

## Judiciary and Human Rights for Police Custodial Violence of Prisoners

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### ABSTRACT

In today's world, women are quite important. The mother's talent plays a significant part in her life. Women in India are granted equal rights under the Indian Constitution. It also makes the state responsible for protecting women's rights and adhering to international human rights accords. But, on the flip side, women in jail confront a slew of issues, including the violation of their basic human rights, despite a slew of Supreme Court, High Court, and commission recommendations to the contrary. It causes problems in the prison that must be addressed. Female inmates in Indian prisons are lower than in other countries. It's possible that it's ignoring women's rights behind bars. The major goal of this study is to highlight the issues facing women in prison, including violations of their human rights, the state of women's prisons, a list of women's human and constitutional rights, and recommendations for changes. The purpose of this study is to examine the notions and approaches to human rights for prisoners in the Indian Constitution. In this sense, the text examines the early decades of constitutional human rights and their growth, as well as the role of judicial interpretations.

**Keywords:** statutory rights, human rights, Indian Constitution, articles, judiciary

## I. INTRODUCTION

The concept of human rights has a long history, and people have always had various rights, but it wasn't always like this, as we can see now. People were split into several divisions in the early eras based on their income, caste, and race, and therefore rights were subjected to enjoy appropriately. Tracing the origins and growth of human rights is bound to spark discussion. 1 As a result, it is preferable to use examples from the recent development of human rights. There were numerous violations of vulnerable groups' and slaves' rights during this time, but by the end of the 18th century, the French and American revolutions had given meaning to rights for all without discrimination. This time of upheaval sped up the spread of human rights around the globe. During the First and Second World Wars, there was a gross violation of human rights that had never been seen before in history. Nationality, place of residence, sex, ethnic origin, religion, and colour are all examples of major man-made human rights breaches around the world. The International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR), and the International Covenant on Economic and Cultural Rights (ICESCR) were all subsequently adopted by the United Nations Organisation (UNO), and they have all helped to advance the civil, political, cultural, and economic rights of people with good spirits. The notion of human rights has broadened as a result of the signing of these accords, and people now have additional civil, political, and economic rights. The declarations also established non-natural human rights such as the right to education, nationality, and family, as well as bodies such as the United Nations Human Rights Council and Human Rights Watch to monitor compliance among member nations. There is no question that everyone has the right to basic human rights since birth, and no one has the authority to limit or restrict such rights on the basis of race, caste, sex, religion, or other factors.

Since 1985, there have been references to the Indian Constitution and human rights. The M. Chelmsford report, 1918, and the Constitution of India Bill, 1985, popularly known as the Home Rule Bill, discuss certain fundamental rights. The Commonwealth of India Bill of 1925 and the Moti Lal Nehru Committee Report of 1928 both mention human rights activities in India, but the true process began in 1931 with the passage of the famous Karachi resolution. 2 Pt. Jawaharlal Nehru moved an objective motion on December 13, 1946, which was unanimously adopted by the Constituent Assembly on January 22, 1947. 3 When drafting the Indian Constitution, the framers took into account and utilised the concepts given out in basic documents. 4 The Indian Constitution's preamble guarantees and grants all of the rights and freedoms mentioned in the document. The constitutional status and growth of human rights, as well as prison reforms to execute the constitutional human

rights of inmates, are two viewpoints on prisoners' human rights in India. Keeping this in mind, this paper briefly examines each of these features.

## II. THE HUMAN RIGHTS OF PRISONERS

Concerning human rights, there is a universally recognised rule that all human beings have the right to basic human rights without discrimination. No one is exempt from this rule, including inmates. Because the Indian social system is based on nonviolence and respect and the legal system is based on natural justice, including the rule of law, prisoners' rights are considered human rights, and the Constitution grants almost all basic human rights to individuals. Although the Constitution does not specifically mention prisoners' rights, they are still considered persons in the eyes of the law, and their basic human rights are thus protected by the Constitution. The Indian judicial system has also made it clear that human beings are born equal in dignity and rights, so there can be no discrimination on any basis, though some restrictions may be imposed in some specific cases. Human rights are necessitated by the existence of humans. These are moral claims that are inalienable and inherent in all people simply because of their humanity, regardless of caste, colour, creed, place of birth, sex, cultural differences, or any other factor. Human rights is the term used to describe how these claims are articulated and formulated. There is no mention of any negative impact or violation of human rights in the definition of the word prisoner." As a citizen of a civilised society governed by law and a system, it is critical to ensure that each citizen lives a reasonably dignified life. Even if a person is confined or imprisoned for his wrongdoing, he is entitled to his rights unaffected by the punishment for wrongdoing, simply because a person's rights cannot be discarded in their entirety if he is on trial. The Universal Declaration of Human Rights (UDHR) of 1948 also states that "no one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment." The Indian Constitution plays an important role in defining people's basic human rights, and prisoners have all of these rights as well, which cannot be taken away from them. The fundamental rights and responsibilities of all Indian citizens are clearly stated in the Indian Constitution.



Source: <https://www.forbesindia.com/blog/legalese/human-rights-day-promise-for-a-better-future/>

Article 14 of the Indian Constitution guarantees equality and equal protection under the law. As a result, inmates have their own set of rights. Excessive force used by the police against a prisoner is regarded as a violation of rights, and it should be brought to the attention of the legislative and judicial branches. Articles 14 and 21 guarantee the right to meet with friends, relatives, and lawyers. These are fair and non-arbitrary rights. Even prison regulations respect the right of inmates to have required interviews with a lawyer in a timely manner. Articles 14 and 21 also provide the right to free legal assistance. The Supreme Court concluded in *Maneka Gandhi v. Union of India* that an individual's personal liberty can only be limited by a law and the procedures provided by that law. The legal procedure should be just, equitable, and reasonable. The Attorney General declared in this matter that the government agreed to evaluate the petitioner's representation. The Supreme Court found that, since the order's fault had been corrected, the petitioner's right to travel abroad had been revoked only in conformity with the legal procedure (Passport Act). As a result, neither Article 14, 19(1) (a), nor Article 21 of the Constitution are violated by the decree. The court held in *Madhukar Bhagwan Jambhale v. State of Maharashtra* 7 that Rule 17 (ix) of the Maharashtra

Prison (Facilities to Prisoners) Rules, 1962 is discriminatory and violates Article 14 of the Constitution, and hence must be thrown down. A prisoner has the right to write welfare letters to other inmates, whether or not they are family members. Discrimination on the basis of religion, race, caste, sex, or place of birth is prohibited by Article 15 of the Indian Constitution. This article states that the state shall not discriminate against anyone based on their religion, race, sex, place of birth, or any combination of these factors. Under Article 15 (3) and (4), the government can establish special arrangements for women and children, as well as a group of citizens who are economically and socially disadvantaged. It is a prisoner's right to live without discrimination inside the institution. The Indian Constitution ensures that everyone has the right to be free of discrimination. Prisoners are included in this definition of person; therefore, they are protected against discrimination based on religion, race, caste, sex, or place of birth.



Source: <https://theindianconstitution.com/article-19-freedom-right/>

Article 19 of the Constitution deals with the Right to Freedom, which comprises six freedoms, all of which are limited in some way by various sub-clauses of the same Article. The right to freedom of speech and expression, as well as the right to join an association, are available to inmates, but all other freedoms, including the right to mobility, the ability to stay and settle anywhere in India, and the right to practise a profession, trade, or business, are not. Handcuffing entails a cruel and humiliating punishment. The minimum freedom of movement that a detainee is entitled to under Article 19 cannot be restricted by the use of handcuffs. Handcuffs should only be used as a last resort because there are alternative means to ensure security. Article 20(1) of the Constitution protects people from ex post facto laws or retroactive criminal legislation; Article 20(2) ensures that no one is prosecuted twice for the same offence (rights against double jeopardy); and Article 20(3) ensures that no one is forced to testify. Articles 20, 21, and 22 of the Constitution can be regarded as relevant to the administration of criminal justice in relation to handcuffs and fetters when it comes to human rights in criminal administration. 8

21st article "No one shall be deprived of his or her personal liberty unless in accordance with the method prescribed by law," says the Constitution. In the context of deprivation, any establishment declared by the government, by general or particular order, to be a subsidiary jail, as well as any reformatory, borstal, or other institution of a similar type, is considered a prison. 9 And incarceration in a prison refers to incarceration in a prison in whatever form, including references to incarceration or detention in a prison under any statute requiring prevention custody. 10 As a result, the aforementioned clause does not infringe upon the human rights of prisoners; additionally, under Article 21, the term "life" has a broader definition, and all citizens who are imprisoned, whether as suspects in a case or as guilty parties, are entitled to the protections of the clauses within reasonable bounds. 11 The Supreme Court in *Maneka Gandhi v. Union of India* 12 broadened the definition of life under Article 21 and conferred more rights to live a dignified life, such as the right to a speedy trial, the right to practise religion, and the right to communicate, among others. However, all of these rights are subject to restrictions imposed by the prison manual and the Constitution. A prisoner's fundamental right to a speedy trial is enshrined in Article 21 of the Constitution. It ensures a procedure that is just, fair, and reasonable. 13 The Supreme Court held in *Prem Shankar v. Delhi Administration* 14 that handcuffing should only be used when there is a clear and present danger of eluding police control. Handcuffing is considered prima facie inhumane and consequently irrational, violating Article 21. In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi* 15, the Supreme Court ruled that the right to life guaranteed by Article 21 includes not only the physical right to exist but also the basic human right to live with dignity. In *Sunil Batra (II)* 16, which resulted from a letter Sunil Batra wrote to one of the Supreme Court judges alleging that a warden in Tihar Jail had caused bleeding injury to a convict named Prem Chand by forcing a stick into his anus, the Supreme Court liberalised the procedural

restrictions of the writ of habeas corpus and used it, in accordance with American cases, for the oversight of state penal apparatus and the condemnation of 17 In *Citizen for Democracy v. State of Assam* (18), the Court recognised the letter as a petition under Article 32, ruling that handcuffing and, in addition, tying with ropes patient inmates admitted to hospitals are violations of Article 21 of the Constitution's human rights guarantee.

According to the *Hoskot19* ruling, "the court has implicit authority under Article 142 read with Articles 21 and 39A of the Constitution to assign counsel for such an imprisoned individual in order to do complete justice" if a prisoner who has been sentenced to imprisonment is practically unable to exercise his constitutional and statutory right of appeal, including a special leave appeal. This is an unavoidable consequence of the Code's right of appeal, which is protected by Article 136 of the Constitution. The right to free legal assistance is plainly an essential part of a reasonable, fair, and just procedure for a person accused of a crime, and it is implicit in Article 21's guarantee, the Supreme Court ruled in *Khatri v. State of Bihar*<sup>20</sup> after a six-year hiatus.

### III. CONSTITUTIONAL AND STATUTORY RIGHTS

Looking for and examining the Matron is responsible for searching and examining female detainees on the medical officer's orders.

#### 3.1 Security Reasons

Female suspects should be detained in a different facility, not in the same facility as male detainees, and should be escorted by female constables, according to the Hon'ble Supreme Court, which also ordered the IG Prison and State Boards of Legal Aid Advice Committee to provide legal assistance to the poor and destitute accused (ma) in police detention facilities.

#### 3.2 Women's Prisoner Separate Institution

According to Article 27 (1) of the Prison Act of 1894, women should be imprisoned in separate buildings or parts of the same building in a manner that prevents them from seeing, speaking with, or maintaining any relationship with any male prisoners; this right is also acknowledged and established by Rule 8 (a) of the Standard Minimum Rules for the treatment of The Prisoners' Minimum Rules for Prisoner Treatment establish a basic guideline for a separate institution for inmates, clarifying that in an institution for men and women, the part of the institution reserved for women will be under the authority of a woman who will have custody of the keys to that part of the institution [14]. Even male employees are not permitted to enter the section of the institution reserved for women unless accompanied by a female employee.

According to the Handbook, inmates should be segregated and kept separate based on the following factors:  
The separation of ordinary inmates from non-violent offenders

Separate accommodations for injured inmates must be devised, and they must be kept absolutely separate from convicted criminals.

- Separation of political and civilian detainees, as well as minor detainees
- Females should not be confined to inmates under any circumstances.
- Regular criminals, prostitutes, and brothel breeders are separated.

#### 3.3 Women's Rights as Mothers in Prison

The Honourable Supreme Court has decided that detainees will be allowed to keep their children in their custody in prison until they reach the age of six, after which they will be handed over to a suitable replacement based on the prisoner's wishes or delivered to a Social Security Department-run institution. To avoid unreasonable difficulties for the mother and the child due to physical distance, the child will not be transferred to an institution outside of the city.

#### 3.4 Pregnant Prisoners' Rights

As long as the captive woman has an appropriate option, provision must be made for temporary release or conditional release (or suspension of the penalty in the event of minor and occasional infractions). Only extreme circumstances that pose a serious security concern should be considered when deciding whether to send a pregnant woman to prison.

The National Commission for the Protection of the Rights of the Child (NCPCR) guidelines state that female prisoners' circumstances should be taken into consideration when they have few resources, especially if they are pregnant, ill, or have dependents (children) [17]. While the nature of the crime cannot be ignored, the NCPCR guidelines state that female prisoners' circumstances should be taken into consideration when they have few resources.

### **3.5 Right for a Female Prisoner's Child**

Children In prisons, educational programmes for children of all ages should be introduced. In addition to educational concerns, recreational facilities that can address the recreational needs of children of all age groups must be available in prisons.

While most dam mothers were unhappy with the medical, recreational, and other (religious) facilities for their children, educational programmes were largely met. Despite their dissatisfaction with some aspects of the programmes, the majority of mothers in prison believe that they are beneficial to their children. The Hon'ble Supreme Court has set guidelines for the Ddam mothers.

## **IV. INDIA'S PRISON ADMINISTRATION**

Punishment systems varied from one region to the next and from one monarch to the next when the British colonised India. This was one of the issues that the British had to deal with when they captured many princely nations, each of which had its own method of punishment. In an effort to address this issue, the British established the present Indian prison system. According to the T. B. Macaulay Committee's recommendations, the government built jails and forbade other draconian punishment techniques like mutilation, branding, and others. They also built schools, hospitals, and factories as part of the implementation of reformative measures. The prison administration also built industries within the institutions and allotted various types of work.

Despite the fact that reform was one of the jail administration's top priorities, human rights violations were common in all of British India's prisons. Detainees were subjected to cruel torture, including whipping, and the jail administration discriminated against prisoners based on their caste, religion, and race. The prison management did not provide enough space for people to practise their religious beliefs.

The Indian Penal Code, 1860; the Prison Act, 1894; the Prisoners Act, 1900; the Identification of Prisoners Act, 1920; and the Punjab Jail Manual, 1898—most of the pre-independence laws that were in conflict with the Constitution of India's spirit but which were still in effect—were all promulgated on January 26, 1950, when India became a republic.

21 Walter C. Reciles, an American expert in prison administration, was invited by the United Nations in 1952, and a draught on modular Prison Laws and Guides was prepared in 1954, but it was never enacted into law. For the goal of modifying the jail legislation, the A. N. Mulla Report, 1980–1983, was also appointed. Following that, the Indian government, in response to widespread condemnation of human rights violations, established a National Human Rights Commission, which has begun an investigation into overhauling the jail administration in order to implement systemic improvements. However, the above committees' or commissions' reports did not receive legislative approval and did not form part of the law of the land. 22 Finally, the judiciary intervened in the matter, treating a letter as a writ petition, allowing the petition, and issuing instructions to the Ministry of Home Affairs and all State Governments, including one for taking appropriate action against the erring officer.

## **V. PRISON SYSTEM**

According to Mr. Justice A.N. Mulla's recommendations, the Indian government must rehabilitate all prisons. Work programmes based on their skills, such as handicraft, tailoring, machine work, agriculture, and gardening, are required. Terrorists must be housed separately from all criminals and regular detainees.

Human Rights Commissions have been established in various parts of the state. There are two types of human rights commissions: national and state. The Human Rights Commission must develop prison-based awareness programmes. Consultants must be required to provide legal aid to convicts.

Women in prison are entitled to free medical care if they become ill, and pregnant women in prison need nutritious food for their unborn child. Additionally, a staff member should regularly check the prisoner's clothing and bedding system. A laundry shop should also be established. Let's take a look at the jail's health facility and medical treatment.

I'd like to add a few new subjects about innovative prison arrangements:

- To plan the construction of a new high-security jail with adequate space.
- To create a medical administration that is available 24 hours a day, seven days a week, with an ambulance service.
- To give a recording base system to the communication centre. 11
- To provide good education to those who are incarcerated.
- On a monthly basis, establish vocational training and labour programmes.
- A legal assistance service and a human rights commission to protect the rights of detainees.
- The minor criminal and the prisoner on trial must be kept in different quarters.
- Female inmates have handled all private security and facilities in a professional manner.

- Encourage participation in the Swachh Bharat Mission and provide enough toilet facilities.
- Keep a tidy meal preparation area with clean vessels and goods.
- Thorough inspection of all administrative and organisational procedures.

The National Institution of Design recently framed a workshop programme for thieves in prison. To solve complex crimes, police officers are known to think like criminals. Going one step further, design gurus at the National Institute of Design are partnering with Sabarmati jail inmates to create theft-proof designs. Many organisations work to make inmates' lives more bearable.

## VI. CONCLUSION

Though India's Constitution includes a broad category of human rights that apply to everyone, this category also includes the protection of prisoners. When the Indian Constitution was being put into effect, the Constitutional Makers took the appropriate steps by including a chapter on fundamental rights. The judiciary has also made a significant contribution by expanding the scope of fundamental rights and attempting to resolve the various issues that prisoners face. While considering various cases, the Supreme Court and High Courts clearly interpreted the various Articles and their implied meanings, giving prisoners more rights. While considering petitions involving prisoner issues, the Supreme Court established a number of guidelines for the prison administration, police, and other investigative agencies to follow. Even the Court has treated a newspaper report and a letter received by inmates about their terrible conditions as a Writ case and ordered the administration to take appropriate action to rectify the issues. If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal due to a lack of legal representation, the court has the power to appoint counsel for such an imprisoned individual under Article 142, read with Articles 21 and 39 A of the Constitution. If the prisoner is unable to hire a lawyer due to indigence or an incommunicado position, the court may, if the facts of the case, the harshness of the sentence, and the ends of justice so necessitate, appoint competent counsel for the prisoner's defence, provided the party does not object. On the issue of prisoner human rights, the role of policymakers and legislators has remained important. Various commissions and committees have worked to provide redress for prisoners as well as to introduce reformatory measures by recommending an e-governance system as a step towards jail reforms to ensure the protection of prisoners' human rights.

This article will help you understand human rights and the plight of prisoners. Human rights demand that prisoners be granted equal rights and opportunities. Prisoners' human rights include care, protection, development, and rehabilitation. Therefore, all prisoners are treated as human beings with rights guaranteed by the Indian constitution.

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