

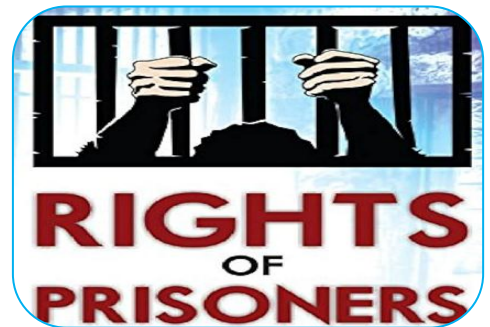


HUMAN RIGHTS VIOLATIONS OF PRISONERS IN INDIA

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ABSTRACT

Human rights abuses against prisoners are one of the major issue globally. Prisoners are deprived of the freedom and are entitled to basic rights and dignity under International law. There are different types of abuses like physical abuse, which includes beatings and torture to prisoners to death. Psychological abuse is solitary confinement or retain essential services like education and recreation that violates human rights standards. Discrimination is based on race, ethnicity, religion or political beliefs. Though, we have international conventions and standards condemning such practices, monitors and enforcement mechanisms remain inconsistent that allows abuses to persevere.



KEYWORDS : Human rights , major issue globally , education and recreation .

INTRODUCTION

In the modern society the process of institutional and judicial control helps ingrowing social-legal that contributes in the development that reforms modern societies. In the case of prisons and other penal institutions as international bodies and the courts that influences penal institutions as international bodies and the courts which influences prison policies since 1960s. Prisons constitutes where constitutional and human rights are applied by prison that is concern with security issues than with the rights of prisoners Therefore, International human rights emphasize the importance of accountability in prison, that includes inspection, monitors and complaints mechanism to protect human rights and rule of law in prison.

International human rights laws for prisoners is primarily guided by Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights¹. Additional protocols and conventions address such as torture prevention (Convention against torture)² Rights of the child (CRC)

¹OHCHR, 'International Covenant on Civil and political Rights' International Covenant on Civil and Political Rights | OHCHR

²United nations Audiovisual library of International law 'Convention against Torture and Other Cruel, inhuman or degrading Treatment or Punishment' (United Nations Audiovisual library of International law), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Main Page

and the arbitrary detention (ICCPR)³. All these aims at ensuring prisoners to treat with dignity and the rights should be upheld and are provided opportunities for reformation and reintegration into society.

HISTORICAL TREATMENT OF PRISONERS IN INDIA

During Ancient Period, various forms of punishment for crimes, including fines, corporal punishment, exile, and punishment. The Arthashastra, an ancient Indian treatise on statecraft and governance attributed to Chanakya(Kautilya) that outlines laws and punishments for different offences that includes imprisonment as a form of punishment for crimes⁴. During the Medieval era, Islamic rulers introduced institutions such as Kotwal and Qazi, that plays a role in administering justice, include punishment for crimes. During Colonial Period, The British establishes first modern prison established in Kolkata in 1770. The colonial authorities introduced various laws and regulations governing prisons and prisoners that includes the Indian Prisons Act of 1894 that which laid down rules for the management and administration of justice. During the Independence and post-Independence period: The Constitution of India, adopted in 1950 guaranteed certain fundamental rights to all individuals that includes prisoners such as the right to right to life and personal liberty. (Article 21) and the right against treatment or punishment (Article20)⁵.

INDIA'S OUTLOOK ON VIOLATION OF HUMAN RIGHTS OF PRISONERS

India has its distinct diversity as developing country and a sovereign, secular, democratic republic. The constitution of India provides for fundamental rights, which include freedom of religion, freedom to speech and expression and many more. Prisoners have been tortured in India by giving barbaric and degrading treatment⁶. Reports of abuse, mistreatment, overcrowding, lack of access to healthcare and violations of prisoner's rights Women are also torture in the form of custodial rape, molestation and other ways of sexual torture⁷. Prison overcrowding leads to poor living conditions increased violence among inmates and limited access to basic necessities such as food, water, and healthcare. Overcrowding can lead to poor living conditions that increases violence among inmates, and limited access to basic necessities such as food, water, and healthcare. The Constitution of India guarantees certain fundamental rights to all individuals, including prisoners. The rights include the right to life and personal liberty (Article 21), and Right against inhuman treatment or punishment(Article 20)⁸. The Prisons Act, 1894, is a central legislation provides for the management and administration of prisoners, maintenance of discipline, provision of basic amenities, and procedures for release on parole. The act is responsible of prison authorities and outlines for addressing grievances and complaints of all the prisoners. The Criminal Procedure Code, 1973 contains provisions related to the rights of accused persons that includes pending investigation or trial. There is

³Human Rights watch,' Saudi Arabia: Unfair trials, Torture, and Political Imprisonment in the Kingdom'(human rights Watch,2008) <Precarious Justice: Arbitrary Detention and Unfair Trials in the Deficient Criminal Justice System of Saudi Arabia: VI. Arbitrary Arrest and Detention (hrw.org)

⁴An Analytical study of prisoners' Rights in India: Challenges, implementation, and Reforms Perspectives'(2024)<AN-ANALYTICAL-STUDY-OF-PRISONERS-RIGHTS-IN-INDIA-CHALLENGES-IMPLEMENTATION-AND-REFORM-PERSPECTIVES.pdf (ijirl.com)

⁵ibid

⁶Chapter 239(ebooks.infibnet.ac.in,Year)<Judicial Pronouncements on Rights of Prisoners in India – Civil and Political Rights (inlibnet.ac.in)>;

⁷Human rights(Ipleaders Blog,<Human Rights violation of prisoners in India - iPleaders)

⁸(2024)," An Analytical study of prisoners' Rights in India: Challenges, implementation , and Reform Perspectives." International Journal Of India law and research,4(4). Available at:AN-ANALYTICAL-STUDY-OF-PRISONERS-RIGHTS-IN-INDIA-CHALLENGES-IMPLEMENTATION-AND-REFORM-PERSPECTIVES.pdf (ijirl.com)

a procedure for arrest, detention, bail, ensures rights of accused persons including prisoners during criminal justice procedure⁹.

Prisoner is a ward and not the slave of the state. The Prisoners are sent behind the bars not for punishment but as punishment. The process of treatment should begin from admission of the inmate in prison. If a new prison faces a number of problems of adjustment. The state has constitutional obligation to honor and to protect rights with the right to live with human dignity. The state has obligation to honor to protect rights¹⁰.

A.K Gopalan vs. State of Madras(1950)¹¹, Initially, The Supreme court had a different approach towards prisoners like they are not provided any fundamental rights under the constitution. The court held that a person could loses his right to personal liberty by the way of detention under valid law by a competent law till he remains in detention, he ceases to be entitled to enjoy other fundamental rights. In the case of **State of Maharashtra Vs. Prabhakar Pandurang Sangzgiri(1966)**¹², In this case respondent was detained under the Defense of India Rules 1962, During the time in jail, he wrote a book of called 'Anucha Antarangaat' but could not because of publish prison authorities. The Bombay High Courts allowed to publish the book as in the case of A.K Gopalan, the freedom of speech was not there so state government appealed to Supreme court. The court held that the right to personal liberty includes right to write a book and gets publish and refuse by the state government to send the petitioner's manuscript for publication, infringes his personal liberty manifested under Article 21. Constitution guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatment to any person liberty and prohibits any inhuman, cruel or degrading treatment to any person whether he is a national or foreigner Also, the court observed that Bombay detention order 1951 that prohibits a detainee from writing to publish a book when a detainee exercises his right and if denied without authority of law would violate Article 21. Therefore the appeal was dismissed and further it was also held that if something is published by a detainee and is not detrimental to public interest or safety under the Defense of India Rules (1962). In two important cases of **Sunil Batra vs. Delhi Administration(1978)** **Sunil Batra(ii) Delhi Administration(1980)**¹³, The supreme court interpreted Article 14,19 and 21 and substantive rights of the prisoner. The right to life in Article 21 is interpreted that includes rights not to be handcuffed ,put on bars and solitary confinement unless absolutely necessary. The right against custodial torture, right to speedy trial, right to wages and the right to compensation for violation of rights are also included. The case of **Nilabati Behera Vs. State of Orissa**¹⁴, The Supreme Court had an observation to ensure that there is no infringement of rights of a citizen to life, except in accordance with law while the citizens in custody. Article 21 of the constitution of India cannot be denied to convict, under trials or prisoners in custody. **State of Andra Pradesh vs. Challa Rama Krishna Reddy (2000)**¹⁵, The Supreme court observed that prisoner has

⁹ibid

¹⁰(2024)," An Analytical study of prisoners' Rights in India: Challenges, implementation , and Reform Perspectives." International Journal Of India law and research,4(4). Available at:AN-ANALYTICAL-STUDY-OF-PRISONERS-RIGHTS-IN-INDIA-CHALLENGES-IMPLEMENTATION-AND-REFORM-PERSPECTIVES.pdf (ijirl.com)

¹¹*A.K Gopalan vs. State of Madras*[[1950]] <https://unacademy.com/content/clat/study-material/legal-reasoning/a-k-gopalan-v-s-state-of-madras-a-landmark-case-in-indian-legal-history/>

¹²*State of Maharashtra Vs. Prabhakar Pandurang Sangzgiri*[(1966)]<https://www.the-laws.com/Encyclopedia/browse/Case?caseId=005691691000&title=state-of-maharashtra-vs-prabhakar-pandurang-sanzgiri>

¹³*Sunil Batra Vs. Delhi Administration*(1978, 1980)<<https://lawbhoomi.com/sunil-batra-vs-delhi-administration/>

¹⁴*Nilabati Behera Vs. State of Orissa*,<<https://lawbhoomi.com/nilabati-behera-vs-state-of-orissa>

¹⁵*State of Andra Pradesh v. Challa Ram krishna Reddy*(2000)<https://lawsuitcasefinder.com/casedetail?id=U2FsdGVkX18yTsyE76VlbeW1vVle7Oak71rGj2fVH2MMgs5>

fundamental rights includes other human rights. In the case, the claimant and his father were lodged in jail. The father dies and claimant sustained serious injuries. The suit compensation was dismissed by lower court but the High Court awards Rs. 1,44,000 as compensation. In the case, while dismissing the appeal filed by the State government, The court held that Right to life is one of the basic rights which is guaranteed to every person by Article 21 of the Constitution and not even the state has authority to violate the right.

The Hon'ble Supreme Court of India in the case of **Joginder Kumar v. State of U.P and Ors.**¹⁶ held that the quality of a nation's civilization can be largely assessed by the methods it employs in enforcing criminal law. The scope of human rights is expanding and the crime is on the rise. The court has been receiving complaints regarding human rights violation due to arbitrary arrests. The law governing arrests involves a delicate balance between individuals rights, freedoms, and privileges, on one side, and individuals duties, obligations and responsibilities on the other. It entails evaluating and weighing the rights, freedoms and privileges, on one side, and individuals duties, freedoms, and privileges of an individual against of collective, determining priorities and where to place emphasis and deciding whether to prioritize the criminal or society, the lawbreaker or the law-abider. **In the case of Sunil Batra V. Delhi Administration**¹⁷ the court answered most important answer that are 'prisoners' persons? And are they entitled to fundamental rights. The court answered these two questions as the rights of prisoners in the International covenant on prisoner's Rights to India has signed assent. In this particular case The Hon'ble Court has rejected the hands-off doctrine and ruled fundamental rights that do not flee the person as he enters the prison. Also, the minimum freedom of movement under which detainee is entitled to under Article 19, Right to free legal aid is provided under Article 14 and 21.

In the case of **State of M.P vs. Shyamsundar Trivedi**¹⁸ said that, convicts do not lose all fundamental rights because of convictions. Committing a crime does strip a person of humanity or entitle others to deprive them of the basic elements of life that uphold human dignity.

DEVELOPMENTS MADE IN PRISONER'S RIGHTS IN INDIA

The National Human Rights Commission and Human Rights Court established under the Protection of Human Rights Act, 1933 also contributes to protection of Prisoners rights. The Government of India granted financial assistance to all States under five Year Plans and Matching Grant under modernization of prison administration to improve the prison atmosphere and live in prisons like additional accommodation, recreation, facilities etc. The State Government by utilizing funds with all possible efforts to improve prison condition that extend all facilities to prisoners to maintain human dignity¹⁹.

The International framework for human rights violations of prisoners is primarily governed by the Universal Declaration of Human Rights as well as various international treaties and conventions. Some key instruments include:

The right of prisoners in International law in a number of International treaties. Due to the widespread denial of civil rights and liberties on the ground of racial, religious and political discrimination had extreme on the International law of Prisoner's right. The use of violence that includes wanton murder that leads to genocide and use of slave labor, abuse and murder of prisoners of

¹⁶*Joginder Kumar v. State of U.P and Ors (1994)*<https://www.legalserviceindia.com/legal/article-13864-joginder-kumar-vs-state-of-u-p-1994-brief-and-summary.html>

¹⁷*Sunil Batra Vs. Delhi Administration* (1978, 1980) <<https://lawbhoomi.com/sunil-batra-vs-delhi-administration/>

¹⁸*State of MP vs. Shyamsundar*

Trivedi (1995), <https://www.casemine.com/search/in/shyamsunder%2Btrivedi>

¹⁹Dr. Jai Shankar Ojha and Fareem Wani, *The rights of prisoners and their abuse in India : A critical Analysis*, Volume 6 Issue 2 April 2018

war, deportation and impounding of property forced a large scale that began to occur in all areas of International instruments²⁰.

1. Third Geneva Convention
2. Charter of United Nations (1945)
3. Universal Declaration of Human Rights (1948)
4. United Nations Standard Minimum Rules for the Treatment of Prisoners (1955)
5. International covenants on civil and Political rights (1966)
6. Convention against Torture and other cruel, inhuman or degrading treatment or punishment (1984)
7. Basic Principles for the treatment of Prisoners (1990)
8. Basic Principles on the use of force and Fire Arms by law Enforcement Officials (1990)

The international framework to address human rights violations of prisoners is complicated and multifaceted system that draws variety of legal instruments and principles. A landmark document adopted by the United Nations General Assembly in 1948. The Declaration provides rights and freedoms to be ingrained to all individuals, regardless of status or circumstances. The key principles of the United Declaration of human Rights with the idea all human beings to certain basic rights and protections that includes the right to life, liberty, and security of persons. The rights applies to everyone without exceptions.

1. The International Covenant on Civil and Political rights (ICCPR): This treaty provides civil and political rights that individuals are entitled to include the rights of prisoners of individuals. It was adopted by the United Nations in 1966. That sets out rights essential to dignity It prohibits torture, cruel, inhuman, or degrading treatment, punishment, that ensures fair trial rights²¹.

2. The Convention against torture and other cruel, inhuman or degrading treatment or punishment that prohibits torture and other forms of cruel, inhuman or degrading treatment or punishment: it was adopted by the United Nations in 1984. This convention includes parties to take effective measures to prevent practices that holds accountable which is responsible for committing them.

3. The Standard Minimum Rules for the Treatment of Prisoners (SMR): It is adopted by the United Nations in the year 1955, that provides guidelines for the treatment of prisoners which aims to protect human rights, healthcare, and access to legal representation.²²

Basic principles for the treatment of prisoners was adopted by the United Nations in 1990, outlining fundamental standards for the humane treatment of individuals in detention²³.

1. Prisoners must be treated with respect, dignity and value as human beings.
2. Discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is strictly prohibited.
3. It is utmost important to respect the religious beliefs and cultural precepts of the all the prisoners.
4. Prisoners have a responsibility to ensure the custody of prisoners and protect society from crime that promotes the well being and development of all members of society.

²⁰ibid

²¹International Covenant on Civil and Political Rights | OHCHR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

²²UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf (unodc.org)

²³1990, Basic principles for the Treatment of prisoners, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners>

5. Despite being expressed, prisoners retain their human rights and freedoms as outlined in international declarations and covenants.
6. All prisoners have the freedom to take part in Cultural activities and education for their personal development.
7. Efforts should be made to abolish solitary confinement as a punitive measure. .
8. Prisoners should have opportunities that engages in meaningful work that contributes to financial support to their families.
9. Prisoners should have access to the healthcare services without discrimination based on legal status.
10. Reintegration of ex-prisoners into society which is facilitated with the help of the community and social institutions that takes into account the interests of victims.
11. The principles should be applied impartially to all the prisoners.

Why do undertrials still suffers even after having provisions in India?

In India, the issue of undertrials facing hardships and suffering in the crime. In India, the issue of undertrials facing problems in the criminal is a complex and multifaceted.

- 1. Prolong Detention:** Undertrials weaken in jails for extended periods detention waiting for indefinite period because of delay in the judicial process. The backlog in cases in Indian courts as inefficiencies in the legal system results in delays in the disposal of cases. This leads to undertrials held in custody for years without cases being heard, violating right to a speedy trials.
- 2. Overcrowding in Indian prisons:** The overcrowding of prisons of living conditions for inmates that includes undertrials that leads to issues such as lack of adequate space, poor sanitation, and healthcare is limited to access. The overcrowding puts a strain on prison resources and challenge to provide basic amenities and services to inmates.
- 3. Legal aid and representation:** Underprivileged individuals lack of financial means to hire competent legal counsel results inadequate defense representation that could undertrials being unaware of legal rights with vulnerability within the criminal justice.
- 4. Torture of undertrials:** Undertrials in India are open to human rights violations, including torture, ill-treatment, and abuse in custody. Reports of custodial violence and mistreatment of undertrials that improves safeguards to protect the rights and dignity of individuals accused of crimes.
- 5. Lack of effective implementation of legal provisions:** Legal mechanisms are designed to protect the rights of undertrials that contributes to continued suffering. There have been laws and guidelines in place to safeguard the rights of undertrials, enforcement and monitoring mechanisms that leads to violations and abuses.
- 6. Ineffective investigation and Prosecution:** Inadequate investigation and Prosecution processes leads to wrongful arrests and prolonged detention of individuals that is innocent.
- 7. Social stigma:** Undertrials in India may face social stigma discrimination even after the release that can impact reintegration into society and aggravate the suffering.

Brief of 2023 Report²⁴

According to the reports ,The Indian government has been criticized with policies that discriminate and condemn religious and other minorities that could lead to increase incidents in Manipur state, where hundreds were killed in ethnic clashes. The police in BJP-governed states that failed to investigate crimes against minorities when administrative officials that is responded to publish victim communities that includes who protested such abuses. Authorities like National Human Rights Commission have been criticized for not being able to work independently to protect rights of children, women, religious minorities, tribal groups and Dalits. During the Twenty(G20), summit the World's largest economies that is published to include the African Union as a Permanent member that

²⁴Human Rights watch,' India'(2023) World report <World Report 2023: India | Human Rights Watch (hrw.org)>

makes the group more representative. The Indian government has faced criticism for restricting free expression, peaceful assembly, and other rights in Jammu and Kashmir and there has been killing of extrajudicial killings by security. There has been arrest made of human rights defenders like Prominent Kashmiri human rights activist Khurram Parvez and a journalist Irfan Mehraj were arrested under the Unlawful activities(Prevention) Act (UAPA). UN human rights have called for Parvez's release and condemned the use of UAPA to target civil society and human rights defenders. In April 2023, six UN human rights experts to Indian government the alleged arbitrary detention and ill treatment of human rights defender Muhammad Ahsan Untoo which could be strategy to disrupt, intimidate, detain and punish in engaging in journalism and human rights advocacy. During the G20 held in Kashmir which promotes the UN special on minority issues. According to National Human Rights Commission registers 126 deaths in police custody, 1673 deaths in judicial custody and 55 alleged extrajudicial killings in 2023. On July 31, communal violence broke out in Nuh district in Haryana state during a Hindu procession and several adjoining districts. In September, Manipur police filed criminal cases against the Editors Guild of India after it published a report of state leadership in the ethnic violence. Human Rights watch found arbitrary detention, overcrowding, Lack of trained staff, denial of education, and prison-like conditions in a government-run institution for children and adults with disabilities on the outskirts of Delhi. The Supreme Court declined to legalize same-sex marriages without accepting government's offer to set up a panel to consider granting certain benefits associated with marriage to same-sex couples. The Indian government continued to detain hundreds of Rohingya refugees for immigration-related offenses and the Indian Parliament passed the Forest Conservation Amendment Act opposition from environmental activist and tribal communities²⁵.

CONCLUSION

Human rights violations of prisoners globally has a serious concern that needs to be addressed. Prisoners treated badly including torture, inhuman treatment, lack of access to healthcare, and denial of basic rights International human rights standards. Governments needs to uphold the rights of all individuals, including those who are incarcerated that ensures prisoners to treat with dignity and respect. Efforts should be made to prevent human rights violations in prisons provides adequate living conditions, access to healthcare, legal representation and opportunities for rehabilitation. United Nations and human rights organizations plays important role in monitoring and addressing human rights violations of prisoners globally. Countries which are developed and have advanced legal systems still faces challenges in upholding the human rights of undertrials like prolonged pre-trial detention, Poor conditions of detention, lack of representation ,Discrimination and Bias, Use of Solitary confinement. Every country must address these issues and ensures human rights of undertrials are respected and protected in accordance with international standards and legal principles. Criminal justice system needs to increase accountability mechanisms and efforts to promote awareness and adherence to human rights principles among law enforcement officials and judicial authorities.

²⁵ibid