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## **Prisoners right in India: Effectiveness of existing statutory provisions and need for reforms**

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### **Abstract**

Prisons have come to occupy the central place in the administration of punishment all over the world. There cannot be a society without crime and criminals. The Institution of Prison is indispensable for every country. The main aim of Prison sentence is not to have to retribution against the offender but to make him a better human being and useful to society. Prisons are very bad considered regarding the conditions of Prisoners. The Prisoners/ Inmates are found in an inhuman and unhealthy atmosphere in prison. Indian Prisons are overcrowded. It is one of the most serious concerns these days. Because Overcrowding create many serious problems as poor living conditions, clothing, food, health care. Prisoners are entitled to basic rights as a normal human when they are behind the bar. These rights are inserted under Indian constitution and Prisons Act 1894 etc. The basic rights include right to legal aid, right to speedy trial, right to food, right to medical assistance and protection against violence and torture. Beside the physical protection afforded to prisoners and the elimination of unnecessary restraints, there are many other issues regarding prisoner's rights have engaged the attention of courts in India. This paper focuses on sketching out legislation, court judgments, and directions regarding the rights of prisoner in India.

**Keywords:** Prisoner, punishment, rehabilitation, judiciary, legislation, conviction

### **Introduction**

All human being are born equal in the world. They are thriving by their creator with few basic rights. Our society cannot be seen without crime and criminals and the institution of prison is essential for each country. Prison is based on reformatory Jurisprudence. The Prison system is no more dark cells where life of an inmate's is made miserable and convict faces inhuman degrading treatments. An inmate in prison does not cease to be a human being and lose all his human rights<sup>[1]</sup>. When an inmate's lodged in jail, they continue to enjoy all fundamental rights guaranteed under constitution and human rights and human rights. All an inmates are enjoy fundamental rights as rights to life, right to medical assistance, right to free legal aid etc. and retain all civil rights as rights of religion, rights to vote, right to property, right of inheritance. It is the duty of the state to take care of his requirements and requests of an inmate<sup>[2]</sup>. With a century, India continuously deals with old laws to maintain prison administration. Prison Act 1894 is deal with severance and classification of prisoner by their status and nature of imprisonment. But this act is totally failed to incorporate various principals laid down by judiciary and by human rights law. State legislation not provides a unique standard for the protection of rights of inmates. There should be a national policy frame work that substitutes the varying state legislations. This aim can be easily obtained by a national legislation rather than varying state laws. The Indian system of prison administration was restructured and improved by the judiciary of prison administration was restructured and improved by the judiciary<sup>[4]</sup>. Several of the rights provide to inmates were incorporated into Indian legal system by the judiciary. An analysis of cases will assist us to lay down the judicial initiatives in enhancing the rights of prisoners<sup>[5]</sup>.

### **Meaning and definition of Prison and Prisoner According to Black Law Dictionary**

Prison means a state or federal facility of confinement for convicted criminals. It also termed penitentiary penal institution, adult correctional institution<sup>[6]</sup>.

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### According to sec. 3 of the Act, Prison

means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners and includes all lands and buildings appurtenant thereto, but does not include any place for the confinement of prisoners who are exclusively in the custody of the police, any place specially appointed by the State Government under section 541 of the Code of Criminal Procedure, 1882 and any place which has been declared by the State Government by general or special order, to be a subsidiary jail <sup>[7]</sup>.

### According to Black Law Dictionary, "prisoner

Mean a person who is serving time in prison. A person who has been apprehended by a law enforcement officer and in a custody, regardless of whether the person has yet been put in prison <sup>[8]</sup>.

### According to Repatriation of Prisoners Act, 2003, "prisoner

Means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in contracting State <sup>[9]</sup>.

### Classification of Prisoners

1. **Criminal prisoner:** Criminal prisoner is a prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction or by order of a court martial <sup>[10]</sup>.
2. **Convicted prisoner:** Convicted prisoner is defined as a prisoner who is under sentence of a court or court martial <sup>[11]</sup>.
3. **Civil prisoner:** Civil prisoner is a person who is not a criminal prisoner <sup>[12]</sup>.

### Prisoner' Right under Indian Constitution

Prisoners under trial, convicted prisoner and suspected are not cease to be human being. It means their rights of human beings are to be protected and respected. Fundamental rights which are available to the prisoners are not defined in Indian constitution in particular. But Various Freedoms guaranteed to individuals in relation to prisoner by expanding the horizons of article 21 of Indian Constitution <sup>[13]</sup>. Articles 14, 19 and 21 are guaranteed under constitution of India to prisoner as well as freeman.. Prison enclosures do not keep out fundamental rights <sup>[14]</sup>.

**Article 14:** of the Constitution of India defines that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India <sup>[15]</sup>. It provided the concept of reasonable classification. This article 14 is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the main object of reformation <sup>[16]</sup>. The constitution of India provide that six fundamental freedoms to the citizens of India. These several freedom as freedom of trade or business, carry on any occupation, profession and freedom to reside and to settle cannot be enjoyed by the prisoners because the nature of these freedoms and due to the condition of incarceration <sup>[17]</sup>.

**Articles 21:** provide no person shall be deprived of his life or personal liberty except according to procedure

established by law <sup>[18]</sup>. Articles 21 provide to any person whether is national and a outsider. This Article postulates two concepts as right to life and principle of liberty. By Article 21 of the Constitution of India, it is clear that it is available not only for free people but also to those people behind the prison. The Article 21 of the Constitution of

India provides following are the rights of prisoners:

1. Right to speedy trial
2. Right to free legal aid
3. Right to be released from prison
4. Right to bail
5. Right to life and personal liberty
6. Right against torture
7. Right to medical aid <sup>[19]</sup>

### Prisoner's Right under Enactments and Rules

There are following enactments which provide rights of prisoner.

#### 1. The Prisons Act, 1894

This Act is called the Prisons Act, 1894. It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States. This Act shall come into force on 1st July, 1894. This act provides main objective to reform the prisoner in connections with rights of prisoners. In this act, various following section which are related to reformation of prisoners. These following sections are

1. Accommodation for prisoners in respect of the separation of prisoners <sup>[20]</sup>.
2. Temporary accommodation for prisoners. It includes the temporary shelter and safe custody of any prisoners <sup>[21]</sup>.
3. After admission, every criminal prisoner shall examined by qualified Medical Officer. In the case of female prisoners, the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer <sup>[22]</sup>.
4. Under this act, the separation of prisoners is as follows:-
  - a. The females shall be imprisoned in separate buildings, or separate parts of the same building <sup>[23]</sup>.
  - b. Male prisoners under the age of 21 are confined separating those of them who have arrived at the age of puberty from those who have not <sup>[24]</sup>.
  - c. Unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners <sup>[25]</sup>.
  - d. Prisoners shall be kept apart from criminal prisoners <sup>[26]</sup>.
5. A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself and to purchase or receive from private sources food, clothing, bedding or other necessities <sup>[27]</sup>.
6. This act provides restriction on transfer of food and clohing between certain prisoners <sup>[28]</sup>.
7. The superintendent shall be providing necessary clohing and bedding to every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding <sup>[29]</sup>.

In 2016, the Parliament has been amended the Prisons Act, 1894. The Act is called Prison (Amendment) bill 2016 <sup>[30]</sup>. The following amendments are:

1. Any authority or other employee of a prison shall not provide prohibited articles like laptop, mobile phones, wireless, i-phones to any prisoner<sup>[31]</sup>.
2. A qualified medical officer provides advice in respect of diet of a pregnant prisoner and determined work<sup>[32]</sup>. A pregnant prisoner shall be entitled to grant of conditional parole for 30 days from the expected date of delivery or from the date of delivery if when she is in prison<sup>[33]</sup>.
3. The Jail authority shall ensure that the cell used for solitary confinement is properly maintained with basic air, light and hygiene<sup>[34]</sup>.
4. Jail employee shall have duty to maintenance of hygiene in jail premises<sup>[35]</sup>.
5. Any visitor shall not take inside or be permitted to take inside a prison any prohibited article like laptop, i-phones, mobile phones, or other digital means of communication with a view to provide or make available such article to any prisoner<sup>[36]</sup>.
6. The State Governments shall establish separate prisons to keep habitual and hardcore offenders separately from the first time offenders and the offenders convicted for lesser crimes<sup>[37]</sup>.
7. The Superintendent or other officer of jail shall inspect and review periodically on a regular basis the condition of prison<sup>[38]</sup>.
8. The Superintendent shall take all necessary steps to ensure that prisoners do not indulge in mental or physical conflict either individually or in groups<sup>[39]</sup>.
9. The officer of a prison shall ensure that prisoners of cybercrimes, treason or anti-national activities do not have access to any electronic equipment or digital means of communication<sup>[40]</sup>.
10. Provide skill training including computer classes, tailoring, carpentry, cooking, gardening, and language classes<sup>[41]</sup>.
11. To conduct workshops and seminars to helpful for rehabilitation of and for educating the prisoners<sup>[42]</sup>.
12. For the purposes of sections 58E and 58F, Appointment of professionals, educators or counselors<sup>[43]</sup>.

## 2. The Prisoners Act, 1900

This act 1900, deals with the people confined by order of the court. But this act is already repealed in some state such as Karnataka and Rajasthan. Through amendment in this act, many states inserted provision for temporary release of prisoners<sup>[44]</sup>.

## 3. The Transfer of Prisoners Act, 1950

This act was brought due to the special provision made in sec29 of The Prison Act 1900 in which inter alia provides for inter- state transfer of prisoners<sup>[45]</sup>.

## 4. The Prisoners (Attendance in Courts) Act, 1955

This Act provides for the attendance in court of persons confined in prisons for obtaining their evidence or for answering criminal charge<sup>[46]</sup>.

More welfare provision has been made with respect Prisoner reform through the repatriation of Prisoners Act 2003 and model Prison Manual 2003.

## Judicial Trend Regarding Prisoner's Right

### Sheela Barse v. State of Maharashtra<sup>[47]</sup>

In this case, the Supreme Court identifies the poor and

helpless condition of a prisoner in jail, his ignorance of constitutional and legal rights or to protect himself against torture and maltreatment. He may not have even the legal assistance due to poor conditions of life. The court issued certain directions regarding the legal aid to inmates, lodging of under trail, keeping up of the female prisoners, their interrogation and medical examination.

### Hiralal Mallick v. The State of Bihar<sup>[48]</sup>

In this case, Justice Krishna Iyer laid down that curative work is need of prisoner to have a healing effect on criminal for brining a change in the personality. The court gave direction to prescribe reformatory type of work in Bihar prisons within the limits of the prison rules operative in the state. There must be humanizing environment in Prison.

### Francis Coralie Mullin v. Administrator, Union Territory of Delhi<sup>[49]</sup>

In this case, the Supreme Court held that the right to life means the right to live with basic human dignity. The petitioner was a British national and was detained in central jail, Tihar. The petitioner had approached the Supreme Court through a writ petition of habeas corpus. It was stated that she experienced considerable difficulty in having interview with her lawyer and members of her family. She also stated that her daughter, who was 5 years of age and her sister who was looking after her daughter, were permitted to have interview with her only once in a month. The apex court extending the meaning with interpretation allowed the petition.

### R.D. Upadhyay v. State of A.P<sup>[50]</sup>

In this case, the Supreme Court held that women under trails and convicts, living in jail with their children. The jail conditions are not conducive and state has an obligation to look after welfare of children and to provide for social, educational and cultural development of children.

## Remedies for Reformation of Prisoner

1. Various workshop and seminar should be organized by Government in collaboration with NGO. The authority and other staff of premises also actively participate in the seminar<sup>[51]</sup>.
2. The open prison system in India has come as a very effective and modern alternative to the system of closed imprisonment. The need of the day is to review the functioning to the inmates<sup>[52]</sup>
3. Rehabilitation of prisoner will be meaningful when they are employed after release<sup>[53]</sup>.
4. Education is also another tool for reformation of prisoner.
5. Probation as a punitive reaction to crime is extensively being used in India. Propitiation is one of the techniques of rehabilitation of prisoner. There is need to improve efficacy of probation service in India<sup>[54]</sup>.
6. Parole is treatment of the prisoner after his release from the prison which aims to counteract the effects of institutional treatment. There is also requirement to improve quality of parole service<sup>[55]</sup>.

## Conclusion

Every person is born in the world treat as human being and has some basic human rights. Their human rights cannot be suspended when they has committed any offence. The

dignity of all people in the world must be protected. Some Human rights are to be recognized by Indian Constitution. Despite the inadequacies in legislation, the judiciary on its own creative spirit had contributed much to prison administration thereby ensuring fundamental human rights of prisoners. Law on prisons should always find a free space in itself for the treatment of prisoners based on their conviction <sup>[55]</sup>.

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