



# The Legal Framework Pertaining To Prisoners' Rights In India

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## I. Introduction

Criminal justice is the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime or sanctioning those who violate laws with criminal penalties and rehabilitation efforts.

Justice is at the top among the aims and objectives of the Constitution of India, 1950<sup>1</sup> as enshrined in the Preamble.<sup>2</sup> The objective of 'justice', social, economic and political is directly incorporated in Article 38<sup>3</sup> which is amplified under Article 39. The Supreme Court has held in *Babuv.Raghunath.Ji*,<sup>4</sup> that the system of administration of justice must provide cheap, expeditious and effective instrument for realization of justice by all sections of the society irrespective of their social or economic position.<sup>5</sup>

In a democratic country the Constitution guarantees certain basic rights and liberties to the people while criminal justice administration protects them by enforcing laws and punishing the offenders. When human rights are guaranteed by a written constitution, they are called fundamental rights because a written constitution is the fundamental law of the State.<sup>6</sup> As correctly pointed out in *GolakNath v. State of Punjab*,<sup>7</sup> fundamental rights are the modern name for what have been traditionally known as natural rights. The protection of human rights through the criminal justice administration is an indispensable feature of any system governed by the rule of law.

## II. India's Criminal Justice System

Criminal justice is the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime, or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. It aims to reduce crime by bringing offenders to justice, and to balance the goals of crime control and prevention, and justice which include equity, fairness, and protection of individual rights. The subject of criminal justice is primarily concerned with the enforcement of criminal law.

The criminal justice administration in India follows the Anglo-Saxon adversarial pattern. It has four vital units, namely, the police, prosecution, judiciary and correctional institutions. The success or failure of the administration of criminal justice depends upon the efficacy, harmonious co-ordination and co-operation of these allied units.<sup>8</sup>

<sup>1</sup> Hereinafter referred as the Constitution'.

<sup>2</sup> WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

<sup>3</sup> State to secure a social order for the promotion of welfare of the people:— (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

<sup>4</sup> AIR 1976 SC 1734.

<sup>5</sup> Dalbir Bharti, *The Constitution and Criminal Justice Administration*, APH Publishing Corporation, New Delhi, 2002, p.2.

<sup>6</sup> Durga Das Basu, *Comparative Constitutional Law*, Lexis Nexis Butterworths Wadhwa, Nagpur, 2010, p.15960.

<sup>7</sup> AIR 1967 SC 1643.

<sup>8</sup> K.I. Vibhute, *Criminal Justice*, Eastern Book Co., Lucknow, 2004, p.142.

Under the Constitution, criminal jurisdiction belongs concurrently to the central government and the states.<sup>9</sup> The prevailing law on crime prevention and punishment is embodied in two principal statutes, namely, the *Indian Penal Code*, 1860 and the *Code of Criminal Procedure*, 1973. The machinery for prevention and punishment through the criminal court system rests on the *Code of Criminal Procedure*, 1973.

### III. An analytical overview of the development of India's criminal justice administration

The criminal justice system in India has evolved over a period of three thousand years. Initially, the Law or *Dharma*, as propounded in the *Vedas* was considered supreme in ancient India for the King had no legislative power. But gradually, this situation changed and the King started making laws and regulations keeping in view the customs and local usages. The punishments during ancient India were cruel, barbarous and inhuman. The system of awarding punishments on the basis of *Varna* contravened the concept of equality of all human beings as propounded by the *Vedas*.

During the Muslim rule in India though enlightened monarchs like Sher Shah Suri and Akbar showed great zeal to administer justice impartially, yet as a whole the administration of justice during the Muslim period in India suffered from defects. The concept of equality was applicable only to the Muslim population in India and many offences including murder, could be compounded by the payment of *diya*<sup>10</sup> and human life was considered rather cheap, capable of assessment in terms of money. The criminal justice system developed by the Muslim rulers continued in India even after the British took control of India. It was in 1860 that the codification of laws changed the discriminatory provisions of Muslim criminal law.<sup>11</sup>

The British after assuming power in India found the then prevailing criminal justice administration defective and decided to bring about drastic changes in it. Lord Cornwallis made detailed studies of the existing conditions of the criminal justice administration. Lord Hastings took special interest in reorganizing the police force to deal with the criminals and maintain law and order in the country. Lord Bentinck created the post of District and Sessions Judge and abolished the practice of sati. In 1843, Sir Charles Napier introduced a police system on the lines of Royal Irish Constabulary. Subsequently, the *Indian Police Act* of 1861 was enacted on the recommendations of a Commission which studied the police needs of the Government. They codified the existing laws; established the High Courts and prisons laws.

Thus, the British introduced reforms wherever necessary. The institutions of police, magistracy, judiciary and jails developed during the British period still continue without significant changes in their structure and functioning. However, the reforms introduced by British rulers treated all Indians and non-British Europeans equally but the British always enjoyed special privileges. It was only with the Constitution coming into being that the right to equality before law was fully recognized and incorporated as a fundamental right.<sup>55</sup>

### IV. Prisons' Historical Development

Before the independence, prisons were developed for the criminal person and against any illegal activity or against British Government. The prisons were very unsafe to inmate. The British Government used to punish most of the prisoner with inhumaneness and mistreating. Punishment was developed for such criminal and wrong-doers. It was one of the steps towards controlling the people from any illegal movement or crime or wrong doers. In the world, there was different capital punishment included such as flogging, mutilation, branding, pillories, imprisonment and death by hang. Even today, some countries are following capital punishment. In India the Britishers have developed the first prison in Goa, 1600. It was small lockups for prisoners. Afterwards, a large prison complex construction was started in 1896 to 1906. It was Andaman Nicobar jail. The British Regime has settled more jails for prisoners. Prisoners were treated like animal in jail and rule by the superintendent of prison. During 18th century, there was no knowledge of human rights. The superior has power to rule the nation. After the changing scenario of the country, Indian Government Act 1935 was developed. After independence, Government of India has reforms "jails" or "prison" system with help from United Nation. It has divided into different level like National level, State level and District level prison system developed. The word 'Prison' doesn't means "to use sudden force" or "to cage". The prison is an old age foundation. Prison is a place, properly arranged for those culprits through legal process are kept for safe custody while in trial or for punishment. Initially, it was just a place where offenders are kept for trials and ultimate punishment, but their occurred an intermediate point-imprisonment was regarded in itself.<sup>12</sup> Lord Macaulay in his book "Minutes of 1835" said that –"Imprisonment is the punishment to which we must chiefly trust". He was the one who put the idea for the idea for the establishment of such rules and regulations, main aim was to destroy criminal streak among convicted offenders. If we turn the pages of our past Indian history, there are descriptions of prisoners, in Manusmriti it is stated that king should have all the prisons where all the evil and wrongdoers are kept. In the historical writings of Huein-Tsang and Fa-

<sup>9</sup> Criminal Law and Procedure is a subject covered by List III of Schedule VII to the Constitution.

<sup>10</sup>*Diya* is the payment by an aggressor to his victim of a sum of money to avoid a retaliation or punishment.

<sup>11</sup> <sup>55</sup>Dalbir Bharti, *The Constitution and Criminal Justice Administration*, APH Publishing Corporation, New Delhi, 2002, p.59-61.

<sup>12</sup>JaytialakGuha, *Roy Prisons & Society-A study of the Indian Jail System*, 2, Gian Publishing House, 1989.

Hein polished treatment of prisoners was unknown during ancient India and also stated about brutal and barbaric punishment of the prisoners. According to the Gita, he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self-sense and who is even minded in pain and pleasure and patient is dear to God. It also says that divinity in humans is represented by the virtues of non-violence, truth, freedom from anger, renunciation and aversion to fault finding, compassion to living being, freedom from covetousness, gentleness, modesty and steadiness the qualities that a good human being ought to have.<sup>13</sup> The historical account of ancient Bharat proves beyond doubt that human rights were manifest in the ancient Hindu and Islamic Civilizations as in the European Christian civilizations. Ashoka, Prophet Mohammed and Akbar cannot be excluded from the genealogy of human rights.<sup>14</sup> The social environments and the stages of societal developments helped to shape the penal institutions for a systematic description of jails, the indirect reference to the judicial aspect of state craft will help to know something about the prison system and its evolution.<sup>15</sup> Prisons in the shape of dungeons had existed from time immemorial in all the old countries of the world. The punitive imprisonment used extensively in Rome, Egypt, China, India, Assyria and Babylon and firmly established in Renaissance Europe.<sup>16</sup> In India, prisons are even today are deemed to be created merely to maintain law and order. But it has to be viewed as an essential means of preserving and raising the quality of human life. Investment on prisons is still considered as non-developmental. Indian's attitude is greatly ambivalent. As most of the prisoners in India are themselves a victim of stark deprivation and of forced induction into criminogenic culture, they hardly have an advocacy of their own or on their behalf. Rationalization of prison reformation is not in India. As a consequence, prisons received the lowest priority within the criminal justice system in India.<sup>17</sup> The Prison conditions under various dynasties is barbaric and inhuman methods were prevailed, the man became prisoner, all his rights are curtailed and he became slave. In those periods, different types of punishments were there. After independence, the prison conditions were changed from barbaric to reformation and rehabilitation methods. Along with the country many foreign layout are also responsible for a good prison system, discuss in detail below:

## V. LEGAL FRAMEWORK

### a) UN Charter

Basic principles for the betterment and good treatment of prisoners were adopted and were officially announced by General Assembly resolution on December 14, 1990.<sup>18</sup> The principles are as follows-

- Prisoners shall be treated with inherent dignity and valued as human beings.
- No discrimination on the grounds of race, sex, colour, language, religion, political, national, social origin, property, birth, or other status.
- Respect the religious beliefs and cultural perceptions of the group to which the prisoners belong.
- The responsibility of the prisons for the custody of prisoners and for the protection of the society against crime and its fundamental responsibilities for promoting the well-being and development of all members of the society.
- All prisoners shall retain the human rights and fundamental freedoms set out in UDHR, ICESCR, ICCPR and the optional protocol as well as such other rights as set out under in other United Nations covenants.<sup>19</sup>

### b) Constitution

There are rights in the Part III of Indian constitution which are made available to the prisoners. Article 14 scrutinized that like should be treated alike, and also given the principle of reasonable classification. Following fundamental mental rights are not enjoyed by a prisoner:

- Freedom of movement.
- Freedom of residence and to settle.
- Freedom of Profession.

### c) The Prison Act, 1894

This act is the first legislation regarding prison regulation in India. Following are the provisions of that:

- Accommodation and sanitary conditions of the prisoners.
- Medical officer must be there.
- There are some provisions relating to mental and physical state of prisoners.

<sup>13</sup>Dr.Gurubax Singh, Law Relating to Protection of Human Rights and Human Values, Vinod Publications (P).Ltd, 2008,

<sup>14</sup>Yogesh K. Tyagi, "Third World Response to Human Rights," Indian Journal of International Law, Vo .21, No.1 (January - March 1981)

<sup>15</sup> M.B. Mahaworkar, Prison Management, Problems and solutions, Kalpaz Publications, Delhi. 2006, p.43

<sup>16</sup>Norval Morris, the Future of Imprisonment, University of Chicago Press, Chicago, 1974.

<sup>17</sup>Narayankar B.D, The New Indian Express, 2nd April 2001, p.9,

<sup>18</sup> United Nations,General Assembly Doc, A/RES/45/111,14Dec1990.

<sup>19</sup> Standard minimum rules for treatment of prisoners, adpt on Aug.30, 1955 Rule 6(1).

- Separation of prisoners for male, female, criminal, civil, convicted and under trials prisoners.

#### **d) The Prisoners Act, 1990**

It is the duty of the government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment.

#### **e) The Transfer of Prisoners Act, 1950.**

This act was passed to avoid over-population in prisons; prisoners are transferred from one state to another for vocational training and to get rid from overcrowding.

#### **f) International Human Rights Law**

International Human Rights Law protect from various inequalities like racism, discrimination among poor and elite group of people, torture. According to them, no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Clothing is considered as a component to an adequate standard of living standard. There should be a proper hygiene system where prisons live. All prisoners shall be offered a proper medical examination and treatment as soon as possible after admission. They also recognize the rights of specific groups of people, including women, children and for disable peoples.

### **VI. JUDICIAL PROTECTION**

In *Hussainara Khatoon v. Home Secretary, State of Bihar*<sup>20</sup> case it was brought to the notice of the Supreme Court that an alarming number of men, women and children were kept in prisons for years awaiting trial in courts of law. The Court took a serious note of the situation and observed that it was carrying a shame on the judicial system that permitted incarceration of men and women for such long periods of time without trials. The Court held that detention of under-trial prisoners, in jail for period longer than what they would have been sentenced if convicted, was illegal as being in violation of Article of 21. The Court, thus, ordered the release from jail of all those under-trial prisoners.

In *Joginder Kumar v. State of U.P.*,<sup>21</sup> case the Supreme Court has taken a very positive stand against the atrocities, intimidation, harassment and use of third-degree methods to extort confessions. The Court has classified these as being against human dignity. The rights under Article 21 secure life with human dignity and the same are available against torture. In *Joginder Kumar v. State of Uttar Pradesh*<sup>22</sup> case the petitioner was detained by the police officers was not told to his family members for a period of five days. Taking the serious note of the police high headedness and illegal detention of a free citizen, the Supreme Court laid down the guidelines governing arrest of a person during investigation *first*, an arrested person being held in custody is entitled, if he so requests to have a friend, relative or other person told as far as is practicable that he has been arrested and where he is being detained, *second*, the police officer shall inform the arrested person when he is brought to the police station of this right, *third*, an entry shall be required to be made in the diary as to who was informed of the arrest.

In *D.K. Basu v. State of West Bengal*<sup>23</sup> case the Supreme Court laid down detailed guidelines to be followed by the central and state investigating agencies in all cases of arrest and detention till legal provisions are made in that behalf as preventive measures and held that any form of torture or cruel inhuman or degrading treatment, whether it occurs during interrogation, investigation or otherwise, falls within the ambit of Article 21. In *Zahira Habibullah Sheikh v. State of Gujarat*<sup>24</sup> the Court has held that free and fair trial has been said to be the sine qua non of Article 21. Right to free and fair trial not only to the accused but also to the victims, their family members and relatives, and society at large.

### **VII. CONCLUSION**

Criminal justice endeavors to delve deep into the human rights perspective of the individuals accused, prisoner and victim of the crime, who come in contact with the vital State functionaries the police, prosecution, courts and peno custodial-correctional institutions that are responsible for ensuring criminal justice. The study depicts a broad picture of the impact and relevancy of fundamental rights in modern administration of criminal justice in Indian scenario, which will highlight the crucial role of judiciary in extending the human rights approach to current state of affairs in dispensing the criminal justice. The significant feature of the research is precise and substantive analysis of the relation between Fundamental Rights and criminal justice, by emphasizing the importance and role of the one in working out the objectives of the other. One of the accepted fundamental principles of criminal jurisprudence 'rather *raison d'être* of the whole criminal justice delivery system, is fair deal and treatment to an individual in the criminal law

<sup>20</sup>AIR 1979 SC 1360

<sup>21</sup>1994 4 SCC 260

<sup>22</sup>AIR 1997 SC 568

<sup>23</sup>AIR 1997 SC 610

<sup>24</sup>AIR 2006 SC 1367

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process. The significance of the research lies in analytical and deliberate discussion on the rights of accused, prisoners and victims from the constitutional perspective which demonstrates that the spirit of human rights reflected in the Constitution is not only premised on individual liberty but also on the concern for the weak and the down trodden.