

BRIEF STUDY OF CONSTITUTIONAL PROVISIONS REGARDING PRISON SYSTEM AND INMATES IN INDIA

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ABSTRACT

No nation of the world can be crime free and in all the systems of the world, all races, all classes, and in both sexes criminals are found and to check that system the prison system was developed in all the societies throughout the globe. Apparently the prison in India represents the less developed of all the prison systems. The traditions, culture and the value and the poor economic conditions have prevented the jail administration to evolve the better models of prison management. The rules and regulations governing management and administration of prisons and treatment of prisoners have been incorporated in old prison act 1894 and also in various other national and international provisions. In India various committees have worked upon prison reforms along with prison manuals which include the executive instructions issued by the Inspector General of Prisons from time to time for the guidance of prison personnel. Many provisions related prison system and inmates are enriched in the constitution of India too.

KEY WORDS- statutory, Preamble, convicted, inception, human rights, freedoms, etc.

Introduction

Though the prison has been a very sensitive issue in all the nations of the world but the systems and treatment varies from nation to nation governments along with the non-government organisations, institutions are trying to improve the conditions of inmates. Various attempts have been made to protect the rights of the prisoner through constitutional and other statutory provision at both national and international level.

CONSTITUTIONAL SAFEGUARDS- PRISONERS RIGHTS:

The fundamental rights guaranteed under the Constitution are not absolute and many restrictions have been imposed on their enjoyment. Right to freedom of the person is one of the most important rights among the fundamental rights. When a person is convicted or put in the prison his status is different from that of an ordinary person. A prisoner cannot claim all the fundamental rights that are available for an ordinary person. However, certain rights which have been enumerated in Part III of the Constitution are available to the prisoners also because a prisoner remains a "person" inside the prison. The Supreme Court of India and various High Courts in India have discussed various decisions

The Preamble of the Constitution of India declares that "we the people of India have solemnly resolved to constitute India into sovereign socialist, secular, democratic republic and to secure all its citizens"

- *Justice -social economic and political;*
- *Liberty -thought and expression, belief and faith; Equality-of status and opportunity and to promote among them all;*
- *Fraternity, assuring the dignity of individuals and unity and integrity of the nation.*

It means that even the constitution from its inception has kept individuals in mind before its promulgation as the constitution is made to defend and protect its people and to establish peace and harmony in

the society. It aims to make the country safe to live in by the citizens, the way Universal Declaration of Human Rights is preaching. Following rights are entitled to following rights-

RIGHT TO EQUALITY: ARTICLE 14

“The state shall not deny to any person equality before law or the equal protection of laws within the territory of India”

This is One of the important provisions of the Indian Constitution which is generally applied by the courts is article 14 in which the principle of equality is embodied. The rule that **"like should be treated alike"** and the concept of reasonable classification as contained in the article 14 has been a very useful guide for the courts to determine the category of prisoners and their basis of classification in different categories.

LIMITATION ON RIGHT TO FREEDOM: ARTICLE 19

Article 19 of the Constitution guarantees six freedoms to the citizens of India. Among these certain freedoms like ‘freedom of movement’, ‘freedom to reside and to settle’ and freedom of profession, occupation, trade or business" cannot be enjoyed by the prisoners because of the very nature of these freedoms and due to the condition of incarceration. But other freedoms like "freedom of speech and expression", "freedom to become member of an association" etc. can be enjoyed by prisoner even behind the bars and his imprisonment or sentence has nothing to do with these freedoms. But these will be subjected to the limitations of prison laws.

PROTECTION AGAINST CONVICTION OF OFFENCES: ARTICLE 20(1)

According to this provision “no person shall be convicted of any offence except for the violation of law in force at the time of the commission of the act charged as an offence, nor be subject to penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence”

It restricts the power of legislature to implement any criminal law retrospectively, it means if an act is not an offence at the date of its commission it cannot be an offence at the date subsequent to its commission.¹

PROTECTION AGAINST DOUBLE JEOPARDY: ARTICLE 20(2)

This provision says that “no one shall be prosecuted and punished for the same offence more than once”. This incorporates the principle that No one should be put twice in peril for the same offence. If a person is prosecuted again for the same offence for which he has already been prosecuted he can take complete defence of his former acquittal or conviction. The requirement of this article is that proceeding must take before a “court” or judicial tribunal.²

PROHIBITION AGAINST SELF INCRIMINATION: ARTICLE 20(3)

It provides that “No person accused of any offence shall be compelled to be a witness against himself.”

General rule in criminal law is that accused must be presumed to be innocent unless contrary is proved. This constitutional safeguard incorporates this rule which protects self incrimination of any accused. the protection is available in case of compulsion and not in the case where accused himself wave his privilege by entering into the witness box or when he voluntarily gives evidence on request .In case Nandini Satpathy Vs P.L Dani³ the supreme court has widened the scope of this clause and held that compelled testimony is not only limited to physical torture but also extends to techniques of psychological interrogations which causes mental torture.

SCOPE OF RIGHT TO LIFE AND PERSONAL LIBERTY: ARTICLE 21

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.

¹ Chief inspector of mines vs K.c Thapper AIR1961 SC 883

² Maqbool hussain vs state of Bombay AIR1953SC325

³ AIR1977SC1025

There is no guarantee of prisoner's right as such in the Constitution of India. The right to personal liberty has now been given a very wide interpretation by the Supreme Court. This right is available not only for the free people but even to those behind bars. The right to speedy trial, free legal aids, right against torture, and right against inhuman and degrading treatment accompany a person into the prison also. Article 21 of the Indian Constitution has been a major centre of litigation so far as the prisoners rights are concerned. It embodies the principle of liberty. This provision has been used by the Supreme Court of India to protect certain important rights of the prisoners. After Maneka Gandhi case, this article has been used against the arbitrary actions of the executive especially the prison authorities. After that decision it has been established that there must be a fair and reasonable procedure for the deprivation of the life and the personal liberty of the individuals.

The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed the human rights theology for the preservation and protection of prisoners rights to maintain human dignity. Although it has clearly been mentioned that the deprivation of Article 21 is justifiable according to procedure established by law, this procedure cannot be arbitrary, unfair or unreasonable. In a celebrity case (Maneka Gandhi Vs. Union of India., 1978), the Apex Court opened up a new dimension and lay down that the procedure cannot be arbitrary, unfair or unreasonable. Article 21 imposed that the restriction upon the state where it is prescribed the procedures for depriving a person of his life or personal liberty. This was further upheld (**Francis Coralie Mullin v. The Administrator**, 1981) "Article 21 requires that no one shall be deprived of his life or personal liberty except the procedure established by the law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful".

SCOPE OF RIGHT TO EDUCATION FOR PRISONERS

According to various international conventions and due to reformatory approach in India the trend is changing and now a detained and imprisoned person shall also have right to get the reasonable education which can be availed from public sources within the limitations of the state, subject to the maintenance of security and public order. Provision must be made for education facility of prisoner mainly woman and youth offenders so that they can improve their personality behind the bars.

State must setup new educational institution along with the faculty so that when prisoner are released from prison they can pursue their further education. The courts must take watch of this matter that fundamental right to education shall not be defeated by the prison administration of state. The education of young prisoner should be made compulsory.

RIGHTS OF PERSON UNDER ARREST AND DETENTION: ARTICLE 22(1)

Article 22 (1) of the Constitution directs that no person who is arrested shall be denied the right to consult and to be defended by the legal practitioner of his choice as well. This legal right is also available in the code of the criminal procedure under section 304. The court through various judgments has also held that from the time of arrest, this right accrues to the arrested person and he has the right of choice of a lawyer. The accused may refuse to have a lawyer but the court has to provide an Amicus Curie to defend him. When an accused is undefended it is the duty of the court to appoint a counsel on Government expenses for his defence. In a series of cases the Supreme Court of India considered the scope of the right of the prisoners or the detainees to have interviews with the family members, friends and counsel. In **Dharmbir vs. State of U.P.**⁴ the court directed the state Government to allow family members to visit the prisoners and for the prisoners, at least once a year, to visit their families. Following things are essential in regard to these provisions.

- (a) An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare, told as far as practicable that he has been arrested and where is being detained.
- (b) The police officer shall inform the arrested person of his right when he is brought to the police station.
- (c) An entry should be required to be made in the diary as to who was informed of the arrest. These protections from the power must be held to flow from the Articles 21 and 22 (1) and enforced strictly.

RIGHT TO BE PRODUCED BEFORE MAGISTRATE: ARTICLE 22(2)

This article provides basically two rights:

⁴ Dharmbir And Anr vs State Of U.P 1979 AIR 1595, 1980 SCR (1) 1

- (1) Every person whether man or woman who has been arrested has right to be produced before the nearest magistrate within twenty four hours of arrest excluding time taken for the journey from place of arrest to court of magistrate.
- (2) No such person shall be detained beyond the said period of twenty four hours without the authority of a magistrate. It is clear here that provision of this article are applicable only when person has been arrested and is accused of some offence or any other act and it has no application when such person has been held guilty of the offence and detained in pursuance of conviction held by court. **Keshav Singh v speaker**, legislative assembly.⁵

RIGHT TO CONSTITUTIONAL REMEDIES: ARTICLE 32

When the personal liberty of a person is deprived by the officials illegally, the remedy available to them is by way of Writs under Article 226 of the constitution before the high courts, and under article 32 of the constitution before the Supreme Court.

Article 32 says,

“The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by part III”

Article 226 says,

“Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose”.

Dr .B.R Ambedkar called this Article as “The fundamental of the fundamental right and “heart and soul of the constitution”. The most significant of the Human Rights is the exclusive right to the Constitutional remedies under Articles 32 and 226 of the Constitution of India. Those persons whose rights have been violated have right to directly approach the High Courts and the Supreme Court for the judicial rectification, redressal of the grievances and enforcement of Fundamental Rights. In such a case, the courts are empowered to issue an appropriate directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, and Certiorari .No time limit is prescribed for issuing the Writs in the constitution, and has been left to courts to decide.

WRIT OF HABEAS CORPUS: PREVENTIVE AS WELL AS REMEDIAL

The Literal meaning of Habeas Corpus is “to have body”. This writ is issued to protect the personal liberty of an individual against arbitrary action of both state and private individual. The scope of this provision is wide and can be availed wherever personal liberty of person is restrained. Before invoking remedy of this Writ it is necessary that petitioner is physically restrained in his personal liberty involving his freedom of movement. the issuance of this writ means an order to detaining authority or person to physically present before the court the detained person and show the cause of detention so that the court can determine its legality and if the detention is found to be illegal, the detained person is set free. The power of court under article 32 is not only preventive but also remedial in nature which means that it has power to grant compensation also. **In M.C Mehta v union of India**⁶ court held that compensation can be awarded in “appropriate cases” and not in every case. The appropriate cases are those where infringement of fundamental right is gross and glaring.

ARTICLE 39-A : EQUAL JUSTICE AND FREE LEGAL AID

This article embodies principle of fair procedure during trial by courts. State shall secure that the operation of legal system promotes justice and ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. If a prisoner is unable to avail his constitutional and legal rights or needs legal assistance, he cannot be ignored just because of indigence. If prisoner is unable to engage a

⁵ AIR1965All349 .

⁶ 1988 AIR 115

lawyer than under constitutional directions and other statutory provisions court has power to assign counsel for such prisoner for doing complete justice.

Free legal aid was considered 'an essential ingredient of reasonable fair and just procedure for a person accused of an offence. **Khatri v State of Bihar.**⁷

SEVENTH SCHEDULE AND ARTICLE 246

Our constitutional setup provides the power distribution between the Centre and the states. This part is divided between legislative, administrative and executive powers. The legislative section is divided into three lists, Union list, States list and Concurrent list. So accordingly parliament can make laws for matters incorporated in the union list whereas state legislature can make laws which are included in state list. Both parliament and state can make laws on the matters which are included in concurrent list.

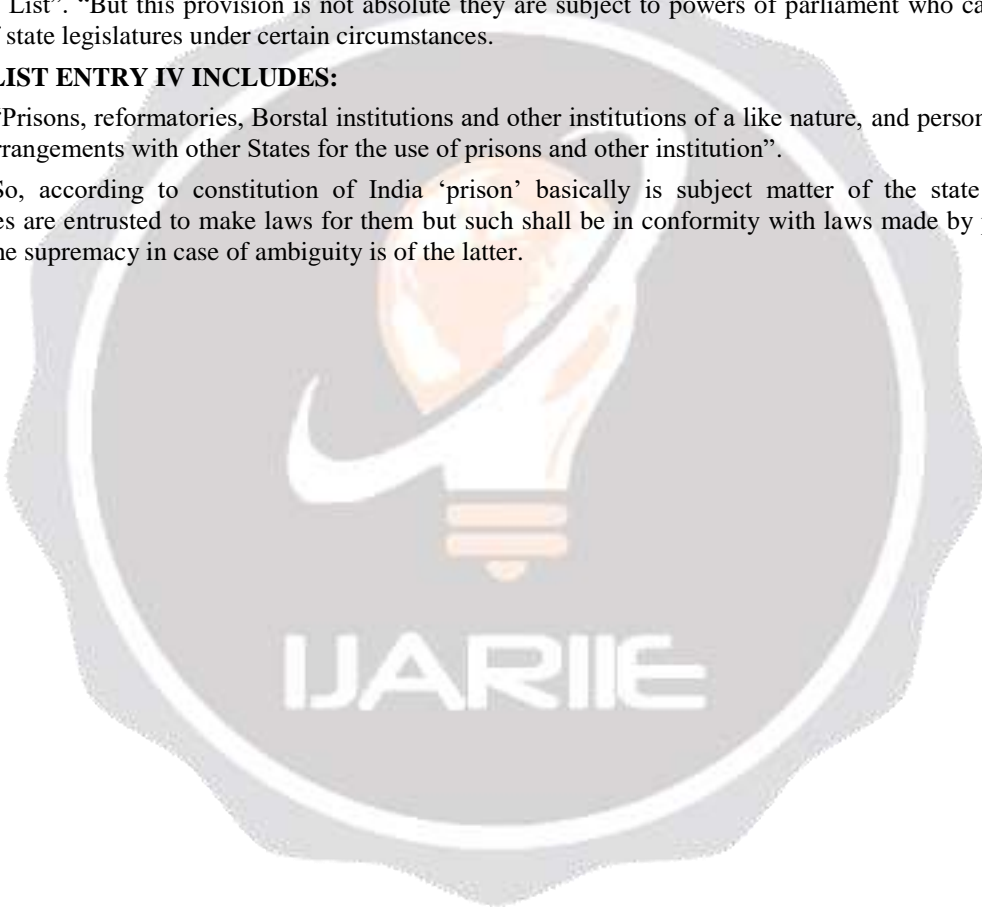
ARTICLE 246 (3) says ,

“The Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule in Indian Constitution referred to as the “State List”. “But this provision is not absolute they are subject to powers of parliament who can exercise powers of state legislatures under certain circumstances.

STATE LIST ENTRY IV INCLUDES:

“Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein, arrangements with other States for the use of prisons and other institution”.

So, according to constitution of India 'prison' basically is subject matter of the state and state legislatures are entrusted to make laws for them but such shall be in conformity with laws made by parliament because the supremacy in case of ambiguity is of the latter.



⁷ 1981SC982AIR