

Rights of Prisoners

As emphasized earlier, the conviction of a human does not render him non-human. He still remains a human who should be treated like one. He should be given the basic human rights available to every man walking on the earth. But at the same time, he should not be treated as a free man with all absolute rights and luxuries. His freedom should be subject to certain limitations and legal restrictions. These restrictions, in addition, should be reasonable.

The apex court of the USA in the case of *Charles Wolff v. McDonnell* and the Supreme Court of India in its famous cases like *DBM Patnaik v. State of Andhra Pradesh* and, *Sunil Batra v. Delhi Administration* has emphatically stated that it must be realised that a prisoner is a human being as well as a natural person or a legal person. If a person gets convicted for a crime, it does not reduce him to the status of a non-person whose rights could be snatched away at the whims of the prison administration. Therefore, imposing any major punishment within the system of prison is conditional upon the absence of procedural safeguards.

The Supreme court of India has been deliberating with the central and state governments since a long time to improve the deteriorating condition of the prisoners which is fundamental because of the overcrowding of prisons, lack of training facilities, personnel and poor infrastructure, etc. Therefore, it is mandatory to invoke the rights and constitutional safeguards of the prisoners. Such rights of, unless they are propagated and implemented in each corner and the entire perimeter of the prism, are a nullity and betrayal of human faith on the criminal justice delivery system.



The advertisement features a dark purple background with orange and white geometric shapes. At the top right is the LawSikho logo. The main text reads 'EXECUTIVE CERTIFICATE COURSE (LIVE CLASSES)' followed by 'Certificate Course in Legal Practice Development and Management' in large, bold, orange and white letters. Below this is a 'Apply Now' button. In the center, there are three stylized human figures in professional attire. To the right, there is a circular icon with a gold coin and a person. At the bottom right, it says 'Duration: 12 Months'. At the bottom left, it says '*100% Refund Policy.' and at the bottom right, '*TnC Apply.'

Fundamental Rights

Fundamental rights form the core of human rights in India. They are the basic rights of the citizens which cannot be taken away under any circumstances. The law of the country also guarantees some of these rights to the prisoners too like [Article 14](#), [19](#), [21](#). However, it cannot impose the fundamental rights in its full panoply to the advantage of the prisoners. Giving prisoners Right to Fair procedure forms the soul of Article 21. Levying reasonableness in any restriction is the essence of [Article 19\(5\)](#) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14. All of these statements

are supported by various judgments of the lower courts and the higher court. Some of them are listed below.

Case Laws

1. In the case of the *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, the court held that a prisoner is entitled to all the fundamental rights unless curtailed by the constitution.
2. In *State of Maharashtra v. Prabhakar Pandurang Sanzgir*, the Supreme Court stated that the mere fact that someone is detained cannot deprive one of his fundamental rights and that such conditions are not to be extended to the extent of the deprivation of fundamental rights of the detained individual. The Court further ruled that every prisoner retains all such rights that are enjoyed by free citizens except the one that is lost necessarily as an incident of confinement.
3. In *Charles Sobaraj v. Supdt Central Jail Tihar*, it was ruled that all the rights available to prisoners under Articles such as 14, 19 and 21 are though limited but cannot be said to be static. They are bound to or rather will rise to new human heights when challenging circumstances arise.
4. In *Francis Corahe Mullin v. The Administrator, UT Delhi* Justice Bhagwati observed the rules laid down by Justice Douglas and Justice Marshall :

Mr Justice Douglas reiterated his thesis when he asserted: "Every prisoner's liberty is, of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him only the more substantial. Conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration, and therefore, the imposition of any serious punishment within the prison system requires procedural safeguards." Mr Justice Marshall also expressed himself clearly and explicitly in the same terms: "I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate and I fully support the court's holding that the interest of inmate."

Right to Privacy

The Right to Privacy is one of the very significant rights available to the citizens of India. They form an intrinsic part of Right to Life and Personal Liberty under Article 21 of the Indian Constitution. They have also been made applicable to the prisoners and convicts through various judgements passed by courts over the years.

In India, however, this right is perhaps the most violated. The right to privacy in respect to search and seizure was first raised in the 1950s, where the apex court ruled that search and seizure cannot be seen as violative of [Article 19 \(1\)\(f\)](#) of the Indian constitution and a mere search by itself does not nullify or harm an individual's right to property. Even if search or seizure affected such right then its effect is temporary and is to be construed as a reasonable restriction on the rights of individuals.

Right to Privacy in recent times

The concept of right to privacy has evolved over the years. In recent time, its scope has been widened to benefit people in the most possible way. A distinction between physical privacy and mental privacy is also being drawn.

In the case of *Rohit Shekha v. N.D Tiwari*, the court held that nobody should be compelled to be subjected to any techniques in question at any circumstances, even when it is in the context of an investigation in a criminal case. Proceeding with such acts would result in an unwarranted intrusion into an individual's personal liberty. It is equally important that adequate space is provided for the voluntary administration of the impugned techniques in the context of criminal justice on conditions that certain safeguards are in place. The court also did a brief examination of the jurisprudence that permits compulsory testing or involuntary drawing of samples and stated that judicial precedents in such cases emerge in criminal prosecution related to serious offences like those involving narcotic substances, manslaughter, murder or sexual offences. In all of these cases, the court has carefully weighed the interest of justice in the context of public policy and privacy of an individual while examining the permissibility of compulsory testing.

Right to Privacy of prisoners and their spouses

In *Rahmath Nisha v. Additional Director General of Prisoner and Others*, the accused was given 10 days leave to visit his wife. But, due to serious illness, his wife was transferred to the hospital in ICU by the time he reached home. However, the police escort that accompanied the accused refused to let him visit the hospital citing that permission has been granted to visit home only. The Madras Court held that the prisoner should be allowed to visit his wife in hospital and that the meeting between him and his wife should not be monitored.

The court stated that when a prisoner is united with his wife, he might like to hold her the hands of his partner. It's natural that his emotions would find physical expression. Therefore, the right to privacy and dignity of the prisoners should be scrupulously safeguarded. It is also important that the conversation between the prisoner and his partner or spouse should go unmonitored.

Right against solitary confinement and bar fetters

Solitary confinement is a kind of imprisonment in which the convict or prisoner is kept in a different cell with little or no contact from other inmates. In addition to that strict monitoring is done on the habits and behaviour of the person. The idea behind solitary confinement is to teach notorious convicts discipline and provide safety to other inmates from them.

The validity of solitary confinement was considered by the Supreme Court in the famous case of *Sunil Batra v. Delhi Administration* wherein the honourable court highlighted that imposition of solitary confinement is only to be made in exceptional cases where the prisoner is of such violent or dangerous nature that his segregation becomes an utmost necessity. The court also observed that keeping prisoners in bar fetters day and night reduces them to the level of an animal and deteriorates their mental health. The courts, therefore, have presented strong resentment against solitary and stated its confinement as highly dehumanizing and derogatory in nature. They have also held such confinements to be against the spirit of the Constitution of India.

Right to Life and personal liberty

The Hon'ble Supreme Court has repeatedly applied the rule of Article 21 in numerous cases and asserted its significance in several other. It has expanded the connotation of the word "life" given by Field J. in the much-known case of *Kharak Singh v. State of UP*. In the said

case, the court ruled that the term "life" connotes more than mere existence like that of an animal. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the other world. It can be said that right to life is not restricted to a mere animal existence. It connotes something more than just the physical survival of a being.

Right to live with human dignity

The right of a human being to live with dignity is protected by the constitution. This right is also given to the prisoners as their mere conviction does not render them inhuman. This right forms a significant part of right to life guaranteed under the constitution of India. The idea behind is that every person's life is precious and irrespective of the circumstances, he should be given a sense of dignity to help him continue living. The courts have enlarged the scope of Article 21 to include this right. Its occurrence could be noted in many cases. Some of them are enumerated below:

Case Laws

1. In the case of *Maneka Gandhi v. Union of India*, the apex court propounded a new dimension of Article 21 wherein it stated that "right to life or live" does not confine itself to mere physical existence but also includes right to live with human dignity.
1. Further, in *Francis Coralie v. Delhi Administration*, while expanding the aforementioned concept, the court held that the word 'life' includes everything that it goes along with it, namely the bare necessities of the life such as adequate nutrition and food, clothing and shelter over one's head, facilities for reading, writing (education), ability and opportunity of expressing oneself in diverse forms, moving freely, mixing and commingling with fellow human beings.
2. Thereafter, the apex court in *Pandit Parmanand v. Union of India* expanded the concept of "life" and ruled that the word "life" is not just limited up to the period of death but even after that. Therefore, when a person was executed with the death penalty (as in this case) but the dead body was not lowered even after half an hour, in spite of the fact that the doctor already gave the death certificate, the court held that it amounted to a violation of Right to life under Article 21. It can be concluded that Right to live continues even after death and includes in its ambit the right to proper handling of the dead body or right to a decent burial.
3. The Supreme Court in *State of Andhra Pradesh v. Challa Ramakrishna Reddy* held that the right to life is one of the basic human rights which is guaranteed to every person by Article 21. It is so fundamental that even the State has no authority to violate it. A prisoner does not cease to be a human being even when lodged in jail. He continues to be a human and therefore is entitled to enjoy all the fundamental rights including the right to life.

Right to health and medical treatment

Right to health is an important right. The Constitution of India incorporates provisions guaranteeing every individual the right to the highest attainable standard of physical and

mental health. In a series of judgements, the highest court of the land has held that the right to health care is a crucial element of Article 21. Article 21 of the Constitution imposes an obligation on the State to safeguard an individual's life.

In the case of *Parmannand Katara v. Union of India*, the court held that a doctor working at a Government hospital is bound by duty to extend any type of medical assistance for preserving life. In fact, every doctor has a professional obligation of extending his services to the patients (be it anyone) with due diligence and expertise in order to protect his life. Therefore, any legal body cannot intervene to cause a delay in the discharge of obligations and duties cast upon the members of the medical profession. The court also reiterated in *Paschim Bengal Khet Mazdoor Samiti v. State of West Bengal*, that a government hospital cannot deny any patient the right to treatment on the grounds of non-availability of beds. Doing so would amount to a breach of Article 21 that highlights the 'right to life'. This article imposes strict obligations on the State to make available the necessary medical assistance to an aggrieved person as protection of human life is of utmost significance

The Gujarat High Court in *Rasikbhai Ramsing Rana v. State of Gujarat* held that the right to medical treatment is one of the basic human rights that should be made available to every person. The court further guided the concerned jail authorities to take proper mental and physical health care of the prisoners which were suffering from any type of disease.

The same court, in a *suo moto* writ, issued guidelines to the Central government to equip all Central and District jails with facilities such as ICCU, pathology lab, proficient doctors, sufficient staff including nurses and latest instruments for medical treatment.

Right to a speedy trial

It is very well said that justice delayed is justice denied. Every prisoner has a right to a speedy trial irrespective of the crime he is convicted of. Speedy trial is considered as an integral part of the criminal justice delivery system. Once a person is accused, he must be subject to speedy trials so as to punish him from the crime he committed or absolve him from it, if not proven guilty. No one should be subject to long, pending and tiresome trials as it not only violates the rights of an individual but is considered to be the denial of justice altogether. The right to a speedy trial, therefore, has become a universally recognized human right. Moreover, the right to a speedy trial is also contained under [Section 309 of the Code of Criminal Procedure](#). If this provision of the Cr.PC is followed and implemented in its true spirit, all the grievances and queries of prisoners could be resolved

Case Laws

1. In *AR Antulay v. RS Nayak* the Supreme Court laid down comprehensive guidelines for accused convicted in a criminal case, however, it did not prescribe a fixed time period for the trial of offences. The court said that the right to speedy trial flows from Article 21 and it includes in its ambit all the stages of investigation like inquiry, trial, appeal, revision and re-trial. The court further stated that an accused cannot be denied his right to speedy trial merely on the ground that he did not demand the same. It also reiterated that the time limit of a trial needs to be decided by keeping certain circumstances in mind such as the nature of the offence, number of accused, number of witnesses, the amount of workload on the court, etc,

The court finally comes to the conclusion in the interest of natural justice that when the right to speedy trial of a convict has been violated the charges of the conviction shall be quashed.

2. Justice S. S. Hasan of the Patna High Court emphatically stated in the case of *Madheshwardhari Singh And Anr. v. State of Bihar* that there would be a day in future wherein it would be realised that a period of less than ten years in delivering justice to a party would be considered as an unjustified delay, thereafter it would be endeavoured and brought down to two years and it would be on that day that justice, in the real sense, would be served. He also pinned his hopes on courts all over the country that they will be conscious towards the right of an indicted person to get speedy disposal of his indictment and also take into consideration the hardship that has been caused to the parties due to such delays which were beyond their control.

Right to legal aid

Legal assistance plays a significant part in the life of an accused awaiting trial or any prisoner or convicts, for that matter. The [42nd Amendment to the Constitution \(1976\)](#) of India incorporated services of free legal aid as [Article 39A](#) under the head Directive Principles of State Policy. Though this article is part of the directive principles of state policy and hence, not enforceable, the principles underlined therein are of utmost importance. It is incumbent upon the State to keep this article in mind while framing rules and regulations for prisoners, criminals or convicts.

The parliament has enacted the [Legal Services Authorities Act in 1987](#) wherein it guaranteed legal Aid. It also directed various state governments to set up Legal Aid and Advice Boards, and frame schemes aiming to provide Free Legal Aid. This was done so that the Constitutional mandate of Article 39-A could be given an effect. If we look into the jurisprudence of Indian Human Rights, it can be said that legal aid is of wider dimension and it is available in civil, administrative or revenue cases other than just criminal cases.

In the case of *Madhav Hayawadanrao Hoskot v. the State Of Maharashtra*, the three-judge bench of the Supreme Court of India read Articles 21 and Articles 39-A along with [Article 142](#) and [Section 304](#) of CrPC together emphasized that the government of the country is under a duty to aid and provide legal services to the convicted or accused individual.

Justice Krishna Iyer emphatically declared that "*Right to free legal aid is the State's duty and not Government's charity*".

Right against Inhuman treatment

It is the right of every prisoner to be protected against any type of cruel or inhuman treatment. The Supreme Court of India in several cases has highlighted the harsh treatments faced by prisoners and directed state and prison authorities to check and regulate the same. The court also prohibited the use of instruments such as handcuffs, chains, irons and straitjackets in punishing the prisoners. Some other instruments of restraint are permissible but only under certain circumstances. These circumstances are mentioned hereunder:

1. Using instruments of restraint for precaution during the transfer of prisoners against escape, conditional upon the fact that it shall be removed while producing the prisoner before an administrative or judicial body.
2. If the medical officer permits the same on certain medical grounds;
3. In cases wherein it is difficult to prevent a prisoner from self-harm or damaging the property around, the director in consultation with the medical officer and after reporting the higher administrative authority may order the prisoner to be put in instruments of restraint.

The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Case Laws

1. In *Sunil Gupta v. the State of MP*, the petitioners had voluntarily surrendered themselves. They even refused to bail out and decided to stay in prison for the cause of public good. Even though they were put in handcuffs and taken to court by the escort party. The court expressed that the act done by the escort party was inhuman in nature and violative of Article 21 of the Constitution. The court also directed the government to take immediate and appropriate action against the defaulting escort part for having acted unjustly and unreasonably in handcuffing the prisoners.
2. In the case of *Kadra Pehadiya v. the State of Bihar*, the court expressed its anger at seeing four petitioners who were merely undertrial prisoners awaiting their trial chained in leg irons. The court ruled that such acts are gross violations of all prison regulations and of the guidelines set by the court in the case of Sunil Batra. The court thereafter directed the Superintendent to remove leg irons from the feet of the four petitioners immediately. The court also directed that no convict or undertrial prisoner shall be kept in leg irons except in accordance with the ratio of the decision of Sunil Batra's case.

Right to Education

Right to education is a Fundamental Right and therefore it should be given to every citizen of the country. Along with education, it is compulsory that the right type of education should be imparted. In *Mohammad Giasuddin v. State of AP*, the court tried to regulate the manner of work and education provided to the inmates of the jail. It directed the state government to look into the nature of work and education given to the prisoners and check that the work provided is "not of a monotonous, mechanical, intellectual or like type mixed with a little manual labour...". The court further stated the facilities of liaison through correspondence courses must also be given to the prisoners who are interested in doing higher or advanced studies. Moreover, basic learning such as tailoring, embroidery, doll-making should be extended to the women prisoners. In addition to that, the well-educated prisoners should be given the opportunities to engage in some sort of mental-cum-manual productive work.

Right to receive books/magazines

In *George Fernandes v. State*, the court took cognizance of the case wherein the Superintendent of the Nagpur Central Jail had fixed the number of books to be allowed to the inmates to be 12. However, the power to take such decisions was not vested in him,

though being a superintendent he could disallow a book terming it as "unsuitable". This was stated in consonance with the [Bombay Conditions of Detention Order, 1951](#).

The court further added "all the restraints on liberty, that no knowledge, learning and pursuit of happiness is the most irksome and least justifiable. Improvement of mind cannot be thwarted but for exceptional and just circumstances. It is well known that books of education and universal praise have been written in prison cells."

Right to publication

The Supreme court held in a case wherein the prisoner was not allowed to read a scientific book that there was nothing in the Bombay Detention Order, 1951 that prohibits a prisoner from writing or publishing a book. It stated that the book prisoner wanted to read was merely a work of science, ("Inside the Atom") and it could not be regarded as detrimental to public interest or safety as provided under the [Defence of India Rules, 1962](#).

Further, in [State of Maharashtra v. Prabhakar Pandurang Sanzgir](#) wherein an accused detained under preventive detention was not allowed to hand over his unpublished book to his wife for publication, the court termed such an act as violative of Article 21.

In yet another case of [Rajgopal v. State of Tamil Nadu](#), the Supreme Court held that there was no authority in law that could priorly deny the permission to publish the autobiography of Auto Shanker (prisoner) under the fear or impression that it would cause defamation of prominent IAS and IPS officers. The concerned officials can take action after the publication and only if the publications are false.

Conclusion

Prisoners do not cease to be human beings when put behind bars. The Supreme Court and many other courts of India have reiterated this position in several cases so that prisoners do not become a victim themselves. And are provided with a proper rehabilitative environment to help them improve and become better beings. It is incumbent upon the Central and State governments to not only provide the prisoners with humane conditions for a living but also educate them about their rights so that it is not abused by the powerful inside the prison.

It could be said that the judiciary of the country has played a crucial role in safeguarding the rights of prisoners whenever the legislative and executive have erred. It has acted as the saviour of the convicts and upheld their fundamental rights time and time again. It has thoroughly exercised its powers through judicial activism and has repeatedly devised new remedies and tools to protect the human's right to life and personal liberty. However, much still needs to be done. In this regard, the wide circulation of human rights' available to prisoners, vast publicity of prisoners right in media and corner to corner surveillance in prisons could be some of the keys for upholding the rights of prisoners and ensuring their safe space in the prison.