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AN ANALYSIS OF PRISONERS' RIGHTS IN INDIA

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ABSTRACT

The way prisoners treated in the prison or by society after release from the prison, it's an important issue for the social justice and for law. Earlier society behave harshly, because of punishment and believed that prisoners lost there all right. However, with the change of time, come with the change in this thinking, and give view that the prisoners have equal right as the normal person. Indian constitution on the basic of human dignity idea, give prisoners equal right as human, because every person as human being has some value. Even a person committed any crime, he has some basic human right in prison and the state has responsibility and duty to respect these right as well as to protect this right. For the protecting the right of prisoner's court and constitution play important role. Judicial review and judgments developing the right of prisoners even they have not right to movement, there fundamental rights protected, Article 14,19,20,21and 22, for right to life, right of speedy trial, legal Aid, and right against torture and ill treatment protected in the Prison. This article focuses on that how the court and established law together protected and shape there right, development and its effective application. This research method follows the important judgements given by Courts in India, with their related constitutional provision; strong judicial support on this law and area of weak implementation of law due to poor administration in prisons, conclusion that the protection of prisoner's right essential for human justice system.

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KEYWORDS: Prisoner's Right, Human Dignity, Indian Constitution, Judicial Intervention, Human Treatment, Doctorial Research, Administrative accountability, legal aid, Article 21, Human Right

INTRODUCTION

The sign of democracy in any country is not only that the citizens has right to do or speak anything or has well established civilized society or robust democracy also related to that how a country treat with the persons or citizens who is behind the bars. The term prisoners refer to any person who detained in prison or jail for their wrongful act as punishment under the authority of the state. The person who committed any act which is wrongful in the eye of law and prove as convict in court is liable for the imprisonment or jail or fine as per there offence type and direction of the court. Court follows the retributive and reformative philosophy for giving the punishment to the prisoners, where mainly focus on the that the culprit or convict punished for equal criminal act that committed or try to change the criminal mentality or character and behaviour of the prisoner in prison. Earlier, imprisonment was amount to civil death which means the person who imprisoned for any reason loss there all the right in the in the eye of law and the society which means they lost their family right, property right, and human right. But after long fight in *Sunil Batra v. Delhi Administrative*², supreme court establish the rule that even the person is imprison for certain region their fundamental right cannot taken which means that administration can only restrict their liberty not their dignity. The main objective of courts and state every time to protect the human right of prisoners in India for which they always try to make development and change in statuary law as well as strictly adhere on the fundamental right also NHRC India³. But here the question is rise that

²Sunil Batra v. Delhi Administrative 1979 SCR (1) 392

³ National Human Right Commission India

really in India their fundamental rights are protected? Because in India the ratio between prisoners more than the judge in court due to which jails are overcrowd of prisoners and get let justice. Under this research paper try to focus on certain point like judicial evolution of prisoners right in India, what are the gaps between the implementation and reality of prisoners in India.

HISTORICAL BACKGROUND

The prisoners and punishment change in India with each era, in this modern era, 21st century state and court mainly focus on right, dignity of prisoners also establish some constitutional and statutory law for the prisoners also timely make change in the provisions which related to prisoners right protection also court focus on give punishment according to their act but historically in Pre-Colonial Era, there was no such punishment of imprisonment of certain period or long term imprisonment or life imprisonment, in ancient time, in medieval period imprisonment was not seen as primary punishment, prisons are only for the purpose of detained the prisoners until not actual sentence like allotted fine paid or any physical punishment or give the punishment exile from country.

The definition of punishment and prisoner change in India in the British Rule, in Colonial Era 1894 in India introduce first comprehensive law, Prisoners Act⁴, in which British government gave few rights to prisoners but treat them as subject, their focus remained on hard labour and discipline of labour.

Post independence in India ideology of punishment change into reformation i.e. focus on correcting the person. Also gave some fundamental right to them for the protection of their dignity even they have not right to freely move anywhere.

⁴ Prisoners Act of 1894

RIGHTS GIVEN UNDER CONSTITUTION ON INDIA

Under constitution of India given certain Fundamental right to prisoners of India under Part III, Constitution of India which is Article 21,14,19,20 and 22. India has no any right given to prisoners in ancient period but first time in colonial era British government gave few rights to prisoners under Prisoner act⁵, post-independence under constitution of India rights given to the them but was not in broad nature, due to not clearly defined that in which area their fundamental right should be protected which area not, because of this judiciary in India constantly invoke their fundamental right of constitution of India.

Under Article 21 of India constitution give prisoners Right to Life and Human dignity, this article acts as the soul for the prisoner which give the broader area for the protection of their dignity in jail. According to the courts of India life is not meaning as long or mere existence⁶, also need some dignity. Even prisoner not given right to movement, constitution give a shield for their dignity protection. In landmark case Justice Krishna Aiyer in landmark case Marie Andre's V. The Superintendent⁷, Tihar Jail, held that "imprisonment does not spell farewell to fundamental right" but not whole Part III of Indian Constitution as the citizen of India also held that the imprisonment of prisoner not only for retribution or deterrence but also for rehabilitation purpose. As Article 21 is broader area for the right protection court in different case or landmark cases explain this that in what area they have right:

1. **Right to Privacy of Prisoners and their Spouse Right to privacy to prisoners and Their spouses** ⁸, Right to privacy is the basic human right, in K.S.

⁵ Supra Note 4

⁶ Kharak Singh V. State of UP, AIR 1963, SC 1295

⁷ Marie Andre's V. The Superintendent AIR 1975 SC 164

⁸ Rahmath Nisha V. Additional Director General of Prisoner and Others

Puttaswamy V. Union of India Case court declared that the right to privacy is the fundamental right of the person which fall under the Article 21 of Indian Constitution, supreme court held that even the person detained in jail and lawfully their certain freedom restricted, their basic human dignity remains with them⁹ so, right to privacy should be protected even the person is detained in jail for punishment they have right to privacy. Right to privacy also include the right to personal and martial privacy between the prisoner and their spouse, according to the court it's fall under the Article 21 and they cannot be taken away arbitrary, but with the restriction that both have limited interaction, and not impact on the discipline and security of prisoner. In Rahmath Nisha V. Additional Director General of prisoner and Others¹⁰, in this case Madras High court held that right to life also include the basic human dignity, privacy, and material relation under Article 21, which give him right to meet his spouse, interaction between spouse and prisoner is their right which cannot be denied by arbitration.

2. Right against solitary confinement and bar fetters

Solitary confinement means the isolated the person or conflict i.e. when the any conflict or prisoner detained in a separate cell away from other prisoners with limited contacts with others or not allowed any human contact. It's breached the right to life and personal liberty under article 21 of Indian constitution In Sunil Batra V. Delhi Administration¹¹ case which was against the torture and inhuman behaviour with the prisoners in jail where supreme court held that even person detained in prison, they will not loss their fundamental right. Also declared that torture and arbitrarily solitary confinement is unconstitutional

⁹ Sunil Batra v. Delhi Administration (1978) 4 SCC 409

¹⁰ Rahmath Nisha V. Additional Director General of prisoner and Others (2019)

¹¹ Supra Note 8

nature which invoke the Article 21 of prisoners. Court also declared that without any reason of threat or violence admiration cannot handcuffed or chaining the prisoners it's totally unconstitutional

3. Right to life and personal liberty

Like the other normal citizen of India, prisoners also have right to life and personal liberty which granted under Article 21 of the Indian constitution, even person in prison their basic human right should not infringe, has also the right to live with dignity, even restricted free movement, the definition of personal liberty is so broad in nature, in a case Kharak Singh V. State of UP¹² where Kharak Singh was on surveillance of police and they come any time to see that he is in his home or not, he filed the suit on the basic of right to sleep, court held that "life connotes more than mere existence like that an animal, visiting of the police at night every time violate his Article 21 of fundamental right under Indian Constitution, because Article 21 talking about the personal liability and right to sleep fall under it which is also amount to violation of Fundamental Right.

4. Right to live with Human dignity

For a human being a life with dignity is too important, it's the basic right of normal people, it's more than life for a human to survive on this earth, it's also fall under right to life of Article 21 of fundamental right under Indian constitution. As it's the basic and common right for human being so, prisoners also have this right because every human being should get some respect, human treatment in society and basic dignity to spend their life. In Menka Gandhi V. Union of India¹³ case court clearly held by expending the meaning

¹² Supra Note 6

¹³ Menka Gandhi V. Union of India, AIR 1978 SC 597

of right to life that right to life include the spending the life with fairness and dignity in the society, The definition of right life and dignity also expanded by including the basic necessity of prisoners which includes the basic needs of human being like reading, education, opportunities etc¹⁴

5. Under the constitution of India prisoners also has right to health and medical treatment which also fall under the definition of right to life, Article 21 of fundamental right under Indian Constitution it's the one of the crucial elements that every human being needed, it's a common right for human beings, in *Parmannd Katara V. Union of India*¹⁵ supreme court clearly held that prevention of human life is so important and it cannot denied by anyone to any person. Also, it's duty of state to provide required medical treatment to prisoners¹⁶
6. **Right of Speedy trial**, it's the most important fundamental right of prisoners under Article 21 of Indian constitution, which highly violates in India and cause overcrowded of prisoners in jails, because of not getting the speedy trial innocent spend their life in prison and wait for their turn, that's why it's recognised as the human right universally. Under 346 of BNSS¹⁷ for protecting article 21 violation, given about the speedy trial without unnecessary adjournments by the court. In the case *Hussainara Khatun V. State of Bihar*¹⁸ follow the section 309 of CrPC by linking it the Article 21 of constitution of India that it's the fundamental right of the prisoners to get speedy trial without any delay, without any adjourn on time.

¹⁴ Francis Coralie V. Delhi Administration AIR 746, 1981 SCR (2) 516

¹⁵ Parmannd Katara V. Union of India SCR (3) 997

¹⁶ Supra Note 9

¹⁷ Bhartiya Nagarik Suraksha Sanhita

¹⁸ Hussainara Khatun V. State of Bihar AIR 1979 SC 1369

7. **Right to, Legal Aid**, under 42nd amendment of the Indian constitution in 1976, introduce the legal aid, under Article 39A, Part IV of Indian constitution as guideline of socialist principle in Directive Principal of State Policy where provide free legal aid to the required people who is unable to spend on advocate also it's the guideline that state have to keep in mind during framing any law related to prisoners or convict or criminals. But it's unenforceable in nature due to fall under the DPSP of Indian Constitution. In *Madhav Hayawadanrao Hoskot V. the State of Maharashtra*¹⁹, court held that it's the duty of the state to provide the free legal aid to the prisoners who is privilege.

STATUTORY LAW FOR THE PRISONERS

Prisoners Act, 1894

It's considered as the foundation which followed by state in India till now, this established during the colonial era, by British government where few right given to the prisoners, the main objective behind the establishment of this law to manage the prisoners in colonial era in discipline, control above them, and security of prisoners. Give the liability and duty on authority that prisoner should follow the discipline in prison also not treated them inhumanely, providing a better health, safe custody in prison.

Code of Criminal Procedure, 1973 (CrPC)

This law success by the BNSS Act, 2023, with same definition and meaning It's played important role in protecting the right of prisoners, under it try to protect the fundamental right Article 21, of Indian Constitution act of prisoners as well as undertrial prisoners, this act is about the procedure of wrongful act like arrest,

¹⁹ *Madhav Hayawadanrao Hoskot V. the State of Maharashtra*

detention, remand, trial, and sentencing of culprit people. Under Section 309 CrPC, protect Article 21 by speedy trial of the prisoners without adjourn of the court, without any delay. It's followed the constitutions' promise that fair, just and reasonable treatment.

CONCLUSION

Change in prisoners right in each where in ancient period no priority given to the imprisonment but in colonial era British government introduce the statutory law, Prisons Act²⁰ for were given few rights to the prisoner with the modern idea of rehabilitation this act replaced by Model Prisoner Act 2023, because government more focused on improved the life of the prisoners in India and have some basic dignity in prison as the human being. For this courts of India played so important role by giving so many landmark judgments which improve the life of prisoners in jail with dignity.

But only providing the basic need to prisoner and protect their dignity not protect there right because the biggest problem in India is overcrowding of the prison due to delay in justice or trial in court because of low no of judge in India compared to overcrowded prisoners. This delay of judgment causes the suffering of innocent person or delay which violate their right and it's not only the problem of India it's a universal problem of delay justice hence this problem also considered under the universal human right. Hence, only making the law for protecting the right of prisoners in country, is not enough. It's all about the implication of law, according to the requirement and time need to change of law to establish a democracy. For this India should follow the Justice Mulla Committee, theory of open Prison and focus on mental and physical health of prisoners.

²⁰ Supra Note 4