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Rights of the Prisoners

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ABSTRACT

The international conventions have marked the humanity of at most important for the survival in the society. The prisoners though are the social offenders have not been boycotted from the shield of humanity as most of the society have adopted the concept of rehabilitation and reformation. Every person shall be given second chance to relive and be adjust in the society. The exceptions are the barbaric criminals who are sentenced death punishment. Though, many states have abolish the death sentence and have adapted the life imprisonment concept imprisonment till the natural life of a person.

The Indian society always been tending towards the reformatory policy. The society believes in ending crime not criminals. The various development programmes that are established by the government for the betterment of the prisoners, help them to repatriate in the society which does not think them fit to socialise. Moreover, the responsibility is given to prisoners to build a social trust among the masses.

The article covers the rights of the prisoners in international and national laws and the benefits provided to them by the authority.

I. INTRODUCTION

The benefits of being in the civilised society is that every individual is bound by the law of the land and every individual can avail the rights that he has attained. The civilised society does not boycott the offender from the aspect of the humanity, every right of his is protected to maintain the human dignity. The Indian socio- justice believe in the concept of non-violence and also on the concept of liberty, fraternity and integrity of the individual. Being the part of democracy, India have left behind the rules that were centric. The Free State also protect offenders and have bestowed various rights to them which is ofcourse debatable. The rationality behind the concept of protecting the prisoners is that they are confined for the wrong they have committed but it does not give right to any authority or the individual to physically and mentally abuse them making them victims before the justice system.

The right to life also provides for the basic human need to which even the offenders and the prisoners are entitled. The Supreme Court have flagged the principle that right to life

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guarantees the protection against the criminal justice system to the offenders. Being offenders they cannot be barred from the society and the concept of humanity. Every individual have some natural rights and it cannot be taken away from them in the civilised society.

Moreover, Indian justice system believes in the reformation of the criminal rather than adapting the capitalistic approach. They are given rights to education, livelihood. More emphasis is made on their skill development to help them repatriate in the society which do not consider fit to live.

II. RIGHTS OF THE PRISONERS

The person who breaks the law of the land are kept under prison but are not deprive of their liberty. They are given certain basic rights such as food and water, to seek assistance of counsel, protection from custodial violence. The international conventions have been framed in regard of protecting the rights of the prisoners. The International Human Rights protect the offender from racial discrimination. The separate laws are implemented for the women, children and the migrant workers. There are various treaties formulated for the enforcing various protocols.

➤ **International conventions and organisations**

The General Assembly of the United Nations charters have adopted the fundamental principles for the rights and treatment of the prisoners. The objective of these principles are:

- The prisoners should be treated with human dignity.
- There should be no racial discrimination on the grounds of race, sex, colour, place of birth, origin, language, religion, political or any other approach.
- The prisoners should not be victims of the custodial violence.
- The prisoners should be made responsible for promoting the well-being of the society.
- The authorities should be made responsible for the skill development of the prisoners.
- The solitary confinements should be restricted.
- The prisoners should be provided with the employment so that they can initiate toward the reform.
- The necessity should be provided.
- The action should be taken against the arbitrary arrest.

The other international organisations such as International Covenants on Civil and Political

Rights and United Nations Core conventions also lays emphasis on these steps for protecting the rights of the prisoners and helping them attain their reformation.

There are various international organisation formed which stated about the degrading conditions of the prisoners behind the cell. The state government is duty bound to look after the conditions of the prisons and to bestow the rights to the prisoners on the humanitarian grounds.

➤ **Indian laws**

India being part of the democratic society have always laid emphasis on reformation of the offenders. There are stringent laws enforced but behind the bars the prisoners enjoyed the life of the common person and the authorities are checked against the custodial violence they were previously blamed for. The authorities are not allowed to be brutal or charge the prisoners with the non-human approach and if they do so strict actions are taken against them. The prisoners are provided with all the basic necessities and they are trained under skill development programs.

There are certain legal rights imbibed under the Indian Constitution. These legal rights protect the prisoners and are the epitome of the humanity that exist within the society. The Part III of the Indian Constitution states the fundamental rights guaranteed to the people and is justiciable. The same part also bestow certain rights to the prisoners.

Article 14 of the Indian Constitution is established on the principle equality before law and the equal protection of the law. The like should be treated alike and also the concept of reasonable classification. The prison authorities should classify the prisoners and should work on the reformatory policy.

Article 19 of the Constitution constitute the six freedom to the citizen to which the prisoners are restricted to enforce their freedom of movement, profession and freedom to reside and settle in any part of the territory. The prisoners have freedom of speech and expression and be the member of an association.

Article 20 of the Constitution is of the utmost importance for the prisoners. It provides:

- Protection against the ex-post facto law. It means that an offender cannot be subjected to the greater punishment except for the punishment prescribe in the old Act at the time of the commission of the offence.

The land mark judgement for the ex-post facto law which is stated under Article 20(1) is

*Kedar Nath v. State of West Bengal*² where the Supreme Court of India held that, the Act should always be observed as prospective in nature if it states the criminal offence or prescribe the penalty for the same. It cannot be retrospective in nature upholding the Article 20(1).

- Protection against double jeopardy which means person cannot be convicted twice for the same offence stated under Article 20(2).

The famous case where the Article 20(2) was stated is *Maqbool Hussain v. State of Bombay*³. In this case the custom authority confiscated the excess amount of the gold from the person. Later, when he was presented before the criminal court the question was raised whether this amounts to double jeopardy. The Supreme Court held that departmental proceedings is independent of the judicial proceeding and therefore the act does not amount to double jeopardy.

- Protection against self- incrimination which means person cannot be forced to be a witness against himself stated under Article 20(3).

The scope of the Article 21 is extremely vast and most of the rights of the prisoners are stated under Article 21.

- Right to legal aid

This is the most essential human right. Every prisoner is entitled to the legal aid. The prisoners have constitutional right to appeal under Article 142 read with Article 21 and 39A. The court may assign the counsel to the accused in case he is not able to afford the counsel in order to do complete justice to the prisoners.

In *M.H. Wadanrao Hoskot vs. State of Maharashtra*⁴, the Supreme Court held the prisoners should be given chance of fair hearing which is constituted under the principles of natural justice. This is the legal right of the prisoner under Article 21 and 39A read with Article 142 that the government should provide the legal service to the prisoners.

- Right to the speedy trial

Article 21 bestow the right of speedy trial marking just, fair and reasonable procedure. It is the socio- legal right to protect the accused. The famous case of *Hussainara Khatoon vs. State of Bihar*⁵, under trial prisoners where the Supreme Court ordered the speedy trial of the

²AIR 1954 SC 660

³1953 AIR 325

⁴ (1979) 1 S.C.R. 192

⁵1979 SCR (3) 532

prisoners whose case was under the long run of the hearing. The fair hearing and speedy trial was held essential for the criminal, in order to mark the justice, equity and reasonable procedure.

- Right to expression

The Supreme Court has held that the prisoners have right under Article 21 to express oneself by life story or autobiography and can publish without the consent of any authority. The state or the officials of the state cannot prevent or confine such publication.

- Right to consult with the lawyer and have conversation with the family members

Though the prisoners are confined in the cell but they are not boycotted completely. The Indian constitution embark some rights to the prisoners where they can meet their family and friends and can consult the lawyer whenever it is necessary. The article 21 have expanded the scope and inculcated the laws which are essential today on the humanitarian grounds.

- Right to wages in the prison

The reformative approach of the Indian justice system tend to establish the skill development programmes inside the prisons. The prisoners are employed inside the prisons and they are paid money for the work services they provide. This is initiated so that they can financially support their families even when they are behind the bars. In the case of *People's Union for Democratic Rights v. Union of India*⁶, the court held that when the person is employed and is paid wages less than the service he provide it constitutes the forced labour under article 23 of the constitution.

- Narco Analysis, Brain Mapping and Polygraph

The Supreme Court in *Selvi v. State of Karnataka*⁷ case held that the method of Narco analysis, Polygraph test and Brain Mapping is unconstitutional as it violates the human rights. Though, the investigation authorities have not completely accepted the decision as it would easily escape the accused without being analysed and would reduce the procedure which could actually be positive mark while investigation. After lot of discussions by the experts the court held that the tests are allowed only when a person gave consent for the same wilfully. Although the result of the test are not used as the evidence before the court.

Article 22 of the constitution guarantees protection against arrest and detention, where the person shall be informed about the grounds of arrest and he should be right to consult the

⁶1983 SCR (1) 456

⁷Criminal Appeal 1267 of; 2004 2010(7) SCC 263

counsel.

Prison Act, 1894- the Act is the primary Indian legislation which provided certain basic rights to the prisoners behind the bars. The separate prisons were built for male and female convict, under trial prisoners and children and civil and criminal convict. The sanitary conditions and the mental and physical health of the prisoners were looked upon. The more emphasis was given on the rehabilitation and reformation. The prisons were developed and the laws were implemented which prescribe the rights to the prisoners.

There were certain committees in India which were formed and they have stated about the prisons and the rights of the prisoners.

- Mulla Committee- in 1980 the government of India appointed the justice Mulla committee for the discussion on the jail reform and also for the reformation of the prisoners and the development of the prison.
- Krishna Iyer Committee- it was set up for analysing the condition of the woman in the prison. The committee suggested the appointment of more women in the police force for the protection of the women prisoners.

III. CONCLUSION

The international conventions have marked the humanity of at most important for the survival in the society. The prisoners though are the social offenders have not been boycotted from the shield of humanity as most of the society have adopted the concept of rehabilitation and reformation. Every person shall be given second chance to relive and be adjust in the society. The exceptions are the barbaric criminals who are sentenced death punishment. Though, many states have abolish the death sentence and have adapted the life imprisonment concept imprisonment till the natural life of a person.

The Indian society always been tending towards the reformatory policy. The society believes in ending crime not criminals. The various development programmes that are established by the government for the betterment of the prisoners, help them to repatriate in the society which does not think them fit to socialise. Moreover, the responsibility is given to prisoners to build a social trust among the masses.
