
UNIT 3 PRISONERS RIGHTS

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3.0 OBJECTIVES

By the end of this unit, you will be able to:

- understand the prisoners rights in general;
- get an overview of the legislative mandates of prisoners rights;
- identify the physical needs of prisoners viz food, clothing bedding etc; and
- enlist the non-physical or aspirational needs of the prisoners.

3.1 INTRODUCTION

The prisoners once confined to the prisons become totally forgotten human being. They are denied even the basic needs. They live in the most dehumanized conditions and are subject to the torture by the prison staff and the co-prisoners. Their contact with outside world is restricted and they have to depend on the State for the fulfillment of the day-to-day needs. The State is under an obligation to protect and promote the human rights of the prisoners. Although the main legislation governing the prison i.e., The Prison Act, 1894, specify some of the rights of the prisoners, but the majority of the provisions focus on prison discipline, prison offences and the punishment for these offences. The various States in India while formulating State legislation on prison have taken into consideration the Prison Act of 1894. Hence, the State legislations, rules, regulations and the manual governing the prisons and the prisoners lack welfare aspect of the prisoner and emphasize more on maintaining discipline. The various Committee's constituted for suggesting reforms in the prison administration as a whole also observed that the rights of the prisoners were denied and neglected. With the shift in the theories of punishment and the attitude of the society towards the prisoners, now considerable change has occurred in the field of prison administration. The judiciary has also played a remarkable role in addressing the problems of prisoners and recognizing and upholding the prisoner's rights.

After independence several notable changes have been introduced in the prison system of India. An ideal classification of prisoners has been worked out to suit the new treatment methods. The prisoners avail the facilities such as, furlough, ticket on leave, medical aid, educational or occupational training, etc. Thus, modern Indian prison has now started functioning as an institution for the treatment and reformation of inmates. The rights of the prisoners have been taken care of by the introduction of the concept of Open Air Prisons. Community Service is the latest developments in this area, which have proved beneficial to prison community. The prisoners enjoy considerable liberty and various rights in varying proportion these days. All credit goes to the judicial activism, which has activated the redundant beneficial provisions in the Prison Act and the Manual and held some of the provisions as unconstitutional. The judiciary has further extended rights in favour of the prisoners by interpreting Article 19 and 21 of the constitution.

3.2 THE PRISONERS RIGHTS IN GENERAL

The Constitution of India confers a number of fundamental rights upon citizens. The prisoners also being the citizens of India continued to enjoy the fundamental rights except those, which are necessarily taken away due to imprisonment by due process of law. The state is obliged to uphold and ensure observances of basic human rights. The prisoners rights are those rights which are conferred upon them by way of statute and the same are necessary for their existence as a human being. The rights although not provided by way of statute but in fact the same have been conferred upon the prisoners by way of liberal interpretation of the statutory and Constitutional provisions.

One of the best tenets of human rights law is that human rights are inalienable and under no circumstances can any authority take away a person's basic human rights. The fact that this tenet is not sometimes made applicable to prisoners is well documented. There are innumerable judgements of Supreme Court and High Courts, showing how prisoner's rights are violated. The judgement highlighted the highly unsatisfactory conditions prevailing inside the prisons and the failure of the prison authorities to provide an environment which is conducive to the maintenance of prisoner's rights, partly rooted in the belief that the prisoners do not deserve all the rights and the protections that the constitution provides to all citizens. Besides being morally wrong and legally invalid, this belief does not show adequate recognition of some basic facts about the prison population.

3.3 LEGISLATIVE MANDATES ON PRISONERS RIGHTS

The Prison Act of 1894 is the main legislation dealing with the prison and the prisoners. The Prison Manual of 1970 also contained provisions regarding the various rights of the prisoners. But the Prison Manual of 1970 was actually not implemented. Now the position is that the Prison Act of 1894 is the only national level document presently governing the prison and the prisoners. The State government has their own prison legislations and manuals, which administer the prison and the prisoners. For the purpose of this chapter, these rights will be discussed under two heading i.e., physical or bodily needs and non-physical or aspirational needs. The Prisons Act provides only the skeleton structure regarding the right to basic need and the absence of National Prison Manual, the Manual of States contains little detailed aspect on the same. Various Committee's constituted

to suggest reform in the prison administration and to analyze the conditions of the prisoners also observed that the right of the prisoners should be taken care of and the infrastructure of the prison administration should be reformed as per the modern penal philosophy.

3.4 PHYSICAL OR BODILY NEEDS

The physical or bodily needs of the prisoners include the food, clothing, bedding, accommodation, sanitation, hygiene, etc. These are the basic need without which there is no survival. The prisons being closed institution there is a gross violation of the rights of the prisoners. The Prison Act of 1894 merely provides that the civil prisoners and unconvicted prisoners can purchase food, clothing, bedding, etc. The Prison Act does not lay down the minimum standard for these needs.

Food and Water

The Prisons Act does not contain elaborate rules on the aspect of food and water only it has mentioned about the same. It is necessary to understand that the elaborate rules are contained in the State Prison Manual.

Clothing, Bedding and Other Facilities

Again the Prison Act merely contains the provisions that a civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessaries for the clothing, bedding etc. So far as other prisoners are concerned the Act is silent on that point. However, it is the responsibility of the State to provide clothing bedding etc., to the prisoners by having recourse to the State Prison Manual, suitable to the extremes of climate. The prison authorities are further required to ensure that clothing shall not be degrading, it is clean and separate beds and beddings are provided to the prisoners.

Accommodation

The Prisons Act of 1894 provides that there should be separate accommodation for the prisoners, but it nowhere elaborate regarding the same. The accommodation does not mean only construction of separate building for the different category of the prisoners. It means that the prisons for the accommodation of different categories of prisoners be constructed on scientific lines as to the requirement of cabins, contents of air, minimum floor, space, proper ventilation, etc. It further means proper sanitation, construction of kitchen on modern lines. Most of the prisons lack these facilities but the care has been taken while constructing the new prisons in Delhi at Rohini. The construction at Mandoli prison is being undertaken on the scientific lines.

At the time when reaction to crime was purely punitive, there was no need for classifying prisoners and all of them were flocked together in a single prison. It was towards the end of 19th century that the idea of individualization of prisoners was introduced by the penologists and this principle has since then been firmly established into practice. Evidently, in the changed circumstances the earlier classification of criminals on the basis of their physical differences serves no useful purpose. Therefore, amended legislations have worked out an objective classification of prisoners according to differential treatment. In spite of being lodged in maximum-security prisons, the modern prisoners are placed in quasi-penal and even non-penal institutions keeping in view their reformation. The

prisoners are now classified according to the treatment to which they are likely to respond most favourably.

Sanitation and Hygiene

The right of the prisoners for proper sanitation and hygiene is not mentioned in the Prison Act but the same is provided in the State Prison Manual. Sanitation and hygiene is necessary to prevent the prison from being a breeding ground for the diseases. The National Human Rights Commission in its Annual Reports have mentioned that there is a lack of proper sanitation and hygiene condition which result in to outbreak of epidemic diseases. The Commission has also recommended for the adequate sanitation and hygiene in the prisons and the States are taking steps towards the same.

Medical Care

The Prison Act envisages that there shall be a hospital for sick prisoners in the prison and the Medical Officer is to take care of the health of the prisoners. National Human Rights Commission's role is again remarkable in making available right to medical services to the prisoner's. The judiciary has also recognized the rights to medical services of the prisoners. In Mohammad Giasuddin v State of A.P. AIR 1977 SC 1926, the court strongly endorsed the importance of the hospital setting and the therapeutic goal of imprisonment.

Check Your Progress I

Note: Use the space provided for your answers.

- 1) Explain the legislative mandates of prisoners rights.

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- 2) What are the provisions for physical or bodily needs according to prisons Act 1894?

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3.5 RIGHT TO NON-PHYSICAL OR ASPIRATIONAL NEEDS

Freedom from Physical Restraints

The modern thinking on penology, which is in tune with the basic human values, stands against the use of such devices as they are considered to be derogatory to basic human dignity. The devices for restricting the movements of prisoners should be applied only when it is absolutely necessary and it should not be

applied for any longer time than is strictly necessary. Provision in the Prison Act relating to putting fetter on the prisoners was challenged before the court. The Supreme Court in *Prem Shankar v Delhi Administration* AIR 1980 SC1535, has held that when there is no compulsive need to fetter a person's limbs, it is sadistic, capricious, despotic and demoralizing to humiliate a man by manacling. Such arbitrary conduct surely slaps Article 14 of the Constitution on the face. The minimal freedom of movement which even a detainee is entitled to under Article 19 of the Constitution cannot be cut down cruelly by application of handcuffs or other hoops. It will be unreasonable to do so unless the State is able to make out that no other practical way of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstances so hostile to safe-keeping. The Court further observed even in cases where in extreme circumstances, handcuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. This is implicit in Article 21 of the Constitution which insist upon fairness, reasonableness and justice in the very procedure which authorizes stringent deprivation of life and liberty.

Right to Visitation Need

The prisoners on account of having been confined to the prison remains entirely cut off from the rest of the world. Hence, the social need of the prisoner to meet his relatives and friends assumes importance. The Prison Act of 1894 provides for the right of the prisoners to meet persons, at proper times and under proper restrictions, to whom he desire to meet. More details about visitorial system have been dealt with in Unit 4 of this block.

Right to be Released on Bail

The right to be released on bail becomes important against the following background regarding the prisoners. About 70% of the prison population is not even convicted of any crime. Even those who are convicts, a large number of them are first time offenders involved in technical or minor violations of law. Very few are recidivists or hardened criminals. Also, as was observed by the Mulla Committee, a majority of the inmates come from the "underprivileged sections of the society, as persons with the means and influence generally manage to remain beyond the reach of law even if they are involved in violation of law."

The poor are generally subjected to pretrial detention mostly because they cannot afford sureties and stand personal bonds. It not only affects the family life of the undertrial but also adversely affects his morale due to vicious impact of prison environment.

The Law Commission in its 78th Report made some recommendations for easing congestion in prisons. These suggestions include liberalization of conditions of release on bail, particularly release of certain categories of undertrials on bail. The amendment in the criminal procedure code in the year 2005 has liberalized the statutory provisions for the release of the underprisoner. Section 439-A of the Criminal Procedure Code provides that the undertrial prisoner should be released on bail if he has already spent period of detention for a period extending to one-half of the maximum period of imprisonment provided for an offence.

Right to Speedy Trial

The under trial prisoners languishing in jail for a longer period comes into contact with the hardened criminals and it increases their chances to become criminal. The best remedy in such cases would be to get their cases tried speedily. The Supreme

Court in *Hussainara Khatoon vs. Home Secretary, State of Bihar* [(1980) 1 SCC 81], observed that incarceration of undertrials who had virtually spent their period of sentence was clearly illegal and a blatant violation of their fundamental rights guaranteed under Article 21 of the Constitution of India. The court observed that “speedy trial” is a constitutional mandate and the State cannot avoid its constitutional obligation by pleading financial or administrative inability. Consequent to the directions issued by the Supreme Court in this case, the State of Bihar released as many as 18,000 under-trial prisoners in 1981 and other States followed the rule. Similarly, the Supreme Court in *Common Cause, A Registered Society through its Director v Union of India* (1996) 6 SCC 775, again recognized the right to speedy trial and laid down guidelines for the speedy disposal of various categories of cases.

Right to Free Legal Aid

The provisions contain in Articles 39-A and 22(1) enumerate the constitutional rights of the accused to be provided free legal-aid services and the services of the counsel of their choice to the indigent accused persons. In *Hussainara Khatoon*, the Supreme Court observed that a procedure which does not make legal services available to a poor undertrial person cannot be regarded as just, fair and reasonable and, therefore, vocative of right to legal aid of the poor accused as contemplated by Art. 21 of the Constitution. The Court in this case ordered release of those undertrials who were languishing in jails for an inordinately long period.

Right against Custodial Torture in Prisons

In its historic judgment in *Sunil Batra v. Delhi Administration*, the Apex Court held that prisoners are entitled to all fundamental rights, which are consistent with their incarceration. Emphasizing the need for humane treatment of prisoners and protection of their basic human rights, the Supreme Court in *Sunil Batra II* AIR 1980 SC 1579, was of the view that as a matter of policy the Article 8 and of the Declaration of the Protection of all persons from torture and other cruel, inhuman and degrading treatment of punishment adopted by UN General Assembly should be implemented by all nations.

The victims of prison injustice, particularly those who are poor and helpless and cannot afford legal representation, have been protected against torture and harassment. A victim of custodial torture can move the court directly through a writ petition for protection of his fundamental rights, specially the right to life and liberty guaranteed by Article 21 of the Constitution. In *Prabhakar Pandurang v. State of Maharashtra* the Apex Court ruled that detention in prison cannot deprive the detenu of his fundamental rights. In the same breathe, the Supreme Court in *D.B.M. Patnaik v. State of A.P.* held that mere detention is no ground for suspension of detenu’s fundamental rights.

The Rights of Women Prisoners

The rights of women prisoners often get neglected due to the fact that their percentage as compared to the male prisoners is comparatively very less. As per the prison statistic of 2005 they constituted approximately 3% of the total prison population. The women prisoners apart from the need to have common rights also need some special rights. Justice VR Krishna Iyer Committee Report on Women Prisoners in 1979, and the report by the All India Committee on Jail Reforms in 1983 dealt with the issue of the women prisoners and advocated for the various rights of the women prisoners.

The rights of the prisoners as discussed above are common to all the prisoners irrespective of their gender. But there are certain rights, which are gender specific i.e., the rights of the women prisoners. The rights of the women prisoners are sparingly recognized in the prison legislations. There exist wide gap between theory and practice vis-à-vis women prisoner's rights. Little thought has historically been given to the gender-specific needs of the female prison population. The comparatively small female prison population has led to the needs of female prisoners often being neglected despite ongoing calls for large-scale reforms of the treatment of women prisoners.

The needs of women prisoners often differ from their male counterparts. Women need gender-specific facilities for healthcare, to help them in childbirth, to care for their children in prison, to receive counseling to guard against the possibility of rape and sexual assault and to maintain contact with their dependants outside the prison.

The Rights to Health

The majority of women in prisons are amongst the poorest members of society and many arrive in prison with a range of prior-existing physical and mental health problems. The Model Prison Manual, 1970 states that: "Only lady doctors shall look after the medical care of women prisoners during their stay in prison". In practice, however, the health facilities available to women in prisons are ill-equipped and are not sufficient.

This is due to the fact that a large number of women prisoners have been victims of physical, sexual, mental and domestic abuse and are often traumatised as a result. The pregnant women prisoners also need special care in the form of proper pre-natal and post-natal medical care.

Visiting Rights

Women prisoners suffer a more severe range of social exclusion problems than men on leaving prison and it is recognised that maintaining close contact with friends and families makes their rehabilitation and re-integration into the community easier. In India, the few penal institutions catering for women mean that many women are imprisoned long distances from their families. This can have devastating effects on the prisoner and on their family. It is important for women prisoners to maintain close contact with their families outside, particularly important for women who have children who are too old to live with them in prison. The gender-specific need of women to have increased numbers of visits from friends and families, for illiterate women to be given special help in writing letters and no limit on the number of letters received by women prisoners. The Manual also sets out special measures to be taken to encourage visitors to the prisoners such as the creation of a special waiting room.

Childcare in Prison

The findings of a report by the national institute of criminology and forensic sciences in 2000 showed that children who lived with their mothers in prisons were growing up without adequate nutrition, medical care and few educational opportunities. The Indian council of legal aid and advice filed public interest litigation in the Supreme Court, asking that state governments formulate proper guidelines for the protection and welfare of children of women prisoners.

The Court observed that following special provisions for women prisoners and their children should be made in the prisons.

- For pregnant women all basic facilities of pre-natal care and post-natal care shall be arranged.
- Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.
- Births in prison shall be registered in the local birth registration office. Female prisoners are allowed to keep their children with them until they reach six years of age. After this period they are to be taken to a suitable institution run by the Social Welfare Department.
- Proper education should be provided to the child of female prisoners living in the jails and the child should also be given recreational opportunities. The facilities of crèches for women prisoners children should also be arranged.

Check Your Progress II

Note: Use the space provided for your answers.

1) What is Right o Non-physical or aspirational needs of the prison inmates?

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2) Explain child care in prison.

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3.6 LET US SUM UP

The judiciary has recognized the prisoner’s rights and the statutory and constitutional provisions have been interpreted in favour of the prisoners. The prisoners now enjoy various rights discussed in this unit which were earlier not available to them. The entire credit goes to the judiciary for extending the rights hitherto denied to the prisoners. The Prisons Act of 1894 contains inadequate provisions to take care of the various rights of the prisoners. There is a need for the comprehensive prison legislation where in all the rights, which are already provided in the existing State prison, statutes and the rights recognized by the Supreme Court be included. So far as women prisoners rights are concerned whilst the judicial activism of the Supreme Court in the Upadhyay case is to be applauded, the on-going tension

between a rights-based theory and the practical realization of these rights is unmistakable.

3.7 FURTHER READINGS AND REFERENCES

1. Report of the *Indian Jails Committee on Jail Reforms 1919-20*.
2. N. Kumar, “*Constitutional Rights of Prisoners: A Study of Judicial Trend*”, 1986.
3. *The Code of Criminal Procedure 1973*, as amended up to date.



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