duty' on State and prison authority. Depending upon legal importance attached and the nature of entitlements conferred, rights can be constitutionally protected fundamental rights, individual's human rights or enactment recognized statutory rights.

A prisoner also is entitled with right to enjoy rights that are guaranteed by International Legal instruments, Indian Constitution and statutes. Further, judicial precedents too have widened the horizon of various rights of prisoners.

# CONCEPT OF RIGHT

## Introduction:

### **Concept of ‘Right’ - Legal Interpretation**

Rights are legally recognized entitlements. Irrespective of where a person is, one’s right must be legally safeguarded. Human rights are universally recognized rights of human beings which must be respected at all times and places. These rights must be protected even in correctional institutions of States. Human rights protection of prison inmates is an important aspect, for the protection of which various laws are made and mechanism is set.

### **Laws Relating To ‘Rights’ Of Prisoners:**

International law is a valuable source of law for countries. Most often a nations’ law is based on models of laws created by international community. On the other hand, there are laws that are enacted in a country in order to comply with requirements of international laws. In the domain of human rights laws, various laws in India are made, for being insisted upon by internal bodies such as United Nations and its organs. Various international legal instruments have been the basis for national legal instruments drafted in the domain of human rights protection in India, including in relation to the rights of prisoners. International legal instruments including international legal instruments enunciates various rights of prisoners. While some rights are guaranteed through human rights related legal instruments, others are proclaimed through judicial precedents specific to prisoners’ rights.

In addition to international legal instruments, the precedents [case laws] established by judiciary especially the Supreme Court of India helps in conceptualizing and widening the scope and ambit of ‘rights of prisoners’.

### **Rights and Duties – Legal Correlatives:**

According to Hohfeld, a jurist legally the term ‘right’ signifies ‘duty’ as it’s correlative. Hence if a person has a right against another person, later has a duty towards the former. Hence if prisoners have rights against State, State is duty bound to protect such rights. Hence such duties

are obligations imposed by laws, which cannot be easily violated. Such rights on the other hand are entitlements of right owners.

# **RIGHTS OF PRISONERS**

## **& ITS COMPONENTS -**

### **AN OVERVIEW**

“Prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Moreover, the rights enjoyed by prisoners under Articles 14, 19 and 21, though limited, are not static and will rise to human heights when challenging situations arise.”<sup>2</sup> On the other hand, human rights of a prisoner is a wide concept and includes various rights guaranteed under law. It includes the following rights:

- Right to life, which is a very wider term thus encompassing under its ambit all such rights that are essential to lead a meaningful and dignified life.
- Right to liberty which is legally considered as a facet of right to life
- Right to health which further includes right to food, right to sleep, right to medical aid
- Right to privacy which is also legally interpreted as a part of right to life. This further includes right to be left alone and right to be forgotten, in the context of a crime accused.
- Right to fundamental freedoms including freedom of speech and expression, freedom of movement, freedom of association, etc.
- Right to equality and equal treatment before law,  
Etc.

Additionally State must try to ensure that the following rights of a prisoner is not unnecessarily interfered:

- Right to follow religion of his choice
- Right to education
- Right to earn
- Right to vote
- Right to meet family and friends

As mentioned earlier a prisoner only because is imprisoned does not lose his rights otherwise guaranteed by law. Rights declared as human rights are to be safeguarded so as to ensure that

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<sup>2</sup> Charles Sobraj v. The Suptd., Central Jail, Tihar, 1978 AIR 1514

minimum entitlements of human beings are legally guaranteed and protected too. In addition to human rights, each fundamental right guaranteed by the Indian Constitution [most of which are also regarded as human rights] are also guaranteed to a prisoner. However to the extent it is necessary to administer prison system, implement punishment the inmate is undergoing and facilitate the legal process which an inmate is undergoing, certain restrictions on the rights of the prisoners can be imposed. However such restrictions are required to be legally valid, reasonable and fair. They must not be unnecessary encroachment of the rights of prison inmates.

Apart from constitutionally guaranteed fundamental rights, there are certain rights that the constitution provides to every individual including a prison inmate which are on the other hand a correlative of duties of State imposed upon state by the Constitution of India under Chapter IV, that is, ‘Directive principles of State policy’. Also criminal laws including criminal procedure code, prison Act, prison rules and prison manuals also confer certain rights upon a prisoner. The human rights related laws to recognize certain rights of individuals which includes prison inmate’s rights too.

Thus rights of a prison inmates includes internationally recognized human rights, constitutionally guaranteed fundamental rights, legally recognized statutory rights. Each of these are enforceable to the extent to which respective laws provides for. [Note - Further explanations in the forthcoming chapters gives an overview of each of these rights.].

According to the summarized note published by Goa States’ prison authorities, the rights of prisoners are as follows:<sup>3</sup>

*“Rights to Human Dignity*

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<sup>3</sup> <https://goaprisons.gov.in/index.aspx>

*(i) Right to be as a human being and as a person: This right has been stressed and recommended by the Supreme Court of India which has categorically declared that prisoners shall not be treated as non-persons.*

*(ii) Right to integrity of the body: immunity from use of repression and personal abuse, whether by custodial staff or by prisoners.*

*(iii) Right to integrity of the mind: immunity from aggression whether by staff or by prisoners.*

*(iv) Right to non-deprivation of fundamental rights guaranteed by the Constitution of India, except in accordance with law prescribing conditions of confinement.*

#### *Right To Basic Minimum Needs:*

*Right to fulfilment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water , access to clean and hygienic condition of living accommodation ,sanitation and personal hygiene ,adequate clothing, bedding and other equipment.*

#### *Right to Access to law*

*(i) Right to effective access to information and all legal provisions regulating conditions of detention.*

*(ii) Right to consult or to be defended by a legal practitioner of prisoner's choice.*

*(iii) Right to access to agencies, such as State Legal Aid Boards or similar organizations providing legal services.*

*(iv) Right to be informed on admission about legal right to appeal, revision, reviews either in respect of conviction or sentence*

*(v) Right to receive all court documents necessary for preferring an appeal or revision or review of sentence or conviction.*

*(vi) Right to communicate with the prison administration, appropriate Government and Judicial authorities, as the case may be, for redressal of violation of any or all of prisoners' rights and for redressal of grievances.*

#### *Right to Communication*

- (i) Right to communication with the outside world.*
- (ii) Right to periodic interviews*
- (iii) Right to receive information about the outside world through communication media.*

#### *Right against Arbitrary Prison Punishment*

##### *Right to entitlement in case of disciplinary violation –*

- (i) to have precise information as to the nature of violation of prisons Act and rules,*
- (ii) to be heard in defence,*
- (iii) to communicate on the decision of disciplinary proceedings, and*
- (iv) to appeal as provided in rules made under the Act.*

#### *Right to Meaningful and Gainful Employment*

- (i) Right to meaningful and gainful employment*

*Note 1: No prisoner shall be required to perform 'begar' and other similar forms of forced labour, which is prohibited as a fundamental right against exploitation under Article 23 of the Constitution.*

*Note 2: Under trial prisoners volunteering to do work may be given suitable work whenever practicable. Such prisoners should be paid wages as per rules.*

*Note 3: No prisoner shall be put to domestic work with any official in the Prison administration. Such work shall not be considered as meaningful or gainful, even if some monetary compensation is offered.*

*Note 4: Prisoners shall be, in no case, put to any work which is under the management, control, supervision or direction of any private entrepreneur working for profit of his organization. This will not apply to open prisons and camps.*

(ii) *Right to get wages for the work done in prison.*

- *Right to be released on the due date.”*

# **RIGHTS OF** **PRISONERS UNDER** **INTERNATIONAL** **INSTRUMENTS**

### **Importance of International Legal instruments:**

International legal instruments form to be the basis for various legal systems law framework. While member states are required to show maximum extent of compliance to these instruments, in India, many laws are framed. India too has adopted in various forms, mandates prescribed by these instruments. Indian Constitution too provides for implementation of international laws including treaties, agreements and conventions. According to Article 253 of the Indian Constitution: “Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.” Article 51(c) too requires State to ‘foster respect for international law and treaty obligations in the dealings of organised peoples with one another.’ The Supreme Court of India in *Vishaka & Ors v. State Of Rajasthan*<sup>4</sup> observed “Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.” The court held “The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.”<sup>5</sup>

### **International Legal Instruments on human rights of prisoners – An Introduction:**

#### **UDHR:**

Various international legal instruments recognizes various rights, recognizing them as ‘human rights’. Hence these are also referred to as international human rights instruments. These instruments recognize human rights that are fundamental for any human being.

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<sup>4</sup> AIR 1997 SC 3011

<sup>5</sup> Ibid.

Considered as a milestone document in the history of human rights, the Universal Declaration of Human Rights [henceforth referred to as UDHR] sets up a ‘common standard of achievements for all peoples and all nations.’ According to the declaration, fundamental human rights must be promoted and protected by States.

According to UDHR following rights are declared as human rights:

- Right to be born free and right to equality in dignity and rights under Article 1.
- Rights and freedoms provided under UDHR shall be ensured to all, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, under Article 2.
- Right to life, liberty and security of person under Article 3.
- Right against torture or cruel, inhuman or degrading treatment or punishment under Article 5
- Right to equality before the law and right to equal protection of the law under Article 7
- Right against arbitrary interference with privacy, family, home or correspondence, attacks upon one’s honour and reputation under Article 12.
- Right to freedom of thought, conscience and religion under Article 18
- Right to freedom of opinion and expression under Article 19, etc.

#### ICCPR:

According the International Covenant on Civil and Political Rights, 1966 [henceforth referred to as ICCPR], following rights are guaranteed:

- Right of self-determination under *Article 1*
- According to Article 2, each State should respect and ensure to rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant under Article 3,

- Right to life which shall be protected by law and not arbitrarily deprived under Article 6,
- Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment under Article 7,
- Right against slavery under Article 8,
- right to liberty and security under Article 9,
- *right not to be* subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation and right to the protection of the law against such interference or attacks *under Article 17,*
- right to freedom of thought, conscience and religion under Article 18,

Most importantly ICCPR recognizes rights of a person facing criminal prosecution and arrested. According to Article 9:

*“1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

*2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

*3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*

4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”*

Further, Article 10 lays down as follows:

*“1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

2. (a) *Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;*

(b) *Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*

3. *The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”*

According to Article 14:

*“1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the*

*private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*

*2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

*3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*

*(a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*

*(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*

*(c) To be tried without undue delay;*

*(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*

*(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

*(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*

*(g) Not to be compelled to testify against himself or to confess guilt.*

*4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.*

*5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*

*6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.*

*7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”*

#### ICESCR:

International Covenant on Economic, Social and Cultural Rights [henceforth referred to as ICESCR], adopted in 1966 guarantees to every human being economic, social and cultural rights. To the extent best possible these rights should be safeguarded even in case of prison inmates. According to Article 1, everyone must have right of self-determination, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development. According to Article 3, States Parties must ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights.

Most importantly, Article 12 recognizes right to life of individuals which becomes a crucial issue with respect to prison inmates. According to this Article:

*“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

*2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*

*(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*

*(b) The improvement of all aspects of environmental and industrial hygiene;*

*(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*

*(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”*

#### CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT WAS ADOPTED IN 1984:

This convention is adopted “having regard to Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” According to the convention, states must prevent torture of all forms. According to Article 2(3), ‘An order from a superior officer or a public authority may not be invoked as a justification of torture’.

#### Following are some of the relevant provisions from the convention:

- According to Article 10, State must “ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who

may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”

- According to Article 11, State should “keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.”
- According to Article 12, state must “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”
- Article 13 requires State to “ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.
- Article 14 requires State to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.”
- ***According to Article 15, State should*** “ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

#### OTHER IMPORTANT CONVENTIONS:

##### CEDAW:

According to the Convention on the Elimination of All Forms of Discrimination against Women (henceforth referred to as CEDAW), State must “undertake a series of measures to end discrimination against women in all forms, including:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.”

#### UNCRC:

In addition to the above, the Convention on the Rights of the Child (UNCRC) recognises that 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” and further provides that “recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.” This is the basis for grant of various rights of children including those that must be ensured even in case of “child in conflict with law”. This is also the basis for the approach India has adopted through its Juvenile Justice laws as well.

According to Article 9, UNCRC, a child should preferably not be separated from parents. However if separation results “from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall itself entail no adverse consequences for the person(s) concerned.”<sup>6</sup>

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<sup>6</sup> Article 9(4), UNCRC.

According to Article 73, UNCRC: “States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

In addition to Conventions related to human rights and other general rights, there are conventions especially relevant to the rights of prisoners. These provide guidelines for member states to follow so as to ensure that prisoners are treated humanely while in custody.

#### UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS:

This Standard was adopted in 1955 by the UN First Congress on the Prevention of Crime and the Treatment of Offenders. The standard prescribes ‘good principle and practice in the treatment of prisoners and the management of institutions.’ Following are some of the rights guaranteed through the Standard:

- Right to accommodation: the Standard states: “Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.” “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”
- Right to sufficient light and fresh air: The Standard requires that “In all places where prisoners are required to live or work, (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.”
- Right to sanitary and hygiene needs and right to clean environment: the standard states: “The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.” Further “Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.” It also states “All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.”
- Right to Personal hygiene, this further requires access to water, toilet articles, etc. which are ‘necessary for health and cleanliness.’
- Right to Clothing and bedding: This requires that “Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.” “If prisoners are allowed to wear their own clothing, arrangements shall

be made on their admission to the institution to ensure that it shall be clean and fit for use.”

- Right to bedding: this requires state to provide to every prisoner ‘a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.’
- Right to food and drinking water: this further requires that the food provides has ‘nutritional value adequate for health and strength, of wholesome quality and well prepared and served.’
- Right to Exercise and sport
- Right to medical services: this right also requires right to have ‘psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.’ Prisoner must also have access to ‘specialist treatment’ when necessary and the ‘services of a qualified dental officer shall be available to every prisoner.’

With regard to women and children in prison, the standard states as follows:

- “(1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.”
- “The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.”
- Right to communicate with family and friends
- Right to library [books]
- Right to retain property

The standard makes a distinction between

- Prisoners who are insane and mentally abnormal prisoners
- Prisoners under arrest or facing trial [that is under-trial prisoners]
- Civil prisoners
- Persons arrested without charge

The standards requires state ensure protection of all these category of prisoners to the possible extent.

*The above principles were also reiterated in revised Rules of 2015, that is – popularly known at the ‘UN Nelson Mandela Rules’*

## **THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS OF 2015**

### **[NELSON MANDELA RULES]:**

The Standard Minimum Rules are often regarded by states as the primary – if not only – source of standards relating to treatment in detention, and are the key framework used by monitoring and inspection mechanisms in assessing the treatment of prisoners.<sup>7</sup> This consists of 122 Rules covering all aspects of prison management and outline the agreed minimum standards for the treatment of prisoners – whether pre-trial or convicted and they are supplemented by the UN Bangkok Rules on women prisoners.<sup>8</sup>

The 122 Rules cover all aspects of prison management and outline the agreed minimum standards for the treatment of prisoners – whether pre-trial or convicted. They are supplemented by the UN Bangkok Rules on women prisoners.]. Rule 1 states “All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a

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<sup>7</sup> <https://www.penalreform.org/issues/prison-conditions/standard-minimum-rules/>

<sup>8</sup> Ibid.

justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.”

### **THE UNITED NATIONS RULES FOR THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR WOMEN OFFENDERS**

**(POPULARLY REFERRED TO AS THE BANGKOK RULES):** *The Bangkok rules were adopted by the General Assembly in 2011. It invites ‘Member States to take into consideration the specific needs and realities of women as prisoners when developing relevant legislation, procedures, policies and action plans and to draw, as appropriate, on the Bangkok Rules’.*<sup>9</sup>

Most importantly the rules states the following:

- The right of women prisoners to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times. [Rule 8]
- If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided [rule 9]
- Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners. [Rule 10(1)]
- Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs in prison or in non-custodial settings. [Rule 12]
- Effective measures shall be taken to ensure that women prisoners’ dignity and respect are protected during personal searches, which shall only be carried out by

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<sup>9</sup> See: <https://cdn.penalreform.org/wp-content/uploads/2016/07/BangkokRules-Updated-2016-with-renumbering-SMR.pdf>

women staff who have been properly trained in appropriate searching methods and in accordance with established procedures. [rule 19]

- Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison. [rule 22]
- Instruments of restraint shall never be used on women during labour, during birth and immediately after birth [Rule 24]
- Women prisoners' contact with their families, including their children, and their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes [rule 26]
- Where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men. [rule 27]
- Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible. [rule 28]
- Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.[rule 36]

**UN'S BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT (1988):<sup>10</sup>**

These principles apply for the protection of all persons under any form of detention or imprisonment. According to these principles:

- All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person. [Principle 1]

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<sup>10</sup> See: <http://hrlibrary.umn.edu/instate/g3bppedi.htm>

- Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose. [Principle 2]
- There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent. [Principle 3]
- Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority. [Principle 4]
- Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority. [Article 5(2)]
- No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment. [Principle 6]
- Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.[Principle 8]
- The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority. [Principle 9]
- Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him. [Article 10]

- A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations. [Article 19]

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#### UNITED NATIONS BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS:

*The Basic Principles for the Treatment of Prisoners was adopted by the General Assembly in 1990. According to the guidelines, following rights of prisoners are to be ensured by State:*

- Right to be treated with the respect due to their inherent dignity and value as human beings
- Right against discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Right to follow one's religious beliefs and cultural precepts
- State must ensure that prisoner's well-being and development is promoted.
- Right to retain all human rights and fundamental freedoms as far as possible in the situations of incarceration. This includes 'human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto'
- Right to take part in cultural activities and education aimed at the full development of the human personality

Guidelines also require State to abolish solitary confinement as a punishment, or its usage should be restricted. The guidelines also requires that 'Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that

of their families’. It further states that ‘Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation. 10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions’. The guidelines require application of all the principles [stated above] impartially.

#### UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE:

These rules are referred to as “Beijing Rules” and were adopted in 1985. The rules requires states to further the well-being of the juvenile and her or his family.

#### THE EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

*This convention provides for the Constitution of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which is empowered as well as obligated to take care of concerns related to prisoners in relation to torture etc., The Committee in order to check on the issue, is empowered to visit prisons and prepare reports on the issue and make recommendations.*

# **RIGHTS OF PRISONERS**

## **AND INDIAN**

## **CONSTITUTIONAL**

## **PROVISIONS**

### **– A GLANCE**

As mentioned earlier, Indian Constitution under Chapter III confers various fundamental rights to its citizens. Most of these rights are also guaranteed to a foreigner present in India. Most of these rights are also extended to prison and hence must be conferred even to a prison inmate to the maximum extent possible. A prisoner doesn't cease to be a human being to be deprived of his right to life guaranteed under Article 21 of the Constitution.<sup>11</sup> A prisoner doesn't cease to be a human being to be deprived of his right to life guaranteed under Article 21 of the Constitution.<sup>12</sup>

A prisoner like anybody else is entitled to enjoy some of fundamental and human rights. These rights include the following:

- Right to life and personal liberty.
- Right to privacy and right to live with dignity;
- Right to health
- Right to humane facilities
- Right to live with dignity
- Right to equality
- Rights to freedom of speech and expression,
- Right to freedom of religion
- Etc.

Indian Constitution guarantees fundamental rights of all including to the maximum extent possible to prison inmates. According to Article 14<sup>13</sup> of the Indian Constitution, every person is

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<sup>11</sup> Bombay High Court, <https://www.livelaw.in/news-updates/prisoner-human-right-to-life-bombay-hc-allows-palliative-care-alleged-naxal-181314>, last visited on 10<sup>th</sup> December 2021.

<sup>12</sup> Bombay High Court, <https://www.livelaw.in/news-updates/prisoner-human-right-to-life-bombay-hc-allows-palliative-care-alleged-naxal-181314>, last visited on 10<sup>th</sup> December 2021.

<sup>13</sup> According to Article 14 which guarantees "Equality before law": "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth."

vested with right to equality before law and equal protection of law. A prisoner hence is also empowered with right to equality, equal treatment and equal protection by law. Hence discrimination without legal justification is unconstitutional.

Indian constitution confers certain fundamental rights that are of value in a criminal justice system since they empower a person in fairly facing a criminal prosecution. According to Article 20, right against double jeopardy and right against self-incrimination are guaranteed. These are also procedural rights guaranteed to a person facing criminal prosecution. Additionally no criminal laws can be retrospective effect as per Article 20<sup>14</sup>. According to Article 22 a person if arrested, must be produced before magistrate within 24 hours of his arrest.

A prisoner [convict] is entitled to the precious right guaranteed by Article 21<sup>15</sup> that he shall not be deprived of his life or personal liberty except according to the procedure established by law.<sup>16</sup> As per Article 20 and Article 21, an accused is conferred with rights to bail, right to legal aid, right against custodial torture, etc. Since ‘right to life’ is a very wider term, under law it is meant to include all those rights that are essential for a person to live a life of dignity. Right to life in India connotes both the following:

- Rights related to procedures of laws that is procedural rights, such as right to fair trial.
- Rights that are substantive, that is right to health, right to drinking water, right to clean environment, etc.

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<sup>14</sup> According to Article 20, Indian Constitution: [Protection in respect of conviction for offences]:

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence

(2) No person shall be prosecuted and punished for the same offence more than once

(3) No person accused of any offence shall be compelled to be a witness against himself

<sup>15</sup> According to Article 21: ““No person shall be deprived of his life or personal liberty except according to a procedure established by law.”

<sup>16</sup> Sunil Batra Etc. v. Delhi Administration And Ors, 1978 AIR 1675

Since Article 21 is regarded as an ‘umbrella’ provision through which various basic rights of human beings are guaranteed, it is wide enough to extend such guarantee to a prison inmate to the extent possible in the prison. Right to life under this provision includes right to health, right to sleep, right to shelter, right to water, right to education, right to internet, right to family, etc.

Right to health is paramount for living a life of dignity and decency. Right to health includes right to clean drinking water, hygienic atmosphere and clean sanitation. According to a statement issued by UN, “States must ensure that everyone, including people in detention, have access to safe sanitation. Without it, detention conditions are inhumane, and contrary to the basic human dignity which underpins all human rights.”<sup>17</sup> Sanitation itself is increasingly recognized as a human right, which should be enjoyed without discrimination, in all settings, including detention.<sup>18</sup>

Recently the Bombay High court recognizing the importance of right to life, directed for the shifting of an accused from prison to hospice for palliative care on account of her terminal cancer.<sup>19</sup> The court in this case held “Article 21 of the Constitution is a basic postulate of human right. A prisoner, be he a convict or under-trial or a detainee, does not cease to be a human being, and even when lodged in the jail, he is not deprived of his right to life guaranteed to him under Article 21 of the Constitution, which includes the right to obtain medical treatment. A prisoner cannot be deprived of health services as it would violate the guarantee conferred under Article 21 of the Constitution of India.”<sup>20</sup>

As per Article 19(1) (a) every citizen of India has right to freedom of speech and expression. This right must also be extended to a prisoner to the extent to which it does not interfere with

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<sup>17</sup> Prisoner access to sanitation a human right, say UN experts on World Toilet Day, 19<sup>th</sup> November, 2009, available at <https://news.un.org/en/story/2009/11/321952-prisoner-access-sanitation-human-right-say-un-experts-world-toilet-day>, last visited on 10<sup>th</sup> December 2021.

<sup>18</sup> Ibid.

<sup>19</sup> [https://www.business-standard.com/article/current-affairs/move-terminally-ill-blast-accused-to-hospice-bombay-hc-to-maha-govt-121090901339\\_1.html](https://www.business-standard.com/article/current-affairs/move-terminally-ill-blast-accused-to-hospice-bombay-hc-to-maha-govt-121090901339_1.html). last visited on 10<sup>th</sup> December 2021.

<sup>20</sup> Nirmala Kumari Uppuganti v. The State of Maharashtra and Anr, Bombay High Court decided on 9 September, 2021.

prison administration. So is also the case with a person's right to freedom of religion. Every prisoner has the right to speech and the right to freedom of religion to the extent that these rights do not interfere with their status as jail inmates.<sup>21</sup>

According to Article 14<sup>22</sup> of the Indian Constitution, every person is vested with right to equality before law and equal protection of law. A prisoner hence is also empowered with right to equality, equal treatment and equal protection by law. Hence discrimination without legal justification is unconstitutional. Indian constitution confers certain fundamental rights that are of value in a criminal justice system since they empower a person in fairly facing a criminal prosecution.

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A prisoner [convict] is entitled to the precious right guaranteed by Article 21<sup>24</sup> that he shall not be deprived of his life or personal liberty except according to the procedure established by law.<sup>25</sup>

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<sup>21</sup> N Kamini, Vellore Deputy Inspector General of Police, <https://timesofindia.indiatimes.com/city/chennai/where-do-prisoners-right-to-speech-and-freedom-of-religion-end/articleshow/73663261.cms>, last visited on 8<sup>th</sup> December 2021.

<sup>22</sup> According to Article 14 which guarantees "Equality before law": "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth."

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Right to life in India connotes both the following:

- Rights related to procedures of laws that are procedural rights, such as right to fair trial.
- Rights that are substantive, that is right to health, right to drinking water, right to clean environment, etc.

Since Article 21 is regarded as an ‘umbrella’ provision through which various basic rights of human beings are guaranteed, it is wide enough to extend such guarantee to a prison inmate to the extent possible in the prison. Right to life under this provision includes right to health, right to sleep, right to shelter, right to water, right to education, right to internet, right to family, etc.

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According to the Model Prison Manual<sup>28</sup> “Right to fulfillment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic conditions of living accommodation, sanitation and personal

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<sup>26</sup> Prisoner access to sanitation a human right, say UN experts on World Toilet Day, 19<sup>th</sup> November, 2009, available at <https://news.un.org/en/story/2009/11/321952-prisoner-access-sanitation-human-right-say-un-experts-world-toilet-day>, last visited on 10<sup>th</sup> December 2021.

<sup>27</sup> Ibid.

<sup>28</sup> Ministry of Home Affairs, Model Prison Manual, 2016, available at <https://www.mha.gov.in/sites/default/files/PrisonManual2016.pdf>

hygiene, adequate clothing, bedding and other equipment.” It also states “all accommodation provided for use of prisoners, particularly for sleeping, will meet basic requirements of healthy living.”<sup>29</sup>

Recently the Bombay High court recognizing the importance of right to life, directed for the shifting of an accused from prison to hospice for palliative care on account of her terminal cancer.<sup>30</sup> The court in this case held “Article 21 of the Constitution is a basic postulate of human right. A prisoner, be he a convict or under-trial or a detenue, does not cease to be a human being, and even when lodged in the jail, he is not deprived of his right to life guaranteed to him under Article 21 of the Constitution, which includes the right to obtain medical treatment. A prisoner cannot be deprived of health services as it would violate the guarantee conferred under Article 21 of the Constitution of India.”<sup>31</sup>

As per Article 19(1) (a) every citizen of India has right to freedom of speech and expression. This right must also be extended to a prisoner to the extent to which it does not interfere with prison administration. So is also the case with a person’s right to freedom of religion. Every prisoner has the right to speech and the right to freedom of religion to the extent that these rights do not interfere with their status as jail inmates.<sup>32</sup>

The Supreme Court of India in *Sunil Batra Etc., v. Delhi Administration and Others*.<sup>33</sup> had extended legal protection of human rights to prisoners in the context of solitary confinement. The Apex Court observed: ““Personal liberty of the person who is incarcerated is to a great extent curtailed by plaintive detention. It is even curtailed in preventive detention. The liberty to move,

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<sup>29</sup> Ibid.

<sup>30</sup> [https://www.business-standard.com/article/current-affairs/move-terminally-ill-blast-accused-to-hospice-bombay-hc-to-maha-govt-121090901339\\_1.html](https://www.business-standard.com/article/current-affairs/move-terminally-ill-blast-accused-to-hospice-bombay-hc-to-maha-govt-121090901339_1.html). Last visited on 10<sup>th</sup> December 2021.

<sup>31</sup> *Nirmala Kumari Uppuganti v. The State of Maharashtra and Anr*, Bombay High Court decided on 9 September, 2021.

<sup>32</sup> N Kamini, Vellore Deputy Inspector General of Police, <https://timesofindia.indiatimes.com/city/chennai/where-do-prisoners-right-to-speech-and-freedom-of-religion-end/articleshow/73663261.cms>, last visited on 8<sup>th</sup> December 2021.

<sup>33</sup> 1978 AIR 1675

mix, mingle, talk, share company with co-prisoners, if substantially curtailed, would be violative of Article 21 unless the curtailment has the backing of law. Section 30(2)<sup>34</sup> establishes the procedure by which it can be curtailed but it must be read subject to the interpretation placed in this judgment. Once Section 30(2) is read down, its obnoxious element is erased and it cannot be said that it is arbitrary or that there is deprivation of personal liberty without the authority of law.”

Thus Indian Constitutional provisions embodies various human rights in form of fundamental rights and hence forms to be an important legal document guaranteeing human rights of all including prison inmates. Unreasonable violations of these rights may be the ground to confer constitutional remedies under Article 226 and 32.

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<sup>34</sup> Section 30(2) in The Prisons Act, 1894: “(2) every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.”

# **RIGHTS OF PRISONERS**

## **AND**

# **INDIAN CRIMINAL LAWS**

Indian criminal laws do also in a way protect human rights of individuals. According to Indian Penal Code, detaining a person without authority of law and justification valid under law amounts to be an offence of wrongful confinement. Abuse of powers by public servants is also criminalized under Indian Penal Code.

In case an accused facing criminal trial laws at times allows for arrest and custodial detention of such accused. Further post-conviction, a convict may also be required to under imprisonment. Hence criminal laws do deal with aspects related to a prison inmate including related to his rights while being in such custody of prison authorities. Most importantly criminal procedure code deals with such rights.

A person once arrested by a police is required to be produced before a magistrate within 24 hours from the time his arrest. A magistrate then subjective to the requirements of the case, either release him on bail or discharge him or submit him to either police or judicial custody. Judicial custody here refers to detention in a prison.

According to section 167 of criminal procedure code, such person, in the course of an ongoing investigation, can be detained in judicial custody for a period not exceeding 60 days if the offence he is involved with is punishable with imprisonment up to 10 years and for a period not exceeding 90 days if the offence he is involved in is punishable with death sentence or life imprisonment or imprisonment of a term exceeding 10 years. For certain serious offences such as those covered under Arms Act, Anti-terror laws, etc. such custodial detention in prison pending an investigation can go longer than 60 or 90 days. During the course of this detention period an accused's legal rights including right to bail, right to appear before court which is a part of his right to defence, etc. are to be safeguarded by State against unnecessary restrictions.

### **Other Relevant Aspects under Criminal Procedure Code:**

Various provisions of criminal procedure code implies obligates essential to be discharged by the prison. Since custody determines being under safe and secured custody, custodial detention of a prisoner in a prison, imposes duties on the part of prison authorities to ensure safety and security of such prisoners. In case of under-trial prisoners, the code requires production of an accused

before court while deciding the questions of custodial detention. According to Section 167, such accused can be produced through video conference mode if he is produced after or from judicial custody. Such production and facilitation of hearing by court and production of accused before court during such hearing is the duty of the prison administration. Similarly in the course of trial too, it is the responsibility of prison administration to facilitate production of accused from their custody by the concerned court, be it physical production or via video conference mode. Relevant provisions in this regard are as follows:

According to section 267 of the code:

- *“(1) whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court,-*
- *(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or*
- *(b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.*
- *(2) Where an order under sub- section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.*
- *(3) Every order submitted for countersigning under sub- section (2) shall be accompanied by a statement of the facts which, in the opinion of Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.”*

According to Section 268:

- *“(1) The State Government may, at any time, having regard to the matters specified in sub- section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under section 267, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.*
- *(2) Before making an order under sub- section (1), the State Government shall have regard to the following matters, namely:-*
- *(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;*
- *(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;*
- *(c) the public interest, generally.”*

According to section 269:

*“Where the person in respect of whom an order is made under section 267:*

*(a) is by reason of sickness or infirmity Unfit to be removed from the prison; or*

*(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or*

*(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or*

*(d) is a person to whom an order made by the State Government under*

*section 268 applies*

*the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining: Provided that where the attendance of such person is required for giving evidence at a place not more than twenty- five kilometres distant from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b)."*

According to section 270:

*" Subject to the provisions of section 269, the officer in charge of the prison shall, upon delivery of an order made under sub- section*

*(1) of section 267 and duly countersigned, where necessary, under sub- section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorizes him to be taken back to the prison in which he was confined or detained."*

*Additionally, the court under section 271 is empowered to issue a commission for the examination of a person who is a prison inmate as a witness. "*

Since it is also the right of prisoner to know about his legal rights including the rights essential for him to face a fair legal process such as court proceedings, it is the duty of the prison administration to facilitate delivery of legal services, legal aid and legal awareness to the possible extent to its prison inmates.

# **RIGHTS OF PRISONERS AND** **PRISON LAWS**

In addition to the Constitution, India has various laws directly and indirectly recognizing and extending protection of human rights of prisoners such as prison laws including Prison Act and Prison manuals, Criminal Procedural laws, Human Rights Act, etc. the following is an overview of some of such law framework that India has:

#### PRISONS ACT, 1894:

The Act aims to provide rules for the regulation of prison and within such rules takes care of concerns of prisoners that contributes to the protection of rights of prisoners. Some of such rules are as follows:

- Number of prisoners to be detained in prison shall be determined based on the concerns related to convenience and safety of prisoners.<sup>35</sup> In case of epidemic the authorities are required to provide temporary shelters and safe custody of such prisoners.
- The Medical Officer of Prison is obliged to take care of ‘sanitary administration of the prison’ as per Section 13
- Considering the importance of the mental health needs of a prisoner, section 14 obligates medical officer of prison to report cases of such prisoners about whom he has ‘reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected’. Such report must be submitted to the Prison Superintendent along with details of relevant observations made by him.
- In case death of any prisoner, the Medical Officer is required to prepare a detailed report as prescribed in Section 15.

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<sup>35</sup> Section 7

- Prison Jailers are also vested with various duties that contributes towards overall protection of prison inmates. Under section 18, a jailor is ‘responsible for the safe custody of the relevant records including related to the commitment warrants and all other documents confided to his care, and for the money and other articles taken from prisoners.
- According to Section 24(2), every prisoner upon admission, as soon as possible must be ‘examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of the prisoner’s health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.’
- Act also obligates for other medical needs to be provided within prison for prisoners who are sick. Act also requires every prison to have a hospital or proper place for reception of sick prisoners [Section 37 and 39]

### PRISON MANUALS

According to the Model Prison Manual, prepared by the Bureau of Police Research & Development, Ministry of Home Affairs in 2003, “though the foundations of the contemporary prison administration in India were laid during the British period, the system has drastically changed over the years, especially since the dawn of Independence”.<sup>36</sup>

Today’s objective of prison administration is not just limited to administering an institution of custodial detention and maintaining discipline in such institution. It is more about balancing the concerns of administration with an added objective of ensuring humane condition in the prison in general and protection of human rights of prison inmates to the maximum extent possible in specific. Thus, administration strategies must integrate all possible measure essential to promote and protect human rights of prison inmates.

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<sup>36</sup> Model Prison Manual, available at <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>

As has rightly recognized by the Model Prison Manual, on the basis of various judgments, “the Supreme Court of India has laid down three broad principles (i) a person in prison does not become a non-person. (ii) A person in prison is entitled to all human rights within the limitations of imprisonment. (iii) There is no justification in aggravating the suffering already inherent in the process of incarceration.”<sup>37</sup> According to the Model Prison Manual<sup>38</sup> “Right to fulfillment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment.” It also states “all accommodation provided for use of prisoners, particularly for sleeping, will meet basic requirements of healthy living.”<sup>39</sup>

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<sup>37</sup> <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>

<sup>38</sup> Ministry of Home Affairs, Model Prison Manual, 2016, available at <https://www.mha.gov.in/sites/default/files/PrisonManual2016.pdf>

<sup>39</sup> Ibid.

# **RIGHTS OF PRISONERS AND** **OTHER LAWS**

Other than Indian Constitution, Criminal laws and prison laws, there are certain other laws through which human rights of prison inmates are protected.

### **Protection of Human Rights Act, 1993:**

This Act aims to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights. This Act though does not directly lay down any specific rules to be adhered to in Prisons, yet recognizing the concern it empowers the commissions established under the Act to look into issues of human rights in prison. The commissions under Section 12 (c) is empowered to visit "any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government."

The role of NHRs, is 'to improve the quality of governance of authority and public functionaries, and indicate the areas of inefficiency. NHRC's role is complementary to the judiciary. But it is not a Court – the Commission can only make recommendation for acceptance and implementation.'<sup>40</sup>

With regard to the role of NHRC in relation to prisoner's rights, the chairperson remarked: "NHRC has been focusing its attention on the promotion and protection of human rights of prisoners, from its inception. The Commission has issued instructions/guidelines that mentally ill person should not be kept in prison and if during jail inspection by the Commission, mentally ill persons are found in the prison it would award compensation to them or to their kin. The State government could recover such compensation from the erring jail officials.

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<sup>40</sup> Justice J.S.Verma, the then chairperson, NHRC, <https://nhrc.nic.in/press-release/nhrc%E2%80%99s-initiatives-prison-reforms>

The Commission has also written to Chief Justices of all High Courts, for effecting speedy trials of cases and release of under trials and to give appropriate instruction to district and Sessions Judges to ensure that they visit jails regularly as is envisaged in the State Prison Manuals. Again the Commission has issued instruction to all prison authorities requiring compulsory health screening of all prisoners and sending monthly report to the Commission. The issues of premature release of prisoners undergoing life imprisonment have also been taken up by the Commission.”<sup>41</sup>

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<sup>41</sup> Ibid.

# **VARIOUS COMMITTEE**

# **REPORTS ON PRISON**

# **REFORMS**

Several committees were appointed to review prison conditions and suggest prison reforms in India including the following<sup>42</sup>:

- The Mysore Committee on Prison Reforms, 1940-41;
- The U.P. Jail Reforms Committee, 1946; and
- The Bombay Jail Reforms Committee, 1946-48.
- UP's Jail Enquiry Committee [In late 30s]

Post-independence, several committees including the following were constituted<sup>43</sup>:

- The East Punjab Jail Reforms Committee, 1948-49;
- The Madras Jail Reforms Committee, 1950-51;
- The Jail Reforms Committee of Orissa, 1952-55;
- The Jail Reforms Committee of Travancore and Cochin, 1953-55;
- The U.P. Jail Industries Inquiry Committee, 1955-56; and
- The Maharashtra Jail Industries Reorganization Committee, 1958-59.
- All India Jail Manual Committee, constituted in 1957 to prepare a Model Prison Manual
- Working group on prison constituted in 1972 which submitted its report in 1973,
- All India Committee on Jail Reforms constituted under the chairmanship of Mr. Justice A. N. Mulla in 1980 which submitted its report in 1983
- National Expert Committee on Women Prisoners constituted in 1986 under the chairmanship of Justice Krishna Iyer which submitted its report in 1987.
- All India Group on Prison Administration-Security and discipline constituted in 1986 under the chairmanship of Shri R.K. Kapoor which submitted its report in 1987

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<sup>42</sup> NATIONAL POLICY ON PRISON REFORMS AND CORRECTIONAL ADMINISTRATION, Bureau of Police Research & Development, 2007 available at - <https://bprd.nic.in/WriteReadData/userfiles/file/5261991522-Part%20I.pdf>

<sup>43</sup> Ibid.

- All India Model Prison Manual Committee of 2000 constituted under the chairmanship of Director General of BPR&D to prepare a Model Prison Manual for the Superintendence and Management of Prisons in India,
- High powered committee under the chairmanship of Director General, BPR&D for drafting a national policy paper on Prison Reforms and Correctional Administration, constituted in 2005.

It is important to note that based on the All India Committee on Jails Reforms' recommendations, the Government of India identified Bureau of Police Research & Development (BPR&D) as a nodal agency at the national level in the field of Correctional Administration on November 16, 1995<sup>44</sup>. In this regard, BPRD is obliged to discharge following duties<sup>45</sup>:

- Analysis and study of Prison statistics and problems of general nature affecting Prison Administration.
- Assimilation and dissemination of relevant information to the States in the field of Correctional Administration.
- Coordination of Research Studies conducted by Regional Institutes of Correctional Administration (RICAs) and other Academic/Research Institutes in Correctional Administration and to frame guidelines for conducting research studies/surveys in consultation with State Governments.
- To review Training Programmes keeping in view the changing social conditions, introduction of new scientific techniques and other related aspects in the field of correction administration.
- To prepare uniform Training Modules, including courses, syllabi, curriculum etc. for providing training at various levels to the Prison Staff in the field of Correctional Administration.
- Publication of reports, newsletters, bulletins and preparation of Audio Visual aids etc. in the field of Correctional Administration.

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

- To set up an Advisory Committee to guide the work relating to Correctional Administration.

All of the theses committees and teams have looked into issues related to prison administration, prison reforms, including on aspects related to prisoners' rights and duties. Most of the recommendations of these committees have even become model rules, guidelines etc., thereby contributing in real sense towards prison reforms.

**HUMAN RIGHTS OF PRISON**  
**INMATES - WITH SPECIAL**  
**REFERENCE TO UNDERTRAIL**  
**PRISONERS, WOMEN PRISONERS,**  
**JUVENILE PRISONERS & OTHERS**

Though in general human rights are to be enjoyed by all including all prison inmates, there certain concerns that need to be addressed with respect to certain category of prisoners.

#### Human rights of an under trial prisoners:

According to Justice J.S.Verma, the then chairperson, NHRC, More than 70 percent of prisoners of the jails in the country, are under trial and most of them have been under trial for years.<sup>46</sup>

Supreme Court of India in Sunil Batra Etc. v. Delhi Administration and Ors. Etc.<sup>47</sup>, observed that under-trials shall be deemed to be in custody, but not undergoing punitive imprisonment. Hence law restricts unnecessary interventions into human rights of undertrain prisoners.

Since an under trial prisoner faces criminal proceedings while being in prison, it is necessary to ensure that he get complete and fair chance to face such proceedings. His right to fairness of criminal process including fair trial can get compromised if his detention in prison becomes a hindrance to his effective participation in criminal process. From the time he is detained in prison till his release, he may have to prepare for his bail application and process, consult lawyer, appear before courts conducting hearing, etc. These are few of the examples of such criminal process an accused may face while being in prison. These are also legally recognized as ‘legal rights’ of an accused and hence laws and institutions must ensure its protection. So is also the need to ensure that an accused is provided with all possible opportunities to exercise these rights. Additionally legal services and legal aid to such inmates leads to better guarantee of these rights. Hence the need to ensure that a prison inmate facing trial gets access to legal services and legal aid. Legal services clinics inside prisons hence are also of great importance.

Further production of accused before court can be facilitated even through video conference. This helps an accused to appear before court while being in ‘judicial custody’ that is, prison. Also, this even eases the prison authorities’ task of transporting under trial prisoners from prison to court.

[Also see: notes – under the title – CRIMINAL PROCEDURE CODE]

#### Human rights of women prison inmates & their children:

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<sup>46</sup> <https://nhrc.nic.in/press-release/nhrc%E2%80%99s-initiatives-prison-reforms>

<sup>47</sup> [1979] 1 SCR 392

International human rights instruments insist for equal protection of human rights of women. So is also insisted by Indian Constitution. Hence a woman like any male prisoner also has all human rights – including right not to be discriminated on the basis of gender.

Though in India a woman is placed mostly in the same prison where male prisoners are detained, yet prison rules require a separate cell for women prisoners. Hence she should be separately detained and be supervised only by women officers and staff.<sup>48</sup>

Due to the gender related concerns, special care must be taken to protect and promote human rights of women prisoners. According to a research finding [Research on “Social, Psychological and Economic Problems of Women Prisoners and Their Accompanying Children and Status of Their Rehabilitation”]:<sup>49</sup> following problems are faced by women prisoners:

- Women are vulnerable: Generally, Women prisoners come from economically and socially disadvantaged segments of the society. Many have histories of alcoholism and drug abuse. Most of the women prisoners experienced violence or sexual abuse before incarceration.

A woman prisoner also faces various gender specific problems and hence needs more care in terms of sanitary and hygiene related needs. Their nutrition, health and safety requirements must be of paramount concern for prison administration. Women prisoner’s emotional and psychological stress is a matter of concern too. Many of them also suffer with stress caused due to fear of social stigma, family separation, etc. Children living in prisons with their mothers who are prison inmates need to be taken care of too, including with respect to such children’s health and education needs.

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<sup>48</sup> Standard Minimum Rules for the Treatment of Prisoners [hereinafter “SMR”], rule 53.

<sup>49</sup> Study by Prof. Deepti Shrivastava, available at <https://bprd.nic.in/WriteReadData/userfiles/file/202108191109550214772researchstudiescompleted.pdf>

The BPRD's 2003 Model prison manual makes several suggestions with regard to women prisoners including the following:<sup>50</sup>

- Women offenders shall, as far as possible, be confined in separate institutions specially meant for them. Wherever such arrangements are not possible they shall be kept in separate annexes of prisons with proper arrangements. The staff for these institutions and annexes shall comprise of women employees only. Women prisoners shall be protected against all exploitation. Work and treatment programmes shall be devised for them in consonance with their special needs.
- The existing enclosures for women in common prisons will be renovated to ensure that women prisoners do not come in view of male prisoners during their passage to and from these enclosures. These enclosures will have a double lock system – one lock outside and the other inside, the keys of the latter always remaining with a woman guard inside. The institutions/enclosures for women prisoners will have all the requisite facilities with reference to their special needs such as segregation, protection, pregnancy, child-birth and family care, health care, training and rehabilitation, etc.
- During pregnancy and lactation, a woman needs more protein and minerals than otherwise. The extra protein can be obtained by substituting a part of the cereal portion of the diet with more milk, fish, meat and eggs, and in the case of vegetarians by concentrating more on milk and milk products. This would also ensure the necessary additional supply of minerals. Pregnant and nursing women need about 3100 calories every day
- If the Medical Officer finds a women prisoner sentenced to death to be pregnant, the matter shall at once be brought to the notice of the Inspector General of Prisons who shall seek the order of the Government for commutation of the death sentence or for postponement of execution till she gives birth to the child. The execution shall not be carried out before the orders of Government are received. When a woman prisoner sentenced to death declares herself to be pregnant, and Medical Officer is unable to certify the truth or otherwise of the statement,

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<sup>50</sup> Model Prison Manual,

immediately, he shall state the interval of time necessary to enable him to satisfy himself on the point. The Superintendent should immediately report the case to the Government and seek orders. When execution of a capital sentence on a woman prisoner has been suspended under either of the situations mentioned above, the sentence shall not afterwards be executed without the express order of the Government for which the Superintendent shall apply.

- Women under trial prisoner should normally be escorted by women police. When there are no women police available, they should be accompanied by woman Prison Guard. As far as is practicable, separate conveyance should be provided for the transport of women under trial prisoners. Women staff members shall be in charge of women under trial prisoners.
- As far as possible, women under trial prisoners should be handed over to their relatives after release. If this is not possible, a woman police or woman prison guard should escort the released woman under trial prisoner to the nearest station or transport bus stand.

### Human rights of juvenile inmates

Like adults, a juvenile prison inmate too is entitled to enjoy all human rights. Additionally it is essential to ensure that he is separated from adult prison inmate. Further his right to education and prison authority's duty to facilitate his reformation is paramount in the context of a juvenile prison inmate. Following rules must be applied in case of juvenile inmates.<sup>51</sup>

- Children who are detained shall be treated in a manner which promotes their sense of dignity and worth, facilitates their reintegration into society, reflects their best interests and takes their needs into account.<sup>52</sup>

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<sup>51</sup> Human Rights and Prisons, - A Pocket book of International Human Rights Standards for Prison officials, UN, United Nations Publications, available at <https://www.ohchr.org/documents/publications/training11add3en.pdf>, last visited on 20<sup>th</sup> January 2022.

<sup>52</sup> CRC, articles 3 and 37; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) [hereinafter "Beijing Rules"], rules 1, 5 and 6; United

- Children shall not be subjected to corporal punishment, capital punishment or life imprisonment without possibility of release.<sup>53</sup>
- Children who are detained shall be separated from adult prisoners. Accused juveniles shall be separated from adults and brought for trial as speedily as possible.<sup>54</sup>
- Special efforts shall be made to allow detained children to receive visits from and correspond with family members.<sup>55</sup>
- The privacy of a detained child shall be respected, and complete and secure records are to be maintained and kept confidential.<sup>56</sup>
- Juveniles of compulsory school age have the right to education and to vocational training.<sup>57</sup>

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Nations Rules for the Protection of Juveniles Deprived of their Liberty [hereinafter “Rules for Juveniles”], rules 1, 4, 14, 31, 79 and 80, quoted in Human Rights and Prisons, - A Pocket book of International Human Rights Standards for Prison officials, UN, United Nations Publications, available at <https://www.ohchr.org/documents/publications/training11add3en.pdf>, last visited on 20<sup>th</sup> January 2022.

<sup>53</sup> CRC, article 37 (a); Beijing Rules, rule 27; Rules for Juveniles, rules 64, 66 and 67, , quoted in Human Rights and Prisons, - A Pocket book of International Human Rights Standards for Prison officials, UN, United Nations Publications, available at <https://www.ohchr.org/documents/publications/training11add3en.pdf>, last visited on 20<sup>th</sup> January 2022.

<sup>54</sup> 1 ICCPR, article 10, para. 2 (b); CRC, article 37 (c); Beijing Rules, rules 13.4 and 26.3; Rules for Juveniles, rule 29, , quoted in Human Rights and Prisons, - A Pocket book of International Human Rights Standards for Prison officials, UN, United Nations Publications, available at <https://www.ohchr.org/documents/publications/training11add3en.pdf>, last visited on 20<sup>th</sup> January 2022.

<sup>55</sup> 2 CRC, articles 9, 10 and 37 (c); Beijing Rules, rules 13.3, 26.5 and 27.2; SMR, rule 37; Rules for Juveniles, rule 59, , quoted in Human Rights and Prisons, - A Pocket book of International Human Rights Standards for Prison officials, UN, United Nations Publications, available at <https://www.ohchr.org/documents/publications/training11add3en.pdf>, last visited on 20<sup>th</sup> January 2022.

<sup>56</sup> CRC, article 40, para. 2 (b) (vii); Beijing Rules, rule 21.1, , quoted in Human Rights and Prisons, - A Pocket book of International Human Rights Standards for Prison officials, UN, United Nations Publications, available at <https://www.ohchr.org/documents/publications/training11add3en.pdf>, last visited on 20<sup>th</sup> January 2022.

<sup>57</sup> ICESCR, article 13; CRC, article 28; Rules for Juveniles, rules 38 and 42, , quoted in Human Rights and Prisons, - A Pocket book of International Human Rights Standards for Prison officials, UN, United Nations Publications, available at

- Weapons shall not be carried in institutions which hold juveniles.<sup>58</sup>
- Disciplinary procedures shall respect the child's dignity and be designed to instil in the child a sense of justice, self-respect and respect for human rights.<sup>59</sup>
- Parents are to be notified of the admission, transfer, release, sickness, injury or death of a juvenile.<sup>60</sup>

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<https://www.ohchr.org/documents/publications/training11add3en.pdf>, last visited on 20<sup>th</sup> January 2022.

<sup>58</sup> Rules for Juveniles, rule 65, , quoted in Human Rights and Prisons, - A Pocket book of International Human Rights Standards for Prison officials, UN, United Nations Publications, available at <https://www.ohchr.org/documents/publications/training11add3en.pdf>, last visited on 20<sup>th</sup> January 2022.

<sup>59</sup> 6 Rules for Juveniles, rule 66, , quoted in Human Rights and Prisons, - A Pocket book of International Human Rights Standards for Prison officials, UN, United Nations Publications, available at <https://www.ohchr.org/documents/publications/training11add3en.pdf>, last visited on 20<sup>th</sup> January 2022.

<sup>60</sup> CRC, article 37 (c) and article 40, para. 2 (b) (ii); Beijing Rules, rules 10.1 and 26.5; SMR, rules 37 and 44; Rules for Juveniles, rules 56 and 57, quoted in Human Rights and Prisons, - A Pocket book of International Human Rights Standards for Prison officials, UN, United Nations Publications, available at <https://www.ohchr.org/documents/publications/training11add3en.pdf>, last visited on 20<sup>th</sup> January 2022.

# **JUDICIAL PRECEDENTS**

Courts have often been guardians of protection of human rights. In case of rights of prisoners, Indian Supreme Court as well as various High Courts in India have ensured this protection through its case laws. “Every prison sentence is a conditioned deprivation of life and liberty, with civilized norms built in and unlimited trauma interdicted. In this sense, judicial policing of prison practices is implied in the sentencing power. The Criminal judiciary has thus a duty to guardian their sentences and visit prisons hen necessarily. Many of them do not know or exercise this obligation.”<sup>61</sup>

The Supreme court of India made a very important observation in Mohammad Giasuddin v. State Of Andhra Pradesh saying: “Progressive criminologists across the world will agree that the Gandhian diagnosis of offenders at patients and his conception of prisons as hospitals-mental and moral-is the key to the pathology of delinquency and the therapeutic role of ‘punishment]” “Our prisons should be correctional houses, not cruel iron aching the soul.” “Indeed, the direction of prison reform is not towards dehumanization but dehumanization, not maim and mayhem and vulgar callousness but man-making experiments designed to restore the, dignity of the individual and the worth of the human person.”<sup>62</sup>

Courts have a duty to protect human rights of all, including rights of prisoners. With regard to this duty of the courts, and the right to be protected through judicial intervention, the Gujarat High court in Aniruddhsinh Mahipatsinh Jadeja v. State Of Gujarat And Ors.,<sup>63</sup> had rightly observed: “Where the rights of a prisoner either under the Constitution or under other law, are violated the writ power of the Court can and should run to his rescue. There is a warrant for this vigil. The Court process casts the convict into the prison system and the deprivation of his freedom is not a blind penitentiary affliction but a belighted institutionalization geared to a social good. The Court has a continuing responsibility to ensure that constitutional purpose of the deprivation is not defeated by the prison administrative.”<sup>64</sup> “A prisoner wears the armour of basic freedom even behind bars and that on breach thereof by lawless officials the law will

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<sup>61</sup> Charles Sobraj v. The Suptd., Central Jail, Tihar, 1978 AIR 1514

<sup>62</sup> 1977 AIR 1926

<sup>63</sup> (2002) 1 GLR 594

<sup>64</sup> Ibid.

respond to his distress signals through 'writ' aid. The Indian human has a constant companion -- the Court armed with the Constitution.”<sup>65</sup>

The Supreme Court of India in *Sunil Batra Etc., v. Delhi Administration and Ors*<sup>66</sup> had extended legal protection of human rights to prisoners in the context of solitary confinement. The Apex Court observed: ““Personal liberty of the person who is incarcerated is to a great extent curtailed by plaintive detention. It is even curtailed in preventive detention. The liberty to move, mix, mingle, talk, share company with co-prisoners, if substantially curtailed, would be violative of Art. 21 unless the curtailment has the backing of law. Section 30(2)<sup>67</sup> establishes the procedure by which it can be curtailed but it must be read subject to the interpretation placed in this judgment. Once Section 30(2) is read down, its obnoxious element is erased and it cannot be said that it is arbitrary or that there is deprivation of personal liberty without the authority of law.”

*Prem Shankar Shukla v. Delhi Administration*<sup>68</sup>, Hon’ble Justice Krishna Iyer observed: “the guarantee of human dignity forms part of an Constitutional culture and the positive provisions of Articles 14, 19 and 21 spring into action to disshackle any man since to manacle man is more than to mortify him; it is to dehumanize him and, therefore, to violate his very personhood, too often using the mask of 'dangerousness' and security. Even a prisoner is a person not an animal, and an under-trial prisoner is a fortiori so. Our nation’s founding document admits of no exception. Therefore, all measures authorised by the law must be taken by the Court to keep the stream of prison justice unsullied.”

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<sup>65</sup> Ibid.

<sup>66</sup> 1978 AIR 1675

<sup>67</sup> Section 30(2) in The Prisons Act, 1894: “(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.”

<sup>68</sup> 1980 AIR SC 1535

In *Francis C Mullin v Union Territory of Delhi & Ors*<sup>69</sup>, it was observed: “While arriving at the proper meaning and content of the right to life, the attempt of the court should always be to expand the reach and ambit of the fundamental right rather than to attenuate its meaning and content. A constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges. This principle applies with greater force in relation to a fundamental right enacted by the Constitution. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.”

In *D. Bhuvan Mohan Patnaik & Ors v. State of Andhra Pradesh & Ors*<sup>70</sup> the court tried summarising scope of rights of prison inmates, saying “Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails to by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to “practice” a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.”

In *Rakesh Kaushik v BL Vig, Superintendent Central Jail, New Delhi*<sup>71</sup> the court observed “To reform and deter the criminal and to work out that process geared to social defence, the convict is cast into prison-not to make him more hardened, more brutal, more cunning and dangerous to society. This *raison d’etre* of penological institutions in our Gandhian country, with humanism as

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<sup>69</sup> 1981 AIR SC 746

<sup>70</sup> 1974 AIR 2092

<sup>71</sup> 1980 SCR (3) 929

basic to the constitutional scheme, cannot be written off without peril.” The Court held “Whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods, 'right, just and fair'.”

Ramamurthy v State of Karnataka<sup>72</sup> the court recognises that “The literature on prison justice and prison reform shows that there are nine major problems which afflict the system and which need immediate attention. These are:

- (1) Overcrowding;
- (2) delay in trial;
- (3) torture and ill- treatment;
- (4) neglect of health and hygiene;
- (5) insubstantial food and inadequate clothing;
- (6) prison vices;
- (7) deficiency in communication;
- (8) streamlining of jail visits; and
- (9) management of open air prisons.”

The court analyses these problems and suggests recommendations in addressing these concerns.

In the case of State of Gujarat & Anr v Hon’ble High Court of Gujarat<sup>73</sup> the court observed: “Reformation should hence be the dominant objective of a punishment and during incarceration every effort should be made to recreate the good man out of a convicted prisoner.” It also stated

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<sup>72</sup> Supreme Court, decided on 23 December, 1996

<sup>73</sup> Supreme Court, decided on 24 September, 1998

that “Thus, reformation and rehabilitation of a prisoner are of great public policy. Hence they serve a public purpose. Reformatory approach is now very much intertwined with rehabilitative aspect to a convicted prisoner.”

*Madhukar B Jambhale v State of Maharashtra*<sup>74</sup>, the court held: “convicts do not wholly shed their fundamental rights, though their liberty is in the very nature of things circumscribed by the very fact of their conviction. The consequent responsibilities of prison administrators have to be borne in mind. These responsibilities broadly stated are:

- (i) maintenance of internal order and discipline,
- (ii) securing the institutions against unauthorised access or escape and
- (iii) rehabilitation of prisoners.

The maintenance of penal institutions is an essential part of the Government's task in preserving social order through enforcement of criminal law and the governmental interests are the preservation of internal order and discipline, the maintenance of institutional security against escape or unauthorised entry and above all the rehabilitation of prisoners as indicated above. As a matter of fact the modern concept of criminology calls for greater attention to the reformation of a prisoner.”

With regard to the need to maintain discipline in prison at the same time taking care of human rights concerns of prison inmates, the UN's Manual on Human Rights Training for Prison Officials summaries principles on the issue as follows:<sup>75</sup> “All disciplinary offences and punishments must be specified by law or by published legal regulations. No prisoner shall be punished before being informed of the alleged offence and before being given the opportunity to present a proper defence. No prisoner shall be employed in any disciplinary capacity. All cruel, inhuman or degrading punishments are completely prohibited, including corporal punishment or placing the prisoner in a dark cell. Punishment by close confinement or reduction of diet shall never be inflicted unless the prisoner is certified by the medical officer as medically fit to sustain

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<sup>74</sup> 1984 (2) BomCR 709

<sup>75</sup> Human Rights and Prisons, Manual on Human Rights Training for Prison Officials, available on UN, 2005, available at <https://www.ohchr.org/documents/publications/training11en.pdf>

it. Instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. Prisoners who are subject to disciplinary action should have the right of appeal to a higher authority.”

Thus, prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Rights enjoyed by prisoners under Arts 14, 19 and 21 though limited are not static and will rise to human heights when challenging situations arise.”<sup>76</sup>

In *Sheela Barse v. State of Maharashtra*<sup>77</sup>, an accused’s right to legal aid was recognized by court. Rights guaranteed under Indian Constitution must be ensured to the extent possible in respect of a prisoner. “The Preamble sets the human tone and temper of the Founding Document and highlights justice, Equality and the dignity of the individual. Article 14 interdicts arbitrary treatment, discriminatory dealings and capricious cruelty. Article 19 prescribes restrictions on free movement unless in the interests of the general public. Article 21 is the sanctuary of human values, prescribes fair procedure and forbids barbarities, punitive or procedural. Such is the aperçu.”<sup>78</sup> Hence, Rights enjoyed by prisoners under Arts 14, 19 and 21 though limited are not static and will rise to human heights when challenging situations arise.”<sup>79</sup> However it is inevitable that some of the rights of the accused gets compromised in the course of criminal procedure, such as arrest, search, custodial detention, etc.

This concern was raised by the Supreme Court in *Joginder Kumar v. State Of U.P.*<sup>80</sup> in which court said:” The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two? A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights,

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<sup>76</sup> *Charles Sobraj v. The Suptd., Central Jail, Tihar*, 1978 AIR 1514

<sup>77</sup> 1983 AIR SC 378

<sup>78</sup> *Prem Shankar Shukla v. Delhi Administration*, 1980 AIR 1535, 1980 SCR (3) 855

<sup>79</sup> *Charles Sobraj v. The Suptd., Central Jail, Tihar*, 1978 AIR 1514

<sup>80</sup> 1994 AIR 1349, 1994 SCC (4) 260

liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first the criminal or society, the law violator or the law abider; of meeting the challenge...” While answering these issues and related questions, the court rightly observed: “The quality of a nation's civilisation can be largely measured by the methods it uses in the enforcement of criminal law.”

In *Prem Shankar Shukla v. Delhi Administration*<sup>81</sup> it was observed that “the functional compulsions of security must reach that dismal degree that no alternative will work except manacles. Our Fundamental Rights are heavily loaded in favour of personal liberty even in prison, and so, the traditional approaches without reverence for the worth of the human person are obsolete, although they die hard.” In this case the court also laid down that an order of superior officer also cannot justify illegal treatment of a prisoner such as custodial torture or handcuffing. The court held: “Even orders of superiors are no valid justification as constitutional rights cannot be kept in suspense by superior orders, unless there is material, sufficiently stringent, to satisfy a reasonable mind that dangerous and desperate is the prisoner who is being transported and further that by adding to the escort party or other strategy he cannot be kept under control.”

Again while referring to the rights of an arrested person the court in *Shri D.K. Basu, Ashok K. Johri v State of West Bengal*<sup>82</sup> has observed: “Fundamental rights occupy a place of pride in the India Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life of personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and

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<sup>81</sup> 1980 AIR 1535, 1980 SCR (3) 855

<sup>82</sup> (1997) 1 SCC 416

the shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguard provided to a person with a view to protect his personal liberty against and unjustified assault by the State, In tune with the constitutional guarantee a number statutory provisions also seek to project personal liberty, dignity and basic human rights of the citizens.

A prisoner or an accused's right to legal aid and legal services are of immense importance. It is through this right that the criminal process he follows can be made fair and reasonable to him. In *Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar*<sup>83</sup> while emphasising on the need to ensure free legal service to an accused the court held: "The right to free legal service is therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of, an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services, on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer."

In *Sheela Barse v. State of Maharashtra*,<sup>84</sup> an accused's right to legal aid was recognized by court. The court in this case observes "Imagine the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill-treatment or oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated, it may be difficult if not impossible for him or the members of his

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<sup>83</sup> 1979 AIR 1369, 1979 SCR (3) 532

<sup>84</sup> 1983 AIR SC 378

family to obtain proper legal advice or aid. It is therefore absolutely essential that legal assistance must be made available to prisoners in C: jails whether they be under-trial or convicted prisoners” and further rightly said: “Legal assistance to a poor or indigent accused, arrested and put in jeopardy of his life or personal liberty, is a constitutional imperative mandated not only by Art. 39A but also by Articles 14 and 21 of the Constitution. It is a Necessary sine qua non of justice and where it is not provided, injustice is likely to result and every act of injustice corrodes the foundations of democracy and rule of law. It is possible that a prisoner lodged in a jail does not know to whom he can turn for help to indicate his innocence or defend his constitutional G or legal rights or to protect himself against torture and ill-treatment, oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated. It may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is therefore essential that legal assistance must be made available to prisoners in jails whether they be under-trials or convicted prisoners.”

In n Madhav Hayawadan Rao Hosket vs. State of Maharashtra,<sup>85</sup> the court observed that “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law.

This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

Various other rights that an under-trial prisoner gets are:

- Right to consult a lawyer of his choice during investigation and trial [Section 303, CR P C., and reiterated by SC in Nandini Satpathy case]

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<sup>85</sup> 1979 SCR (1) 192

- Right to a free legal aid lawyer, during a criminal trial conducted by Sessions Court [Section 304 Cr P C]
- Right to speedy trial [Section 309 Cr P C as well as Article 21, Indian Constitution]. While speedy trial cannot be completely granted to an accused, his detention beyond legally permitted period pending criminal proceedings is also not allowed. In the course of a pending investigation it is only for a maximum period of 60 or 90 days [in case of a regular crime] that a person can be detained in prison. Post this period if investigation continues accused will be released on bail as per section 167. Similarly in case of a pending trial an accused's detention cannot go beyond the period prescribed by provisions such as section 436A.<sup>86</sup>

The Court while referring to this right of a prisoner in *S.C. Legal Aid Committee v. Union of India*<sup>87</sup> had observed: “we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and

<sup>86</sup> Section 436A of Criminal Procedure Code prescribes time bar for detention of an accused pending trial [that is an under trial prisoner]. According to this provision, “Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties; Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties; Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.”

<sup>87</sup> 1994 SCC (6) 731, JT 1994 (6) 544.

reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose.” Supreme Court in A.R. Antulay v. U.S. Nayak, [(1992) 1 SCC 225] and Raj Deo Sharma v. State of Bihar, [(1998) 7 SCC 507], has held that the right of speedy justice is a fundamental right as envisaged under Article 21 of the Constitution.<sup>88</sup>

- Right to bail since as courts have repeatedly said “bail should be the rule and jail should be an exception. Hence denial of bail must be with justifiable reasons. The court in Lt Col Prasad Shrikant Purohit v. The State Of Maharashtra<sup>89</sup>, has rightly held that “though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.” This interpretation has come more clearly in relation to the default bail granted under Section 167 of Criminal Procedure Code. The Delhi High court in Abhishek v. State NCT of Delhi<sup>90</sup> has held that “The right to seek default bail under Section 167(2) Cr.P.C. is a fundamental right and not merely a statutory right, which flows from Article 21 of the Constitution of India. It has been held to be an indefeasible part of the right to personal liberty under Article 21 of the Constitution of India, and such a right cannot be suspended even during a pandemic situation. The right of the accused to be set at liberty takes precedence

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<sup>88</sup> Allahabad High Court quoted these decisions in Amarawati and Anr. (Smt.) v. State Of U.P. [2005 (1) AWC 416], while upholding right to be released on bail as per section 167.

<sup>89</sup> (2018) 11 SCC 458.

<sup>90</sup> CRL.M.C. 2242/2020, decided in October 2021.

over the right of the State to carry on the investigation and submit a charge sheet.” The Supreme Court too in its latest decision in *Bikramjit Singh v. The State Of Punjab*<sup>91</sup> Has rightly reiterated that “The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled.”

- Right to appeal: Right to appeal is also an important right of an accused person as per our criminal laws and constitutionally guaranteed fundamental rights. The Supreme court in *M.H. Hoskot v. State of Maharashtra*<sup>92</sup>... observed that “One component of ‘fair procedure’ is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure, natural justice and normative universality .....” Further, every step that makes the right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and, ergo, unconstitutional (In a sense, even Article 19 may join hands with Article 21.”<sup>93</sup> In this case, the court also emphasized upon the need to provide free legal services of a lawyer to an indigent prisoner. The court states: “If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142, read with Arts. 21, and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code and allowed by Art. 136 of the Constitution. The inference is inevitable that this is a State's duty and not government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to

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<sup>91</sup> **2020 SCC OnLine SC 824** or see - <https://indiankanoon.org/doc/10807134/>

<sup>92</sup> 1978 AIR 1548, 1979 SCR (1) 192

<sup>93</sup> Ibid.

be reasonably remunerated for his services. Surely, the profession has a public commitment to the people but mere philanthropy of its members yields short mileage in the long run. Their services, especially when they are on behalf of the State, must be paid for. Naturally, the State concerned must pay a reasonable sum that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the court.”<sup>94</sup> It is also important to note that in this case the court has also reiterated to need of ensuring that the accused gets freely a copy of the judgment of the court.

- Etc.

In *State of Punjab v. Balbir Singh* <sup>95</sup> the court while referring to the right of an accused to be informed of his rights arising from and during procedure of arrest and search, reiterated the need to inform about these rights including that of accused’s right to remain silent. While emphasising on these rights the court observed: “When such is the importance of a right given to an accused person in custody in general, the right by way of safeguard conferred under Section 50<sup>96</sup> in the context is all the more important and valuable. Therefore it is to be, taken as an imperative requirement on the part of the officer intending to search to inform the person to be searched of his right that if he so chooses, he will be searched in the presence of a Gazetted Officer or a Magistrate.” The court further stated “To afford such an opportunity to the person to be searched, he must be aware of his right and that can be done only by the authorized officer informing him. The language is clear and the provision implicitly makes it obligatory on the authorized officer to inform the person to be searched of his right.”

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<sup>94</sup> Ibid.

<sup>95</sup> 1994 AIR 1872, 1994 SCC (3) 299

<sup>96</sup> Section 50, Narcotic Drugs and Psychotropic Substances Act, 1985 provides for the procedure relating to search of persons.

With regard to the importance of ensuring protection of prisoners' rights in *Prem Shankar Shukla v. Delhi Administration*<sup>97</sup> it was held “the basic assumption we humanistically make is that even a prisoner is a person, not an animal, that an under-trial prisoner a fortiori so. Our nation's founding document admits of no exception on this subject as Sunil Batra's case has clearly stated. Based on this thesis, all measures authorised by the law must be taken by the court to keep the stream of prison Justice unsullied”

### **Right to livelihood:**

“The Supreme Court in *Olga Tellis* case laid it down that the right under Article 21 comprehends the right to earn one's livelihood. A person because he is in prison does not lose this right so long as his right under Article 21 can be exercised by him consistently with his imprisonment. Work is necessary for the preservation of life. In England, therefore, a prisoner is not only entitled but he is also bound to work and he is paid for his work at the rates approved by the, Secretary of State. The right of the prisoner to earn his livelihood and to preserve his life thus imposes a corresponding obligation on the State to provide work to the prisoner and pay for it. Such right of the prisoner can only be taken away by a valid law enacted by the found by the constitutional legislature, courts to be fair and reasonable. That is the ratio of the two hall-mark decisions of the Supreme Court in *Mithu's* case and *Panduranga Prabhakar's* case as there is no law enacted by the legislature authorising the State to deny the payment for the work extracted from prisoner the State would be violating Article 21 in extracting work from the prisoner without payment.”<sup>98</sup> The court in this case further observed: “the failure of the State to pay for the work extracted from the prisoner amounts to violation of the prisoners right to earn his livelihood. This reasoning cannot be found fault with on the basis that imprisonment will then become the best form of getting employed. Where the State kept the prisoner in its custody, the above implication becomes unavoidable.”<sup>99</sup>

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<sup>97</sup> 1980 AIR 1535, 1980 SCR (3) 855

<sup>98</sup> *Poola Bhaskara Vijayakumar v. State Of Andhra Pradesh And Anr*, AIR 1988 AP 295

<sup>99</sup> *Ibid.*

### **Right to be released on Furlough:**

“The idea of granting furlough to a prisoner is that the prisoner should have an opportunity to come out and mix with the society and the prisoner should not be continuously kept in jail for a considerable long period. The interaction with the society helps the prisoner in realizing the folly which he has committed and the liberty which he is deprived of. In modern times the effort is to improve the prisoner and the punishment is to be considered as an action for reformation of an individual. It is futile to suggest that a prisoner should be kept behind the bars continuously and should not be permitted to come out on furlough unless the authorities think it wise.”<sup>100</sup>

As regards to the nature of the facilities of release on Furlough is concerned, it is well settled that the said right is held to be a substantial, legal right conferred on the prisoner. Rules cannot deprive the prisoner of the substantive right to be released on Furlough, provided, requirement in the Rules are complied with.<sup>101</sup> The Court in this case has clarified the distinction between furlough and parole. It held ‘Parole is granted for certain emergency and release on Parole is a discretionary right, while release on Furlough is a substantive right and accrues to a prisoner on compliance of certain requirements,’<sup>102</sup>

### **Right to be in contact with family & right to conjugal visits:**

The court in *Dharambir and Anr v. State Of U.P.*,<sup>103</sup> the court recognising the importance of a prison inmate’s right to be in touch with his family said: “the humanizing process will be facilitated by keeping the prisoners in contact with their family. This can be made feasible (a) by allowing members of the family to visit the prisoners and (b) by the prisoners, under guarded conditions, being permitted, at least once a year, to visit their families. We therefore, direct that

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<sup>100</sup> *Sharad Keshav Mehta v. State Of Maharashtra And Others*, decided by Bombay High Court on 19 July, 1988

<sup>101</sup> *Central Prison v. State Of Maharashtra*, Bombay High court decided on 7<sup>th</sup> August, 2008.

<sup>102</sup> *Ibid* & also see: *Sharad Keshav Mehta v. State Of Maharashtra And Others*, decided by Bombay High Court on 19 July, 1988.

<sup>103</sup> 1979 AIR 1595

all these be done by the State Government and the Superintendent under the authority of this Court's order. The prisoners will be permitted to go on parole for two weeks, once a year, which will be repeated throughout their period of incarceration provided their conduct, while at large, is found to be satisfactory. “

Right to conjugal visits and related aspects: Though right to conjugal visits and right to procreation is not yet guaranteed as a right of prisoner across India, yet in some states and in some cases, the same has been provided through court decisions. In *Mrs. Meharaj v. The State*, the Madras High court granted conjugal visit right to a prisoner and observed as follows:

“Man is a social animal. He needs a family as well as a society to live in. The man needs both to share his emotions and feelings. Being human beings, prisoners also would like to share their problems with their life partner as well as with the society. Just because, they are termed as prisoners, their right to dignity cannot be deprived.

Out of four theories of punishment, India has accepted the theory of reformation also. The concept of reformatory theory is best, as it says that the human being to be reformed would become the productive member of the society. If that is to be done, prisons have to be transformed as homes for the purpose of giving training morally as well as intellectually, so that the prisoners are denuded of the qualities of a criminal. The psychologists and psychiatrists believe that the frustration, tension, the ill feelings and the heart burnings can be reduced and a human being can be better constructed if they are allowed conjugal relationship even rarely. Therefore, while considering the merits and demerits of allowing conjugal visits or permitting leave for the purpose of artificial insemination, the advantages are more than the disadvantages.

Conjugal visit leads to strong family bonds and keep the family functional rather than the family becoming dysfunctional due to prolonged isolation and lack of sexual contact..... Therefore, it is a right time that the Government should constitute a committee to consider the possibility of providing conjugal visit and analyze the merits and demerits of permitting conjugal visits and to provide the facility for conjugal visits to eligible prisoners subject to the precautions / safety measures to be taken.

Conjugal visits of the spouse of the prisoners is also the right of the prisoner. This right is recognized at least in few countries of the world. When the prisons are overcrowded providing place for conjugal visits may be a problem, but the Government has to find out a solution. Today, conjugal visits are called extended family visits (or, alternately, family reunion visits). The official reason for these extended family visits is three-fold: to maintain the relationship between the prisoner and the members of his family, to reduce recidivism, and to motivate or to provide an incentive for the good behavior.” The court in this case also examined the question - whether permission should be granted in the name of parole or by way of suspending the sentence? in response to this question, the court held: “We hold that until a legislation is made or appropriate rules are issued by the Tamil Nadu government regulating the grant of parole (temporary release), there shall be no temporary release of any prisoner on parole.” The term parole as repeatedly used in Chapter XIX of the Tamil Nadu Prisons Rules is not relating to the temporary release of a prisoner, but it is a release by granting remission.”

It is important to note that in an earlier case from Punjab, the state’s concerned prison related rules were interpreted to include prisoner’s right to conjugal visit. In *Arun v. State Of Haryana And Others* <sup>104</sup>... the court held that “The right was recognized” and that the “provisions of the Punjab Good Conduct Prisoner's (Temporary Release) Act, 1962” can be interpreted to include this right and the court held that “the parole for conjugal visits and procreation could be considered under Section 3(1) (d) "any other sufficient cause".

Though India lacks a law recognising prisoner’s right to conjugal visit, it is important to note that many other countries recognise this right of the prisoner.

### **Right to visitation:**

“In 1973, the National Advisory Commission argued that prisoners should have a "right" to visitation. Task Force Report, Corrections (1973) at 66. It also argued that correctional officials should not merely tolerate visiting, but should encourage it, particularly by families. Although the Commission recognised that regulations were necessary to contend with space problems and with security concerns, it proposed that priority be given to making visiting areas pleasant and

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<sup>104</sup> <https://indiankanoon.org/doc/80068790/> [decided in 2019 by Punjab & Haryana High Court in the matter of CWP No.3311 of 2019 (O&M).

unobtrusive. It also urged that correctional officials should not eavesdrop on conversations or otherwise interfere with the participants' privacy. Thus, although there may be current limitations on the possible use of the Constitution on visitations by family and friends, public policy should dictate substantial improvements in this area, in any event. We see no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of the prisoners' kit of rights and shall be respected."<sup>105</sup> “We see no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of prisoners' kit of rights and shall be respected.”<sup>106</sup>

### **Right to Communication:**

Right to Communication will include the right to communication with the outside world, right to periodic interviews, and right to receive information about the outside world through communication media.<sup>107</sup> Right to communication also includes right to write. A prison inmate has right to communication to the extent to which it does not affect the object of sanctions and prison administration. This right further includes ‘right to write’ letters to his family members of friends. According to the Maharashtra Prison Manual 1979, a convicted Class I prisoner is permitted to write two letters on government cost and two letters on their own cost per month, while Class II prisoners can write one letter each; letters to their advocates were additional.<sup>108</sup>

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<sup>105</sup> Aniruddhsinh Mahipatsinh Jadeja v. State Of Gujarat and Ors, (2002) 1 GLR 594.

<sup>106</sup> Madras High Court in P. Nedumaran v. The State of Tamil Nadu, decided on 14 August, 2001, referring to SC’s Sunil Batra’s precedent.

<sup>107</sup> Mulla 1983, pp. 46, Vol I), quoted by Baljeet Kaur, Prisoners’ Right to Write: Why SC Rulings Should be Taken Seriously by Prison Authorities, available at <https://www.epw.in/engage/article/prisoners-right-write-why-sc-rulings-should-be-considered>.

<sup>108</sup> <https://www.epw.in/engage/article/prisoners-right-write-why-sc-rulings-should-be-considered>

The Mulla Committee in its 1983 report recommended that there should not be any limit on incoming letters and no restrictions on number of letters prisoners may send at their own cost.<sup>109</sup>

Like the above there are various rights of the prisoners that are constitutionally guaranteed, legally ensured and assured through judicial precedents.

### **Right to Redressal of Grievances:**

Rights if breached must be remedied. Redressal of grievances of prisoners is one such remedy available against breach of rights of prisoners. Whenever prisoners have any grievances they must have access to redressal mechanism which is also an important right of such prisoners. [See the chapter on REDRESSAL]

Like the above there are various rights of the prisoners that are constitutionally guaranteed, legally ensured and assured through judicial precedents.

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<sup>109</sup> Ibid.

# **OBLIGATIONS OF PRISONERS**

In order to well maintain a prison and also provide a clean, safe and secured atmosphere, it is important to impose certain obligations upon prison inmates. According to the Model Prison Manual of BPRD, 2003:<sup>110</sup>

*“At the time of admission, prisoners should be asked to obey the rules and their duties shall be explained to them as below:*

- (i) *Obey the orders of all officers of prison (including clerks, medical and technical staff) and convict officers*
- (ii) *Remain strictly with their groups and within the part of the prison in which they are confined, unless ordered by proper authority to leave it.*
- (iii) *Abstain from talking when in a file at unlocking or at latrine and bathing or other parades, or at any time when ordered by an officer of the prison to desist; also abstain from abusing, singing, quarrelling, laughing loudly, talking loudly and indecent behaviour at any time*
- (iv) *Not hold any communication with outsiders, women, civil or under trial prisoners or prisoners of a class different from their own, or with the guards, beyond what is absolutely necessary*
- (v) *Not receive or possess ganja or other drugs, money or jewellery, or any article of food or clothing prohibited by the rules, books, papers, writing materials of any description, rope, knife, or other implement (except during working hours and when the implement is required for work). When they find any of these articles in the prison or know of any other prisoner having possession of any such articles, they shall report the matter to the Deputy Superintendent or Warder*
- (vi) *Report any plot or conspiracy, and any attempt to escape, or any planned attack upon any prisoner or officer of the prison*

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<sup>110</sup> BPRD, Model Prison Manual, 2003, available at - <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>, last visited on 25<sup>th</sup> January 2022.

- (vii) *Help the officers of prison in the event of any attack upon them*
- (viii) *Keep their clothes, blankets, beddings, and utensils clean and in proper order*
- (ix) *Keep their persons clean*
- (x) *Perform their assigned tasks willingly and carefully and take proper care of any property of government entrusted to them for any purpose*
- (xi) *Be orderly in their behaviour; march when moving about the prison; when addressing or being addressed by an officer of the prison or visitor stand at attention with their hands down; and salute when ordered*
- (xii) *Not to remove provisions from the kitchen or food servicing platforms without authority, or conceal any article of food in the wards or cells*
- (xiii) *Not to remove any unconsumed food from the place where the meal is taken*
- (xiv) *Stick to the bed, ward, yard, and the seat assigned to them while at meals or at work*
- (xv) *Not to loiter about the yards, or in the wards, after the doors have been opened, or bathe or visit the latrine beyond the specified hours*
- (xvi) *Not commit any nuisance or urinate in any part of the prison which has not been assigned for that purpose, or spoil any part of the prison or any article in the prison in any way*
- (xvii) *Show respect to all officers. Not to strike, assault or threaten any officer or prisoner*
- (xviii) *Not to gamble or barter or play any game (unless specially permitted by the Superintendent) within the prison; nor keep animals, birds or other pets;*
- (xix) *Wear the clothing given to them and not to exchange clothing or any part of their prison kit, with any other prisoner.”*

Prisoners are required to mutually respect each other's rights. Hence one's rights is subject to non-interference by another. Hence also the need of maintaining a safer atmosphere within prison, so that every prison inmate's right is respected by another prison inmate. This requires maintaining discipline in prison. Hence a prison inmate is obliged to maintain discipline in prison. Further a prison inmates rights must not be unnecessarily encroached upon by the prison authorities.

“Prison discipline shall cover all aspects of Institutional life such as<sup>111</sup>:

- ii) Discipline of good health,
- iii) Discipline of work,
- iv) Discipline of proper behaviour,
- v) Discipline of education and learning, and
- vi) Discipline of interest in finer aspects of life.

A prison inmate has a duty to contribute towards discipline maintenance of the prisons. For this he is required to adhere to prison rules and regulations. Failure to adhere to mandatory rules may even result in sanctions. Following acts of the prisoners shall constitute prison offences<sup>112</sup>:

- *Endangering the security of the prison in any way, by a wilful or negligent act and shall include tampering in any way with prison walls, building, bars, locks and keys, lamps or lights or with any other security and custody measure.*
- *Doing any act calculated to create unnecessary alarm in the minds of other prisoners.*
- *Doing or omitting to do any act with intent to cause to oneself any illness, injury or disability.*

<sup>111</sup> BPRD, Model Prison Manual, 2003, available at - <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>, last visited on 25<sup>th</sup> January 2022.

<sup>112</sup> BPRD, Model Prison Manual, 2003, available at - <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>, last visited on 25<sup>th</sup> January 2022.

- *Omitting to report the commission of any prison offence.*
- *Breaking law and order and prison discipline.*
- *Planning, instigating and abetting, directly or indirectly, the commission of any prison offence.*
- *Refusing, omitting to abide by standards of behaviour, rules and regulations and lawful instructions and orders.*
- *Failing to assist in the maintenance of prison discipline.*
- *Failing to give assistance to a prison official when called to do so.*
- *Making false, malicious and groundless, written or verbal, complaints against prison officials.*
- *Committing nuisance or mischief of any sort.*
- *Quarrelling with other prisoners.*
- *Smoking at places, or at times, other than appointed places. (xiv)*
- *Attacking, assaulting, and causing injuries to others.*
- *Participating in a riot or mutiny, abetting another prisoner to do the same.*
- *Escaping or attempting to escape from prison or legal custody or failing to report to prison officials about attempted escapes.*
- *Possessing, hiding, smuggling, attempting to smuggle, obtaining, giving or receiving and bartering contraband articles.*
- *Failing to report to prison officials about contraband articles.*
- *Stealing/damaging/destroying/disfiguring/misappropriating any government property or another prisoners' articles and property.*
- *Failing to report at once any loss, breakage or injury, which the prisoner may accidentally have caused, to prison property or implements.*
- *Tampering with or defacing identity cards, records or documents.*
- *Breach of the conditions of leave and emergency release.*
- *Refusing to eat food or going on a hunger-strike.*
- *Eating or apportioning any food not assigned to him or taking from or adding to the portions assigned to another prisoner.*
- *Wilfully or negligently destroying or spoiling food, or throwing it away without orders.*

- Introducing into food or drink anything likely to render it unpalatable, unwholesome, or dangerous for human consumption.
- Cooking unauthorisedly.
- Violating rules and regulations framed for the systematic running of the canteen.
- Bartering canteen articles.
- Being idle, careless or negligent at work, refusing to work, malingering, disturbing other prisoners at work, or in barracks.
- Manufacturing any article without the knowledge or permission of a prison officer.
- Performing any portion of the task allotted to another prisoner or obtaining unauthorised assistance of another prisoner in the performance of one's own task.
- Apportioning to any prisoner any part of the task to be performed by him/her.
- Mixing or adding a foreign substance to the materials issued for work.
- Wilfully disabling himself from labour.
- Converting, or attempting to convert, a prisoner to a different religious faith.
- Wilfully hurting other's religious feelings, beliefs and faiths.
- Agitating or acting on the basis of caste or religious prejudices.
- Having any communication, in writing or by word or by signs, without permission, with any outsider, an under trial prisoner, detenus, civil prisoners, and approvers.
- Sending messages surreptitiously by writing or verbally.
- Participating in, or organising, unauthorised activities like gambling and betting.
- Using indecent, abusive, insolent, threatening or improper language; being disrespectful, making indecent or vulgar acts or gestures.
- Soiling or befouling any place or article.

- Loitering or lingering, leaving the appointed area or workgroup without permission.
- Failing to assist, or preventing another person from assisting, prison officials in suppressing violence, assault, riot, mutiny, attack, gross personal violence or any other emergencies.”

A prison inmate also has following duties:

- duty to maintain cleanliness
- duty to maintain discipline [orderly behavior, uniforms, maintaining time table, etc.]
- duty to discharge works assigned in prison
- duty to follow prison rules
- Etc.

Prison inmates apart from having rights conferred by law also are obliged with duties imposed by laws. In order to better administer a prison it is important to maintain disciplined atmosphere in prison for which prison inmates are required to discharge such obligations. According to the summarized note published by Goa States’ prison authorities, the obligations of prisoners are as follows:<sup>113</sup> “It shall be the duty of each prisoner:-

- To obey all laws and instructions issued by the competent prison authorities;
- To abide by all prison rules regulations and perform obligations imposed by these rules and regulations;
- To maintain the prescribed standards of cleanliness and hygiene;
- To respect the dignity and the right to live of every inmate, prison staff and functionary;
- To abstain from hurting religious feelings, belief and faiths of other persons;

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<sup>113</sup> <https://goaprisons.gov.in/index.aspx>

- To use Government property with care and not to damage or destroy the same negligently or wilfully;
- To help prison officials in the performance of their duties at all times and maintain discipline and order;
- To preserve and promote congenial correctional environment in the prison.”

# **BREACH OF RIGHTS AND** **GRIEVANCE REDRESSAL** **MACHANISM**

## **RIGHTS OF PRISONERS AND GRIEVANCE REDRESSAL MACHANISM IN PRISONS:**

Effective administration of prisons requires strong grievance redressal mechanism within prison through which grievances of prisoners related to violation of their rights and other such concerns are redressed.

[ALSO SEE – Prisoner’s right to redressal of Grievances – discussed above]

According to Mulla Committee, prisoner’s right includes right to effective presentation of individual complaints and grievances during confinement in prison to the appropriate authorities. Hence a robust grievance redressal mechanism should be put in place in all prisons to ensure the rights of prisoners are not violated and their concerns are heard impartially and there should be both internal and external mechanisms for inmates to represent their grievances.<sup>114</sup>

The Mulla Committee also recognized prisoners right to “communicate with prison administration, appropriate government and judicial authorities, as the case may be, for redressal of violation of any or all of prisoner’s rights and for redressal of grievances” as an important right.<sup>115</sup>

According to the National Prison Manual<sup>116</sup>:

1. The District Judge should visit every prison in his/her jurisdiction at least once a month and give prisoners the opportunity to represent their grievances in the absence of prison officials. The Board of Visitors should also be activated to ensure regular visits to prisons. The non-official members of the Board including members of the Legislative Assembly, nominee of the State Human Rights Commission and social workers of the District/Sub-Division should be encouraged to visit the prison at least once a month. Most importantly in order

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<sup>114</sup> <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>

<sup>115</sup> Quoted in <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>

<sup>116</sup> <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>

to redress the grievances of women prisoners it is necessary that the Board of Visitors must contain a certain percentage of women members to improve the redressal of grievances specific to women inmates.

2. The National Model Prison Manual prescribes the creation of a Prisoners' Panchayat to organise events and activities for prisoners as well as provide an avenue to represent concerns and seek redress of grievances. A 'Mahapanchayat' should be held at least once a quarter with the Superintendent in attendance for the redressal of prisoners' grievances and implementation of their suggestions. The practice of fortnightly or weekly 'Nari Bandhi Sabhas' (women prisoners' councils) should also be encouraged.
3. The Prisons Manual also provides for the setting up of a Grievance Redressal System in every prison, with complaint boxes to be prominently installed, especially accessible to female prisoners. A Grievance Redressal Committee is to examine the complaints twice every week.<sup>117</sup>
4. An additional complaint box should also be in place for serious complaints such as sexual abuse, torture etc. which only Board of Visitors can open. A register can be placed at an accessible spot in the prison for submitting grievances. Apart from the prisoner herself, her legal adviser or family members should be allowed to make complaints regarding her stay in prison. In case the lady medical officer notices signs of torture during medical examination, she may, with the consent of the woman prisoner, raise a complaint on her behalf.
5. Prisoners should also be able to represent their grievances verbally or in writing during visits by Board of Visitors, DLSA, State Commissions for Women, District Magistrate, etc.
6. Prisons that house women inmates must have a senior female officer as part of the Grievance Redressal Committee, which should examine complaints in an unbiased manner. Women prisoners should have a chance to raise their concerns to the Superintendent during weekly parades. In managing the

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<sup>117</sup> Ibid

grievance redressal mechanism, steps should be taken to avoid the risk of retaliation, and to ensure that the complaints are not censored.

Since prison administration is a state subject for law making purpose, States have adopted their own strategies to protect rights of prisoners by way of establishing grievance redressal mechanism.

### **STATE OF KERALA:**

Kerala Prisons & Correctional Services (Management) Act 2010 stipulates that each jails shall constitute a grievance redressal committee and it shall be convened once in three months giving prior intimation to the inmates. Such committee shall receive complaints or representation from the prisoners in order to redress their grievances.<sup>118</sup> The grievances and complaints are being looked into by the concerned Superintendent and Prison Officers at different levels. The sealed Complaint boxes of the DGP & CS and concerned District and Sessions Judges have been installed in all prisons which are opened once in a month by the Director General of Prisons & Correctional Services and District and Sessions Judges respectively. The prisoners are free to send representations and complaints to National Human Rights Commission, State Human Rights Commission, Govt. Departments, Courts etc. through the Superintendent of Prisons. More over the General Public can meet the concerned Prison Superintendents, Zonal Deputy Inspector Generals of Prisons and DGP&CS in connection with any of their grievances for redressal. The phone numbers of Director General of Prisons & Correctional Services and other senior officers are exhibited in the website of Prisons Department and the public and close relatives of inmates are free to call in emergency situations to invite attention to any grievances for urgent redressal.<sup>119</sup>

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<sup>118</sup> <https://keralaprison.gov.in/grievance-redressal-system.html>

<sup>119</sup> Ibid.

# **RIGHTS OF PRISON OFFICERS**

Human rights issues are comprehensive and diverse to cover all essential facets of life of all human beings irrespective of their profession. The quality of life of an individual depends upon the dignity of life. Hence, minimum rights essential to provide quality life with dignity must be conferred upon all irrespective of their profession. Prison administration officers also deserve equal legal protection of securing minimum human rights.

Administering a prison that too in a legal system committed to democratic values is a complex proposition and a complicated assignment. A prison houses inmates including hardened criminals, repeated offenders, inmates suffering with mental health issues, inmates facing emotional trauma as well as inmates suffering with substance abuse. Women inmates have their own gender related concerns which also must be taken care of by the prison authorities. Hence prison administration involves obliging prison officers with complicated and overburdened duties, raising often questions related to their own rights protection. Effective and efficient discharge of their duty is possible only if they receive sufficient legal protection of their rights. Hence the concern.

### **PRISON STAFF'S RIGHTS AS HUMAN RIGHTS**

Human rights are “the rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status and they include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work, education, social origin, birth, and many more.”<sup>120</sup> They are “inherent in all human beings by virtue of their humanity alone.” Human rights are derived from the inherent dignity and worth of the persons and they are universal, inalienable and equal. These rights cannot be taken away from or surrendered by any person. Everyone including a prison officer is “entitled to these rights, without discrimination”<sup>121</sup>. However, in reality law and policies often focuses on the rights of the citizens and seldom of the human rights of State agents like police or prison officer.

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<sup>120</sup> <http://www.un.org/en/sections/issues-depth/human-rights/>. last accessed on 16th May 2018.

<sup>121</sup> Ibid.

Human rights is a comprehensive term covering under its ambit basic rights [by virtue of being a human being] inevitable for a human being to live including those which belongs to a member of law enforcement agency – the police. There term is widely defined to include such rights of police. It is regarded as “*inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being*”. They are inalienable within qualified legal boundaries and equally applicable to all.

According to the Universal Declaration of Human Rights under Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

Section 2(1) (d) of the Indian Protection of Human Rights, 1993 defines “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

In our criminal justice system the prisons plays a pivotal role as an agent of the State. They are the correctional institutions which imposes correctional sentences prescribed by courts upon the offenders. They the institutions that houses under trial prisoners who are still facing criminal prosecution. Hence prisons plays a very important role in administering criminal justice system. Hence the purpose of this institution is well-concerned.

However it is a fact that Indian criminal justice administering agencies including prisons and police are even today largely influenced by the colonial system. The Austin’s concept of “authority” of State is even today visible in the police as well as prison agency thus exposing subordinates to

authoritative atmosphere. They are exposed to State control, compulsive atmosphere of work which is hardly respectful of human rights of their staff [prison officers].

A prison officer is required to discharge various complex duties:

- They have to administer prison and ensure an atmosphere that safe and secure for all inmates.
- They have to ensure discipline amongst prisoners including mutual safety of each prisoners and prevent any untoward and violate acts or clashes between prisoners.
- They have to ensure protection and promotion of human rights of all prison inmates
- They have to facilitate criminal process including production, safe custody and execution of courts orders in respect of every inmate. On the whole they are required to ensure that prison's role as a machinery of state in administering criminal justice system is effectively discharged.
- They have to ensure humanistic approach towards each inmate including children staying with women inmates
- To contribute effectively towards reformation of prisoners.

Prison officers, like police are expected also to:<sup>122</sup>

- uphold the rule of law which is the basis of a democratic society.
- act as an executive arm of the Government.
- be the protector of rights and liberties of the citizens' guaranteed by the Constitution and protect the weak and poor from oppression and exploitation [with in the prison]
- to act as an agency of social service and as an instrument for social change.

All these duties are also expected to be discharged by prison authorities and its staff. But it is a fact that prisons are exposed to greater number of challenges in the current era. Day by day an alarming increase in the number of crimes is being observed as a result of increasing population, scarcity of resources, lack of education, employment, poverty changing societal values and

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122 Parvesh K. Atri, "Sociology of Crime and Criminology" Anmol publications New Delhi 1st edn. 1998 at p. 140

norms, etc. This has a direct bearing on prison institutions as number of prison inmates are also increasing at an alarming rate. Thus more crimes would lead to more responsibilities on the police and correctional agencies which would inevitably lead to more stress on their personnel.

### **SOME OF THE FORMS OF ABUSE OF HUMAN RIGHTS OF PRISON OFFICERS:**

“Stress is inherent in uniform services. There have been several studies conducted on officers in different parts of the world and some in India, which reveal that the present working conditions and several other factors have lead to increased level of stress among officers.”<sup>123</sup> Hence work related stress is one of the common form of violation of human rights of prison officers.

Since most of the prisons are overcrowded today, the work load on the prison staff is also huge. Denial of holidays and leaves also is very common problem faced by prison officers. This also adds to problems associated with work related stress both physical as well as mental. Prison staff often have to strive to work with a large number of the stressful peculiarities countered by them in day-to-day functioning.

There are many unheard plights of the prison staff, especially of the lowest cadre police – a wing expected to ensure safety and security of the inmates. Human rights of such officers are often at peril, due to various reasons including relating to systemic defects and deficiencies.

### **IMPORTANT HUMAN RIGHTS OF PRISON OFFICERS:**

The following are some of the important human rights guaranteed by the Indian Constitution and international legal instruments - but is hardly enjoyed by a prison staff especially those officers working at lower cadre:

- Right to life: Article 21 of the Indian Constitution and Article 3 of UDHR – including right to liberty and security.

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123 Varun Kapoor & Dr.Yamini Karmarkar, “Police Investigators – Stress Study”, The Indian Police Journal, Vol. LXI, No. 2., April – June 2014, BPRD, India, available at <http://www.bprd.nic.in/WriteReadData/userfiles/file/5392398545-April%20June%202014.pdf>.,retrieved on 30th December 2018.

- Right to Equality and Dignity: Article 14, Indian constitution as well as Article 7, UDHR.
- Right to Freedom: Article 2 of UDHR [everyone is entitled to all the rights and freedom set forth in their declaration].
- Article 4 of UDHR proclaims that everyone has the Right to be free from slavery or servitude
- Right to freedom of thought and conscience – under Article 18 of UDHR
- Right to freedom of opinion and expression – under Article 19 of UDHR
- Right to freedom of assembly and association – under Article 20 of UDHR
- Right to be free from cruel inhuman or degrading treatment or punishment: - Article 5 of UDHR
- Right to equal protection of law – under Article 7 of UDHR
- Right to an effective remedy or grievance – under Article 8 of UDHR
- Right to family and children – under Article 12, UDHR
- Right to freedom of Movement – under Article 13, UDHR
- Right to exercise franchise
- Right to Social Security – under Article 22, UDHR
- Right to rest and leisure – under Article 24, UDHR
- Right to standard of living adequate for health and well-being – under Article 25, UDHR
- Right to education, training and development – under Article 26, UDHR
- Right to participation in cultural and religious life of community – under Article 27, UDHR
- Right to perform duty to the community with dignity without any interference – under Article 29, UDHR

Though the above are the list of rights legally recognized as rights of ‘all’ yet State agents like Police and prison officers and their human rights are hardly spoken about issues. They are rather often criticized as violators of human rights. But in reality – it’s a one side of the coin. On the other side – we see gross violations of human rights of prison officers.

An effective prison administration requires not just an environment safer to prisoners but also to staff who work there without time limits. Hence measures essential to ensure protection of rights of prison authorities must be taken so as to make the entire prison atmosphere more humane.

# **TOWARDS ENSURING A BETTER** **BALANCED APPROACH –** **RECOMMENDATIONS.**

Prison Jurisprudence, developed through case-law and derived from constitutional law, already exists.<sup>124</sup> “Prison justice implies Court's continuing duty and authority to ensure that the judicial warrant which deprives a person of his life or liberty is not exceeded, subverted or stultified. It is a sort of solemn covenant running with the power to sentence. Where a prison practice or internal instruction places harsh restrictions on jail life, breaching guaranteed rights, the Court directly comes in. Every prison sentence is a conditioned deprivation of life and liberty with civilized norms built in and unlimited trauma interdicted.”<sup>125</sup>

It is important to remember that the whole prison jurisprudence including those established in form of provisions of laws and precedents of courts emphasis on maximum extent of protection of prisoners' rights. As was rightly summarized in the Model Prison Manual, 2016, the three principles enunciated by Indian courts with respect to prisoner's rights are:

- “(1) a person in prison does not become a non-person;*
- (2) A person in prison is entitled to all human rights within the limitations of imprisonment*
- (3) There is no justification in aggravating the suffering already inherent in the process of incarceration.”*

Courts extended hands of aid reaches prison inmates when his rights gets violated. In this regard, various precedents in India are established by the Supreme Court and High Court. Writ jurisdictions are often invoked to check issues of rights violations in prisons. The Gujarat High court in Aniruddhsinh Mahipatsinh Jadeja v. State Of Gujarat and Ors.<sup>126</sup> said “Prisons are built with stones of law' and so it behaves the Court to insist that, in the eye of law, prisoners are persons, not animals, and punish the deviant 'guardians' of the prison system where they go

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<sup>124</sup> Ramesh Kaushik v. B. L. Vig, Superintendent And Anr, 1981 AIR 1767

<sup>125</sup> Charles Sobraj v. The Suptd., Central Jail, Tihar, 1978 AIR 1514

<sup>126</sup> (2002) 1 GLR 594

berserk and defile the dignity of the human inmate. Prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials 'dressed ill a little, brief authority', when Part III is invoked by a convict. For when a prisoner is traumatized, the Constitution suffers a shock. And when the Court takes cognizance of such violence and violation, it does, like the, Hound of Heaven, 'But with unhurrying chase, and unperturbed pace. Deliberate speed and Majestic instance' follow the official offender and frown down the outlaw adventure.”

Every imprisonment indicates compromising of concerned person's right to life which hence must be as per procedure established by law. Such procedure must also be fair and just as was held by Supreme Court of India in *Maneka Gandhi* case.<sup>127</sup>

On the other hand, prison inmates also must discharge obligations imposed upon them by laws and rules, so as to ensure within prison an atmosphere of discipline, security and safety. While prison inmates are guaranteed with protection of legally granted rights, they on the other hand are subjected to obligations imposed by laws. Balancing the two concerns, firstly of protecting their rights and secondly of ensuring their discharge of duties imposed by laws, is crucial for better administration of prison institutions.

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<sup>127</sup> *Maneka Gandhi v. Union of India*. AIR 1978 SC 579