

“HUMAN RIHTS OF PRISONERS IN INDIA LEGAL SYSTEM – A STUDY”

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Abstract:

Human rights are universal principles safeguarding the dignity and freedom of every individual. These rights, encompassing life, liberty, equality, and dignity, are enshrined in constitutions and upheld through international agreements. Despite global recognition, violations persist, especially within prison systems, where inmates often endure inhumane treatment and neglect. This study investigates the scope of human rights abuses in prisons worldwide, with a focus on India. Through a combination of quantitative and qualitative research methodologies, it explores legal frameworks, international treaties, and court decisions pertaining to prisoners' rights. It emphasizes the imperative of upholding human rights within prisons, advocating for reformatory approaches to rehabilitation rather than punitive measures. Key principles, including the rule of law, equality before the law, and protection of fundamental rights, underpin efforts to ensure humane treatment and dignity for all individuals, including those incarcerated. The findings underscore the critical need for comprehensive reforms to address systemic issues and uphold the inherent rights of prisoners within the Indian context and beyond.

The idea that human rights are fundamental forms the basis of international human rights law, reiterated in various international human rights conferences, treaties, and constitutions, such as the 1948 Universal Declaration of Human Rights. The 1993 Vienna World Conference on Human Rights emphasized that governments must uphold and protect all human rights and fundamental freedoms, regardless of their political, economic, and cultural structures. Human rights have evolved through various revolutions and generations in a dialectical phase. Even today, people struggle for human rights, as current governments are not effectively addressing them, leading to a questionable situation.

Keywords: Human rights, Prison, Universal Declaration of Human Rights, Prisoners Rights in India, The Rule of Law: Human Rights and Prisoners

Human Rights:

In the context of human rights, according to the Encyclopedia of Human Rights, human rights are universally accepted principles and rules that maintain morality and allow every member of the human family to fulfill their full potential and live life in an environment of freedom, justice, and peace.

Raphael (1967) has stated that human rights are inherent to individuals simply because they are human beings.

Cranston (1973) argues that human rights are universal moral rights, which every person, everywhere, at all times should possess, and which no one should be deprived of without serious injustice. They are rights owed to every human being simply by virtue of their humanity.

Macham (1976) defines human rights as fundamental and indisputable components of justice. Justice, being the primary moral virtue within human society, necessitates that all rights are essential for achieving justice.

According to Section 2(d) of the Protection of Human Rights Act (PHRA), 1993, human rights encompass the rights related to life, liberty, equality, and dignity guaranteed by the Constitution or embodied in international agreements, enforceable by courts in India.

Prison:

A jail is a place where individuals who are accused or convicted of one or more crimes, or have violated the country's prevailing laws, are confined. The term 'jail' has traditionally been defined as a place where individuals are held in custody pending trial or where they are imprisoned as convicted criminals.

The English word 'jail' is derived from the old French 'prison' and refers to a place where people are physically confined and deprived of various personal freedoms (Crighton and Towl, 2008).

According to Janna (1967), the word 'jail' has its origin in the Latin language, which means 'to seize.'

Paranjpe (1996) states that jails are used as institutions to treat criminals as deviants in order to have fewer restrictions and control over them within the jail.

Section 3 of the Prison Act, 1894 defines a jail as a police lock-up or any place declared by the state government through general or special orders to be a subsidiary jail (Prison Act, 1894).

Scope of the Study:

Various governments have made significant advancements in improving the prison system over the years, but there is still a need for reform and rehabilitation within the existing system. The sad reality is that even today, prisoners are subject to human rights abuses worldwide. They are often treated inhumanely, harassed, and humiliated by both prison officials and fellow inmates. Access to proper healthcare is limited, and they are provided with inadequate food, clothing, and bedding. Additionally, overcrowded conditions make living conditions unbearable. These issues are not confined to any specific region but are prevalent worldwide, even in some of the wealthiest countries. Without a reformative approach, many prisoners end up becoming more hardened criminals after their release. The lack of effective integration and engagement opportunities within the Indian prison system not only fails to rehabilitate prisoners but also hinders their productive engagement with society upon release.

Research Methodology

This study is based on the design of quantitative and qualitative research and is primarily based on the collection of primary data through regional surveys, supplemented with available literature. In addition to collecting primary data through field surveys, relevant literature is being referenced, especially through literature surveys in various libraries, seminar presentations, periodicals, journals, publications, government records, newspapers, and governmental reports and documents.

The preambles to the *Universal Declaration of Human Rights* and the two *International Covenants on Human Rights* emphasize that: **recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world** (Universal Declaration of Human Rights, 1948).

Principle 1 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides that: **All persons under any form of detention or imprisonment shall be treated humanely and with respect for the inherent dignity of the human person** (Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988). This principle is confirmed in the *Basic Principles for the Treatment of Prisoners* and *Standard Minimum Rules for the Treatment of Prisoners*, adopted

by the United Nations in 1955, which deal with the essential features of daily life in prison (Human Rights and Prisons Manual on Human Rights Training for Prison Officials, 2005). We shall discuss the right to physical and moral integrity in two categories i.e. prohibition of torture & ill-treatment and admission & release.

Provisions of following international laws and treaties are worth to be mentioned here- No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment. There are no exceptions Article 5 of the *Universal Declaration of Human Rights* provides that: **No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment** (Universal Declaration of Human Rights, 1948).

Torture is defined as any act by which severe physical or mental pain or suffering is intentionally inflicted on a person, other than that which is inherent in or incidental to lawful sanctions. Article 1, paragraph 1, of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* defines torture as **any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions** (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987). Article 1, paragraph 1). Illtreatment is defined as other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture.

Article 16, paragraph 1, of the Convention, defines other cruel, inhuman, or degrading treatment or punishment as **other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture as defined in article 1 when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity** (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987). No prisoner shall be subjected, even with his or her consent, to any medical or scientific experimentation which may be detrimental to health. Article 7 of the *International Covenant on Civil and Political Rights* and Principle 22 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* confirms this right of prisoners (International Covenant on Civil and Political Rights. (23 March 1976). Article 7: *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 1988). The *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)* confirms that orders from a superior officer may not be invoked as a justification for torture (The Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island

Guidelines, 2002). Article 3 of the *Code of Conduct for Law Enforcement Officials* confers that Law enforcement officials may use force only when it is strictly necessary (Code of Conduct for Law Enforcement Officials, 1979). Principle 34 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides that all deaths in custody, incidents of torture and ill-treatment, and disappearances of prisoners shall be properly investigated (The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988).

Provisions for Prisoners Rights in India:

Prison institutions are known by different names in different countries like 'Correctional Facilities', 'Detention Centre', 'Jails', 'Remand Centre' etc. The earlier notion of prison as a place in which inmates are forcibly confined and deprived of their rights and freedom and further given punishment has changed. The purpose of prisons has changed from retribution and punishment to reformation and rehabilitation and there is a change in social perception towards prison and prisoners. Prisons are now treated as a correction or improvement facility which indicates that there is more emphasis on the reformation of prisoners than to punish them. In India, Prisons have been included in Entry No. 4 (Prison Reformatories, Borstal Institutions, and other institutions of like nature and persons detained therein; institutions) in the State List (List II) in the Seventh Schedule of the Constitution of India. The management of prisons in the country is regulated by the Prisons Act, 1894, and Prison Manuals/Regulations prepared by various States based on their ground situations. Principal laws relating to prisons and their management are Constitution of India, 1950; The Prisons Act, 1894; The Prisoners Act, 1900; The Prisoners (Attendance in Courts) Act, 1955; The Transfer of Prisoners Act, 1950; The Repatriation of Prisoners Act, 2003; The Identification of Prisoners Act, 1920; The Probation of Offenders Act, 1958; and The Indian Penal Code, 1860. Each state has its own Prison Manual which specifies the rules and regulations for the administration and management of prisons. Many states have revised their manuals to accord due emphasis on the reformation and rehabilitation of offenders in society.

The Rule of Law: Human Rights and Prisoners

The overview of law, to some extent, can be traced back to Aristotle's inspiration, further developed by Roman jurists; pondered upon by medieval natural law thinkers; enlightened philosophers such as Hobbes, Locke, Rousseau, Montesquieu, and American framers; German philosophers Kant, Hegel, and the 19th-century nomothetes; and various contemporary thinkers like Hayek, Rawls, Scalia, Jiang Zemin, and Lee Kuan Yew, among others. Each of these thinkers has approached law and its principles from a different perspective, considering various

components for it. Some emphasize only the preservation of legal principles, while others give more weight to other beliefs.

For a society to utilize the law effectively, it has been recognized that there need to be identified conditions where the law should prevail, but it does not dictate what the content of a society's laws should be, leading to many disagreements about what that content should be. While some thinkers grapple with conflicts and just solutions in this area, others focus more on the structure of laws. Both concerns are addressed either through regular practice of law or attention to the elements of their country's legal system or through a dialectic between two perspectives on the rules of law, considering a robust law where some maximum rights are protected.

Using the list of values above, the transparency and stability of law are related to a meaningful concern, ultimately ensuring the protection of human rights and fundamental freedoms. While it is essential that both be acknowledged as complementary (e.g., protection against arbitrary state action), a person may simultaneously believe in the formalist and contemporary necessities of law, adhering to legal rules and ensuring their regular enforcement. Indeed, it is somewhat challenging for someone to be an expert in the strict enforcement of legal rules, adhering to certain established processes for making and enforcing laws.

It seems that the most famous and extensive exposition of the subordination of law can be seen in the explicit governance of law by Albert Venn Dicey. From this perspective, for most thinkers in the field of law, Dicey is considered the primary reformer of "the rule of law." Based on Dicey's perspective, one might say that the subordination of law concerns the human-made state and government above it. In other words, it refers to the complete governance of law over humans. Moreover, equality for all individuals, despite their political and social status, along with the subordination to legal authorities, is connected to the governance of law.

Under an impartial and independent judiciary, the protection of human rights and the legal rights of offenders and eligible individuals for punishment are ensured. Therefore, the following rules and general guidelines are extremely necessary for these measures and the spread of justice:

- A. The law should be sufficiently comprehensive.
- B. The law should be clear, definite, and determinable.
- C. The law should be valid, consensus, and compliant.
- D. Legislative validity.
- E. Policy validity.
- F. Supporting the applicability of structural validity
- G. The law should balance stability and flexibility.

H. Equality before the law.

I. Legal autonomy and the division of powers.

J. Fundamental rights of justice

In the light of justice principles, these guidelines should be applied to achieve a stable society based on human rights values under the law. It is necessary to declare and implement clear and effective directives regarding prison management and the treatment of prisoners under the law, which should be announced first and implemented at the domestic level by states. Adhering to these directives is crucial for the protection of the human rights of prisoners.

The Indian judiciary has acknowledged and supported the rights of prisoners concerning the following issues:

- ❖ "Criminals cannot be deprived of fundamental rights merely because they have committed offenses." - Justice V.R. Krishna Iyer (Sunil Batra vs. Delhi Administration, 1978).
- ❖ "Just like you and me, prisoners are also human beings. Therefore, all the rights curtailed in the legal prison process remain with the prisoner, only those rights that are curtailed in the legal prison process. This includes the protection of fundamental human dignity and the right to make the prisoner a better human being" (Charles Sobhraj vs. Superintendent, 1978).
- ❖ If a person commits a crime, it does not mean that they are made less human and excluded from the aspects of life that protect human dignity.
- ❖ It identifies every dated citizen as a prisoner, not just because they have become a prisoner.
- ❖ Imprisonment is for punishment, not for incarceration (John Vague, 1994). The sentence of imprisonment must be completed according to the orders of the court, and any additional sentence can only be imposed by the prison authorities (Sunil Batra vs. Delhi Administration, 1978).
- ❖ The day-to-day life of criminals depends largely on the prison authorities, and the state has authority over their life and liberty, with mechanisms of rights existing so that the authorities do not abuse their power.

Therefore, prison authorities should be responsible for their care, especially regarding their extensive discretionary powers. g. Prison as punishment is now being reconsidered as a treatment. It includes a philosophical aspect where people are incarcerated to have the opportunity to stop their criminal lifestyle. Therefore, reform is a plan through which offenders are rehabilitated through educational, training, and counseling programs. Some human rights are necessary for development and growth without which no improvement can take place. h. Reports of overcrowded jails, extended incarceration of accused prisoners, unsatisfactory living conditions, and indifferent and harsh treatment of prisoners have been consistently warning signs for years. Unfortunately, no significant reforms have addressed fundamental problems related to the Indian prison administration. The rights of prisoners are expressed under Indian laws governing prisons and the Indian Constitution. While describing the rights of prisoners, the decisions of the Supreme Court and High Courts have played a significant role.

Conclusion:

In conclusion, the protection of human rights within prison systems is imperative for upholding the dignity and welfare of all individuals. Despite legal frameworks and international conventions, human rights abuses persist, highlighting the urgent need for reformative measures. The principles of the rule of law, equality, and fundamental rights serve as guiding principles in addressing systemic issues within prisons. It is incumbent upon governments and relevant authorities to prioritize the implementation of policies and practices that promote humane treatment, rehabilitation, and reintegration of prisoners into society. By upholding human rights principles within prison systems, societies can strive towards achieving justice, peace, and respect for the inherent dignity of every individual.

References:

- ❖ Janna, Kally (1967). When the Gates Shut. Longman Publishers, London.
- ❖ Jones, Howard and Cornes, Paul. (1977). Open Prisons. Routledge and Kegan Paul, London.
- ❖ K. Stohr, Mary, and Walsh, Anthony. (2016). Corrections: The Essentials. Sage Publications, Second Edition.
- ❖ Kumar, Naresh. (1985). Constitutional Rights of Prisoners. Mittal Publication, Delhi.
- ❖ Lahiri, Tarapada. (1986). Crime and Punishment in Ancient India. Radiant Publishers, New Delhi.
- ❖ Mallaiah, CS, (1982). Development of Prison Administration in India. Social Defence, Ministry of Social Welfare, Government of India, New Delhi.
- ❖ Miethe, Terance D. and Lu, Hong. (2004). Punishment: A Comparative Historical Perspective. Cambridge University Press, Cambridge.
- ❖ Mohanty, Amarendra. (1990). Indian Prison System. Ashish Publishing House, New Delhi.

ARTICLES

- ❖ Bhatt, Hitesh, and Rawat, Arpita. (2014). Prison Reforms In India. International Journal of Research and Analysis, Volume 1, Issue3.
- ❖ Khan, Nawaz F. (2014). Prison a Changing Concept from Institution of Punishment to System of Reformation and Social Re-Entry. IOSR Journal of Humanities and Social Science, pp 09-12
- ❖ Osafsky, Howard J. (1991). Psychiatry Behind the Walls: Mental Health Services in Jails and Prisons. Psy LII Journal.
- ❖ Raju, L.P. (May 2014). Historical Evolution of Prison System in India. Indian Journal of Applied Research, Volume : 4, Issue : 5.
- ❖ Roy, Sudipto. (September 2003). Jail Reforms in India: A Review. Criminology and Social Integration, Vol. 11, No. 1, Published on Hrcak, Portal of Scientific Journals of Croatia
- ❖ Sinha, Anju. (November 2013). Open Prisons: Their Working and Utility as Institutions of Reformation and Rehabilitation. International Journal of Humanities and Social Science, www.ijhssi.org, Volume 2, Issue 11.

