

## PRISONERS RIGHTS: RIGHT TO LIFE UNDER HUMAN DIGNITY

**Dr. RUCHI TIWARI**

Assistant Professor

Baroda School Of legal Studies

Faculty of Law

The Maharaja Sayajirao University of Baroda

Vadodara (Gujarat) 390 002

[11rtiwari@gmail.com] (M) 08511102451

Residential Address

A4 Goverdhan park no.1

Harni road east

Vadodara (Gujarat) 390 022

**JILL MEHTA**

Student

4<sup>th</sup> Year Ba.llb (hons)

Baroda School of Legal Studies

Faculty of law

The Maharaja Sayajirao University of Baroda

Vadodara (Gujarat) 390 002

[jillmehta125@gmail.com] (M) 8849889155 , 9429569517

Residential Address

A2-101, Sidharth Samanvay

Near Surendra Nursery

Channi Main Road

Nizampura

Vadodara (Gujarat) 390 002

### ORIGIN OF THE RESEARCH

This paper reports on one aspect world today where there is considerable discussion on human rights and various United Nations bodies and non-governmental organizations are concerned about the implementation of human rights. The phrase "human rights" was used again in the Atlantic Charter and the same formula was repeated shortly thereafter in the Declaration of the United Nations signed on 1<sup>st</sup> January, 1942: "Since human rights and the fundamental freedoms are invisible, the full realization of the civil and the political rights without the enjoyment of the economic, social and cultural rights without the enjoyment of the economic, social and cultural rights is impossible."<sup>1</sup> This paper reflects the challenges of carrying out qualitative research on human rights specifically in the prisons sector.

The major concern of this research paper is that Human rights which are derived from the inherent dignity of the human person and no one should be subjected to torture, cruel, inhuman, ill-treatment or degrading treatment or punishment especially prisoners who aren't consider to be the normal human particularly in India. Whilst we had a working hypothesis that formal human rights frameworks would have some identifiable impact on the operation of prisons for both prisoners and staff, we wanted to find out to what extent prisoners and staff found these frameworks relevant or Effective.

Aim to do the research for the rights of the prisoner are to give them voice towards the ill-treatment, cruelty and degradation of their humanity that they are facing at several stages in their prison life. Revealing the exploration shows regard for the estimation of their perspectives as residents and people. Commitment of their time and conclusions to the exploration additionally makes moral commitments. Further, with regards to human rights talks, the strategy was viewed as underlining that individuals in jail are commendable of being tuned in to.

*Prisoners:*

According to black's law dictionary prisoner is the one who is deprived of his liberty; one who is against his will kept in confinement or custody. A person restrained of his liberty upon any action, civil or criminal, or upon comiand- rent. No prisoner shall be subjected, even with his or her consent, to any medical or scientific experimentation which may be detrimental to health<sup>2</sup>. Article 21 of the Indian of the Indian constitution states that "No person shall be deprived of his life and Personal Liberty except according to the procedure established by law". Right to life and Human rights are the backbone of the human rights in India, by giving such liberal and

1

<sup>2</sup> Rome Statute of the International Criminal Court, article 7

comprehensive meaning to “life and personal liberty”, the courts have formulated and have established plethora of rights.<sup>3</sup> A detainee otherwise called a prisoner is any individual who without wanting to is denied of freedom. This freedom can be denied by intense control or imprisonment. Detainee’s rights manage the privileges of the prisoners while in a correctional facility. Detainees have fundamental lawful rights that can’t be detracted from them.

#### *Rights of Prisoners in India (Historical Background)*

In India the British Rule legacy has been continued for Prison Administration. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. “In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, and clothing, bedding and medical care. In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail Management. In 1894, the draft bill became law with the assent of the Governor General of India”<sup>4</sup>

#### *Prisoners’ Rights under Prisons Act 1894*

Prisoners are also entitled with right just like a normal human being when they are behind the bars, in India these rights are provided to them under the Constitution of India and other various acts among which one of them is Prisons’ Act 1894.<sup>5</sup> Prisons Act, of 1894 is the first legislation regarding prison regulation in India. This Act mainly focus on reformation of prisoners in connection with the rights of prisoners. Following Sections of the Prisons Act, 1894 are related with the reformation of prisoners:-

- Accommodation and sanitary conditions for prisoners,<sup>6</sup>
- Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison,<sup>7</sup>
- Provisions relating to the examination of prisoners by qualified Medical Officer,<sup>8</sup>
- Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and under trial prisoners<sup>9</sup> .
- Provisions relating to treatment of under trials, civil prisoners, parole and temporary release of prisoners.<sup>10</sup>
- In the year of 2016 the Parliament has been passed the Prisons (Amendment) Bill, 2016 to amend the Prisons Act, 1894 with a view to provide protection and welfare of the prisoners.

#### *Prisoners’ Rights under Constitution*

Constitution of India does not expressly provide the provisions related to the prisoners’ rights but in the case of *T.V. Vatheeswaran v. State of Tamil Nadu*,<sup>11</sup> it was held that the Articles 14, 19 and 21 are available to the prisoners as well as freemen. Prison walls do not keep out fundamental rights.

Article 14 of the Constitution of India says that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. Thus Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation.<sup>12</sup>

Article 19 of the Constitution of India guarantees six freedoms to the all citizens of India. Among these freedoms certain freedoms cannot be enjoyed by the prisoners because of the very nature of these freedoms. But the “freedom of speech and expression”<sup>13</sup> and “freedom to become member of an association”<sup>14</sup>

Article 21 of the Constitution of India says that No person shall be deprived of his life or personal liberty except according to procedure established by law. This Article stipulates two concepts i.e., right to life and principle of

<sup>3</sup> <http://www.legalservicesindia.com/article/1616/Role-of-Judiciary-in-Protecting-the-Rights-of-Prisoners.html>

<sup>4</sup> <http://home.rajasthan.gov.in/content/dam/pdf/StaffCorner/Training-Material/Useful-Presentations-And-Videos/Overview%20of%20prisons%20in%20India.pdf>

<sup>5</sup> <https://legaldesire.com/rights-prisoners-indian-law/>

<sup>6</sup> Section 4 of the Prisons Act, 1894

<sup>7</sup> Section 7 of the Prisons Act, 1894

<sup>8</sup> Section 24(2) of the Prisons Act, 1894

<sup>9</sup> Section 27 of the Prisons Act, 1984

<sup>10</sup> Sections 31 and 35 of the Prisons Act, 1894

<sup>11</sup> AIR 1983 SC 361 : (1983) 2 SCC 68.

<sup>12</sup> Chowdhury Roy Nitai, “Indian Prison Laws and Correction of Prisoners”, Deep and Deep Publications, New Delhi, 2002, p.75

<sup>13</sup> Article 19(1)(a) of the Constitution of India

<sup>14</sup> Article 19(1)(c) of the Constitution of India

liberty. By Article 21 of the Indian Constitution it is clear that it is available not only for free people but also to those people behind the prison. Following are the rights of prisoners which are implicitly provided under the Article 21 of the Constitution of India:-

- Right of inmates of protective homes,<sup>15</sup>
- Right to free legal aid,<sup>16</sup>
- Right to speedy trial,<sup>17</sup>
- Right against cruel and unusual punishment,<sup>18</sup>
- Right to fair trial,<sup>19</sup>
- Right against custodial violence and death in police lock-ups or encounters,<sup>20</sup>
- Right to live with human dignity,<sup>21</sup>

Apart from these rights of prisoners Constitution of India also provides following rights to the prisoners:-

- Right to meet friends and consult lawyer,<sup>22</sup>
- Rights against solitary confinement, handcuffing & bar fetters and protection from torture,<sup>23</sup>
- Right to reasonable wages in prison.<sup>24</sup>

#### Case Laws:

Prisoners' Rights have been established through various case laws among which the prominent ones are: *Hussainara Khatoon (IV) v Home Secretary, State of Bihar* [(1980) 1 SCC 98] which is related to the right of prisoner for the speedy trial<sup>25</sup>:

- **Facts:** The case dealt, *inter alia*, with the rights of the under trial prisoners on *habeas corpus* petitions which disclosed a shocking state of affairs in regard to administration of justice in the State of Bihar. An alarmingly large number of men and women, children including, were behind prison bars for years awaiting trial in courts of law. The offences with which some of them were charged were trivial, which even if proved, would not warrant punishment for more than a few months, perhaps a year or two, and yet they remained in jail, deprived of their freedom, for periods ranging from three to ten years without even as much as their trial having commenced. The Court ordered immediate release of these under trials many of whom were kept in jail without trial or even without a charge
- **Ruling:** Fairness under Article 21 is impaired where procedural law does not provide speedy trial of accused; does not provide for his pre-trial release on bail on his personal bond, when he is indigent and there is no substantial risk of his absconding; if an under-trial prisoner is kept in jail for a period longer than the maximum term of imprisonment which could have been awarded on his conviction and if he is not offered free legal aid, where he is too poor to engage a lawyer, provided the lawyer engaged by the State is not objected to by the accused.
- Where the petitioner succeeds in establishing his case, the Court would grant him any relief which is necessary to afford proper justice, or to prevent manifest injustice regardless of technicalities such as to issue directions to the Government and other appropriate authorities, as may be necessary, to secure to a prisoner his constitutional rights.
- The Supreme Court (per Bhagwati J) (at 107, para 10) held that the state cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to improving speedy trial.

**Another prominent case law for the right to live with dignity under the right of prisoner is the case of Jeeja Ghosh & anr. vs Union Of India & ors** <sup>26</sup>:

- **Facts of the case are:** Jeeja Ghosh who is an Indian citizen suffering from cerebral palsy. She is a very famous personality with a very high qualification. She was invited to an international conference in Goa, North South Dialogue IV and it was hosted by ADAPT. She was invited as one of the 15 international individual for reviewing an Indo- German Project which was being show case at the conference. This conference was intended to put a special focus on people with disabilities and their families and social or institutional barriers. The second Petition purchased a return ticket for Ms. Jeeja

<sup>15</sup> Upendra Baxi v. State of U.P., (1983) 2 SCC 308

<sup>16</sup> M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544

<sup>17</sup> Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81

<sup>18</sup> Jagmohan Singh v. State of U.P., AIR 1973 SC 947

<sup>19</sup> Rattiram v. State of M.P., (2012) 4 SCC 516

<sup>20</sup> D.K. Basu v. State of W.B., (1997) 1 SCC 416

<sup>21</sup> Jeeja Ghosh v. Union of India, (2016) 7 SCC 761

<sup>22</sup> Sunil Batra v. Delhi Administration, AIR 1980 SC 1579

<sup>23</sup> Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535

<sup>24</sup> People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473

<sup>25</sup> [http://www.hrcr.org/safrica/access\\_courts/India/Indiacases.html](http://www.hrcr.org/safrica/access_courts/India/Indiacases.html)

<sup>26</sup> <http://lawtimesjournal.in/jeeja-ghosh-anr-vs-union-of-india-ors/>

Ghosh from the Respondent no. 3 Spice Jet Ltd. The incident happened when she was travelling from Kolkata to Goa. When Ms. Jeeja sat on the flight and she was approached by a member of a flight, asked to see her boarding pass. The crew member basically feared that her disability might pose health risk during pregnancy or during the time of delivery. She was ordered to off the plane, even after she tearfully protected and informed the flight crew members that she needed to reach Goa for the conference. She was de-boarding. After returning to the airport and arguing with airlines officials. She later discovered that the Caption has insisted that she be removed due to her disability. She is the one woman who has never who did not let anything come in her road. She's never chosen to fight instead of succumbing to her condition. After this incident, Ms. Jeeja went into shock and trauma of this event, she had trouble sleeping and eating, so she was taken to a doctor the following day where she was prescribed medication. Because of this, she was unable to fly Goa on 20<sup>th</sup> February and thus missed the conference all together. It did humiliate and traumatize her but also to the organizers and to all the attendee of the opportunity to hear her and her experiences and her analysis of Indo- German under review. Petitioner No. 1 grudges that even after 4 years of this incident whenever she has a flashback, she feels haunted with that scene when she was pulled out of the plane like a criminal. She continued to have nightmares about that incident. The Respondent has sent the apology letter to the Petitioner for trivializing the incident by just mentioning that 'inconvenience caused' was 'in advent'. Before approaching to the court, the Petitioner has also submitted the complaint to the Chief Commissioner for Persons with Disabilities and to the Ministry of Social Justice. The Petitioner has filed a petition under Article 32 of the Constitution. She claimed in her Petition that airlines crew members such behavior is as outrageous as it is illegal and discriminatory. She also claimed that third Respondent's staff clearly violated Civil Aviation Requirements.

- It was *held*: They found that the Respondent No. 3 acted in callous manner and in the process violated the rules of 1937 and Car, 2008 which was also experienced by Ms. Jeeja Ghosh. It was an unreasonable discrimination against her. The Hon'ble Court awarded 10, 00,000 as damages which were supposed to be paid by Respondent No. 3 within a period of 2 month from today.
- Significance of the Judgment The Hon'ble Supreme Court directed to the concerned officers of the DGCA as well as officers from the department of disability Affairs, which is under the ministry of Social Justice and Empowerment shall have a joint discussion on this aspect to consider the recommendation given by the committee. Supreme Court directed to have a separate Help Desk for the disabled Persons. Supreme Court also did Harmonious Construction between the rights of the disabled persons and safety of the other passengers. It was recommended by the committee that disabled person with wheelchair should be allowed with their wheelchair but it was not good for the safety of other passengers. Therefore, the Hon'ble Supreme Court refused to take such risk. It was last stated that various facts are not covered under CAR like helping the disabled person to go for the toilet. These should be included in CAR. So, that the members of flight will be bound to take care of disabled persons. Hon'ble Court also stated that a special training programme of the staff member has to be there. They need to be more specialized to take care of such passengers and sensitive enough. Hon'ble Court tried to reflect the feelings of the disabled persons. It has been stated by the Hon'ble Court that the disabled persons don't need the sympathy but to be trusted by others. They want to get all reasonable opportunity as any other non-disabled person. Hon'ble Court also discussed the rights of the disabled person under Article 14, 19 and 21. All the disabled person has this fundamental right to live their life with human dignity. It has also been stated that non-disabled person has closed the doors of all opportunities to disabled persons but still disabled persons always try to get the opportunity and prove every single time when they have given the opportunities.

#### *Human rights and NGO:*

Human Rights NGO's are private associations and they demand significant resources for the promotion and protection of human rights. They are independent of both government and all political groups which seek direct political power. Human Rights NGOs are different from NGOs involved in other fields in the sense that the former seek to protect the rights of all members of the society and not to a particular group or constituents. NGOs, whether their activities are worldwide or confined to one country, contribute substantially in different ways in the promotion and protection of human rights especially in developing and undeveloped countries. They perform different functions depending upon the purposes for which they are established. Some of the functions which they may perform relating to human rights are:

- Mobilization of Public Opinion
- Collection of Information
- By providing direct service
- Dialogue with government and international bodies
- Legal assistance
- Filing of writ petitions
- Communication to the commission of human rights
- Processing of information

- Human rights education

It is to be noted that NGOs activity is essential for continued efforts are protecting human rights of the prisoners among them the leading NGO's which work for the betterment and providing rights to the prisoners making them treat as human are Amnesty International, HRLN and many more, when we look in detail regarding the prisoners and the initiative for their rights these are the leading NGOs.

#### HRLN

HRLN, under the Prisoners' Rights Initiative, works for improving the condition of the prisoners, helps them for getting bail, provides access and guidance for the speedy and fair trial, and files petitions on the behalf of the prisoners to safeguard their rights. The Prisoners' Rights Initiative, in conversion with supporters and social activists working all over India, works for the arrival of detainees, particularly needy ones, who are or have been experiencing preliminaries and moping in penitentiaries for an extensive stretch of time. Since this initiative deals with problems faced by prisoners, HRLN advocates regularly visit jails and collect case details from the prisoners. The Prisoners Rights Initiative, in conjunction with lawyers and social activists working the whole way across India, works for the arrival of detainees, particularly poor ones, who are or have been experiencing preliminaries and grieving in jails for a significant period of time.

#### Major concerns of HRLN are:

- 70% prisoners are undertrials, and are mostly indigent.
- Even though bail is granted, prisoners are not released, as they are unable to pay the surety amount.
- High amount of surety ordered by courts which indigent prisoners can't pay.
- Rejection of personal bond applications, as indigent prisoners don't have proper addresses/houses.
- Lack of insufficient provision of medical aid to prisoners.
- Callous and insensitive attitude of jail authorities.
- Lack of proper legal aid services.
- Corruption and other malpractices.

#### Works and impact of HRLN:

HRLN has worked and is working throughout the country where they have been providing free legal aids across the states and cities like Mumbai, Chennai, Bangalore, Gujarat, Orissa etc. So far, through HRLN intervention in Delhi prisons alone, over 5000 persons have been released on bail and an equal number have been provided with legal advice and representation. Many juveniles that have been languishing in adult jails have been released or transferred to Juvenile Homes. HRLN's basic aim, right from the start, has been to gradually achieve systemic change and reform so legal aid for under trials is institutionalized from the point of arrest, and also to raise awareness of prison conditions and the problems faced by under trials. Towards this end, it has worked with the State Legal Services Authorities (SLSAs) in some States and the National Legal Services Authority (NALSA). For example, in Delhi, HRLN lawyers have been enrolled with the Delhi State Legal Service Authority (DLSA) and visit prisons and some observations homes for women<sup>27</sup>.

HRLN has held some regional workshops for training lawyers and four National level Consultations for advocates and social activists. As an outcome of the 3rd National Consultation on Prisoners' Rights, Legal Aid and Prison Reform held in March 2016, a National Forum for Prison Reforms was established, which has as its members the following organisations - Human Rights Law Network (HRLN), Tata Institute for Social Sciences (TISS), Commonwealth Human Rights Initiative (CHRI), International Bridges to Justice India (IBJ India), Multiple Action Research Group (MARG), and Lawyers for Human Rights International (LFHRI). Through the National Forum for Prison Reforms, various interventions have been made in the Supreme Court of India in the Writ Petition (Civil) 406 of 2013, Re- Inhuman Conditions in 1382 Prisons, which has transformed the way prisoners' rights issues have been viewed in the country and has paved the way forward for making the prisons more accountable and more transparent in their functioning.<sup>28</sup>

#### Amnesty International

In 1961, British lawyer Peter Benenson was outraged when two Portuguese students were jailed just for raising a toast to freedom. He wrote an article in The Observer newspaper and launched a campaign that provoked an incredible response. Reprinted in newspapers across the world, his call to action sparked the idea that people everywhere can unite in solidarity for justice and freedom<sup>29</sup>. From there the journey of Amnesty international began.

"After more than 50 years of groundbreaking achievements, Amnesty has been through a major transformation, adapting to dramatic changes in the world. We have shifted from a large London base, to open [regional offices](#) in cities in Africa, Asia-Pacific, Central and Eastern Europe, Latin America and the Middle East. These offices are major hubs for our investigations, campaigns and communications. The new regional

<sup>27</sup> <https://hrln.org/initiatives/prisoners-rights/>

<sup>28</sup> <https://hrln.org/initiatives/prisoners-rights/>

<sup>29</sup> <https://www.amnesty.org/en/who-we-are/>

offices strengthen the work of Sections who already work at the national level in more than 70 countries. We can now respond quickly to events wherever they happen, and be a powerful force for freedom and justice". - Henning Schacht.

Amnesty activists have been ready to spring into action for people facing imminent danger in detention. From sending faxes and tweets to making phone calls or taking to the streets. "The phone calls to the police during my arrest saved me from torture and rape. The police station was so swamped they stopped picking up the phone," says Women of Zimbabwe Arise (WOZA)'s co-founder Jenni Williams.

While there have been thousands of victories, systemic change is harder to come by, and far too many people are still languishing in isolation, incommunicado, in fear.<sup>30</sup>

Major Callings of Amnesty International are:

- No secret detentions.
- No torture or other forms of ill-treatment.
- Rapid and regular access to lawyers, doctors and relatives.
- Effective legal process so that people can challenge their detention and treatment.
- Independent judges
- Adequate detention conditions.
- Including an end to prolonged solitary confinement.
- Prompt and independent investigations when someone dies in detention.
- Independent Monitoring bodies make regular visits to detention places.
- Fair trials within a reasonable time or release.
- All prisoners of conscience released without conditions.

Thus we can say that HRLN and Amnesty International are the two leading NGOs which over the time have been working for the betterment of the prisoners and have been improving their lifestyle and way of looking at life and making inmates believe that there is a life after the bars which can be improved.

As per the survey of NATIONAL CRIME RECORDS BUREAU AND MINISTRY OF HOME AFFARIS till 2015<sup>31</sup>:

Sr no.	Type	No. of jail	Capacity	Population of inmates	Occupancy rate
1	Central jail	134	159158	185182	116.4
2	District jail	379	137972	180893	131.1
3	Sub jail	741	46368	39989	86.2
4	Women jail	81	4748	2985	62.9
5	Borstal school	20	1830	1003	54.8
6	Open jail	43	5370	3789	70.6
7	Special jail	63	10915	5769	52.9
8	Others	3	420	13	3.1
9	Total	1401	366781	4196213	114.4

**CONCLUSION**

This article laid out and assessed the discoveries of this exploration on the importance and significance of human rights to detainees, staff and the board. It at that point thought about whether and how such research offers an incentive to governments furthermore, strategy producer. There are also specific challenges to protecting rights in prisons (and other closed environments). Indeed where human rights instruments were in place, it was routinely pointed out by participants that these were only a beginning: they did not provide the detailed applied guidance needed by staff (and detainees). Whilst it is argued here that formal human rights instruments are necessary, and valuable as a starting point, they are clearly not sufficient on their own.

It can be said that the prisoners are also entitled to all his fundamental rights while they are behind the prisons. Indian Constitution does not expressly provides for the prisoners' rights but Articles 14, 19 and 21 implicitly guaranteed the prisoners' rights and the provisions of the Prisons Act, 1894 contains the provisions for the welfare and protection of prisoners. The Court has ruled that it can intervene with prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of the prisoner. Supreme Court in many cases held that prisoner is a human being, a natural person and also a legal person. Being a prisoner he does not cease to be a human being, natural person or legal person. Conviction for a crime does not reduce the person into a non-person, whose rights are subject to the whim of the prison The research discussed here does not provide answers to immediate problems. However it ought to contribute to the ways in which imprisonment and human rights values are discussed, and influence the context within which decisions about each are taken in this country. It will have been valuable if it has provided 'a frame for

<sup>30</sup> <https://www.amnesty.org/en/what-we-do/detention/>

<sup>31</sup> <http://ncrb.gov.in/statpublications/psi/Prison2015/Full/PSI-2015-%2018-11-2016.pdf>



thinking' about these issue administration and therefore, the imposition of any major punishment within the prison system is conditional upon the absence of procedural safeguards.