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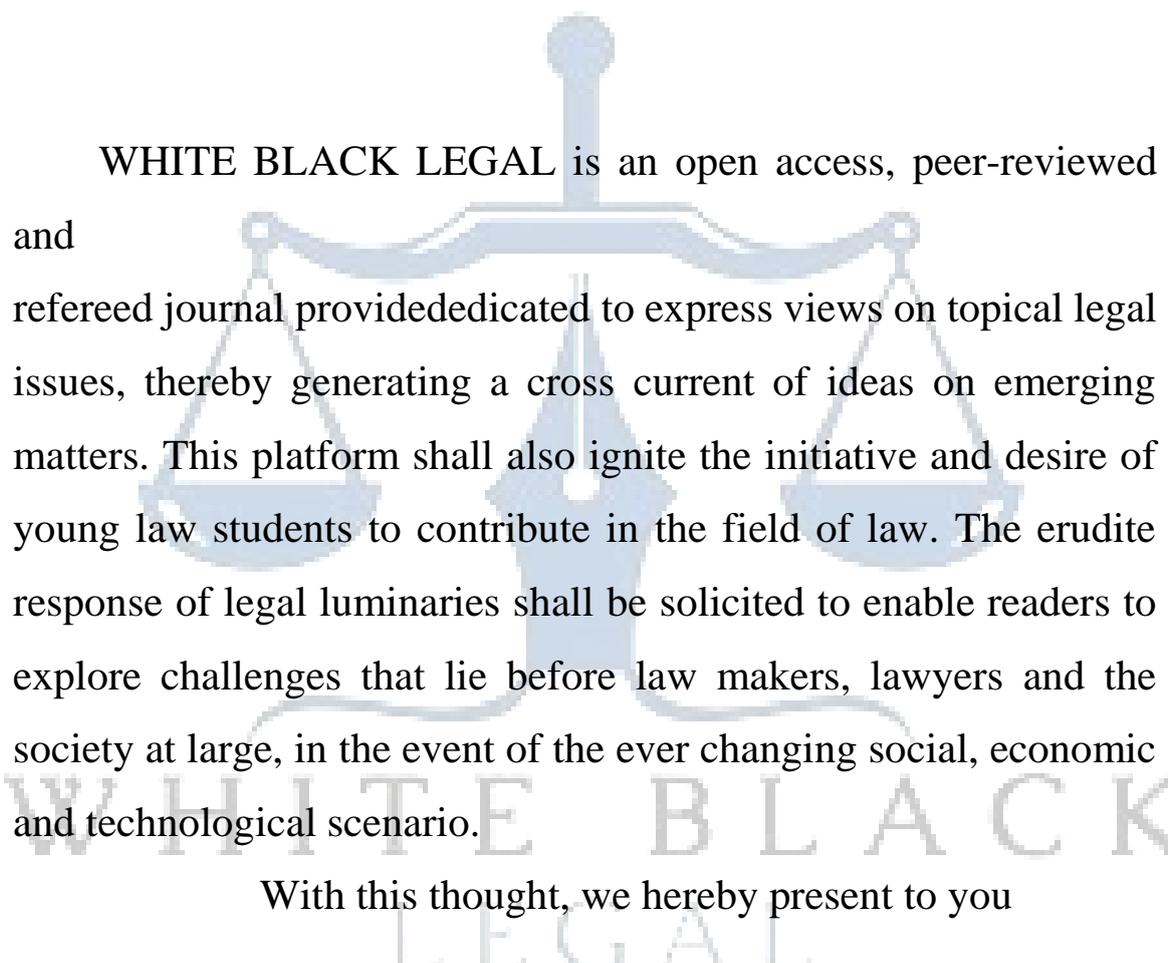


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE RIGHTS OF THE PRISONERS AND ARRESTED PERSONS IN INDIA: A COMPREHENSIVE LEGAL OVERVIEW¹

AUTHORED BY - NIKITA BEGUM TALUKDAR

Introduction

The All-India Jail Reform Committee (1980–83) recommended various rights for prisoners and measures for maintaining prison discipline. This led to the gradual adoption of practices aimed at encouraging discipline through positive inducements, such as remission of sentences for good conduct, payment of wages for labor, the provision of facilities like canteens, and the granting of privileges such as writing letters and meeting friends and relatives. Notably, many of these so-called “benefits” have now been recognized by the judiciary as fundamental rights of prisoners. It is well-established that a criminal conviction does not strip a person of their humanity or reduce them to a non-person. Consequently, prisoners are entitled to most rights available to individuals outside the prison system, albeit subject to certain legal restrictions. It is regrettable that a progressive country like India has yet to codify the rights of prisoners. Nevertheless, it cannot be denied that the Hon’ble judiciary has recognized an extensive list of prisoners’ rights, which all authorities are expected to uphold in the absence of formal legislation. However, in practice, these rights often remain confined to paper, with prison authorities seldom adhering to them.

Both the Supreme Court of the United States and the Supreme Court of India have affirmed that prisoners remain human beings, natural persons, and legal persons. Their status as prisoners does not negate their humanity or legal identity. Therefore, any major punishment imposed within the prison system must adhere to procedural safeguards, ensuring that prisoners’ rights are not left to the arbitrary discretion of prison authorities.²

¹ Nikita Begum Talukdar, Assistant Professor-Senior Scale of Law at SOL, UPES, Dehradun, Uttarakhand, India.

² “*Charles Wolff v. McDonnell*, (1974) 41 Law Ed 2nd 935, *DBM Patnaik v State of Andhra Pradesh*, AIR 1974 SC 2092, *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675, and *Sunil Batra v. Delhi Administration*, AIR 1980 Cr.LJ 1099.”

In this paper the author has explained the various rights of a prisoner and arrested persons in India under the Constitution of India and the new Criminal Codes 2023 which are the Bharatiya Nyaya Sanhita, 2023 and the Bhartiya Nyaya Suraksha Sanhita, 2023.

Rights of the Prisoner's and arrested persons under the Constitution of India and New Criminal Codes

The Supreme Court has ruled that the conditions of detention must not result in the deprivation of fundamental rights.³ Prisoners retain all the rights enjoyed by free citizens, except those necessarily restricted as a consequence of confinement. Furthermore, the rights available to prisoners under Articles 14, 19, and 21, though limited in scope, are dynamic and expand to meet the demands of evolving circumstances. "Article 21", when read with "Article 19(1)(d) and (5)", has a broader application than its colonial origins, drawing its interpretation from the advancing standards of decency and dignity that signify societal progress. The reasonableness of restrictions under Article 19(5) and the avoidance of arbitrary discrimination under Article 14 are fundamental to ensuring justice and equity within the framework of prisoners' rights.

The Bharatiya Nyaya Sanhita (BNS), 2023, and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, have introduced several provisions that impact the rights of prisoners in India.

The rights of the prisoners and arrested persons are mentioned below:

I. Right to life and personal liberty :

The Hon'ble Supreme Court has adopted annotation of Article 21 and provided connotation of "life" given by *Field J.* that "life means more than mere animal existence. 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."⁴ Article 22 of the Indian Constitution mandates that any detained person must be informed of the reasons for their arrest.

Section 47 of the BNSS reinforces this by requiring that every police officer or person arresting someone without a warrant must promptly communicate the full particulars of the offence or

³ "State of Maharashtra v Prabhakar Pandurang Sanzgir, AIR 1966 SC 424

⁴ Kharak Singh v. State of UP, AIR 1963 SC 1295."

other grounds for the arrest. The BNSS stipulates that an arrested individual should be examined by a medical officer in the service of the Central or State Government, or if unavailable, by a registered medical practitioner, soon after the arrest.

II. Right to live with human dignity:

In a progressive interpretation of Article 21, the Hon'ble Supreme Court has held that the "right to live" extends beyond mere physical survival. It encompasses the right to live with dignity and humanity, reflecting a broader and more inclusive understanding of life.⁵ Expanding on this concept, the Hon'ble Supreme Court held that the term 'life' encompasses more than mere existence. It includes the basic necessities of life, such as adequate nutrition, clothing, shelter, and access to facilities for reading, writing, self-expression, free movement, and social interaction with others.⁶ Subsequently, the Supreme Court expanded the interpretation of 'life' under Article 21, asserting that it is not confined merely to the duration of existence. The Court held that even in cases of execution by the death penalty, the right to life is violated if the deceased's body is not lowered for half an hour after the issuance of a death certificate by the doctor.⁷

The Supreme Court emphasized that the right to life is a fundamental human right guaranteed to every individual under "Article 21", and even the State has no authority to infringe upon it. The Court further affirmed that a prisoner, despite being confined in jail, remains a human being and retains all fundamental rights, including the right to life.⁸ It is now beyond dispute that convicts are not entirely stripped of their fundamental rights. However, the liberty of a prisoner is inherently restricted by the conditions of confinement. This makes the preservation of the limited freedom they retain all the more significant.⁹

III. Right to health and medical treatment:

The Hon'ble Supreme Court, in a series of judgments, has recognized the "right to healthcare" as an integral component of Article 21 of the Constitution. Article 21 imposes a duty on the

⁵ "Maneka Gandhi v. Union of India, AIR 1978 SC 597, and followed in Francis Coralie v. Delhi Administration, AIR 1981 SC 746

⁶ Francis Coralie v. Delhi Administration, AIR 1981 SC 746

⁷ Pandit Parmanand v Union of India, (1995) 3 SCC 248."

⁸ "State of Andhra Pradesh v. Challa Ramkrishna Reddy, AIR 2000 SC 2083."

⁹ "DBM Patnaik v State of Andhra Pradesh, AIR 1974 SC 2092, and Sunil Batra v. Delhi Administration, AIR 1978 SC 1675.

State to preserve life, and a government doctor, as an agent of the State, is obligated to provide medical assistance to save lives. This obligation extends to all doctors, whether in government or private practice, who are professionally bound to use their expertise to protect life. No law or State action can justify avoiding or delaying the fulfillment of this critical duty. Given its absolute and paramount nature, any procedural law or statutory provision that interferes with the discharge of this obligation cannot stand and must yield to the higher duty of preserving life.¹⁰

The right to medical treatment is a fundamental human right. The Gujarat High Court directed jail authorities to ensure proper care for ailing convicts. The petitioners, who were convicted and incarcerated in the Central Prison, Vadodara, suffered from serious health issues and were denied proper and timely medical treatment due to a lack of jail escorts required to transport them to the hospital. The Gujarat High Court expressed its shock over the situation and promptly summoned the I.G. Prison and the Additional Chief Secretary, both of whom issued necessary directives. The Court further held that negligent officers would be held personally accountable for the oversight.¹¹

IV. Right to speedy trial:

The Supreme Court ruled that the right to a speedy trial is a fundamental right under Article 21 of the Constitution. It stated that delays in the disposal of cases amount to a denial of justice. Therefore, the court is obligated to take appropriate measures to ensure prompt trials and the swift resolution of the cases.¹²

The Hon'ble Supreme Court has outlined detailed guidelines for ensuring the speedy trial of an accused in a criminal case but chose not to set a fixed time limit for the trial of offenses. It emphasized that the prosecution bears the responsibility to justify and explain any delays. The Court affirmed that the right to a speedy trial, as derived from Article 21, applies at all stages of legal proceedings, including investigation, inquiry, trial, appeal, revision, and retrial. Additionally, the Court stated that an accused cannot be denied the right to a speedy trial simply because they failed to request it.

¹⁰ Parmannd Katara v. Union o f India, AIR 1989 SC 2039 : (1989) 4 SCC 286; also see Consumer Education and Research Center v. Union o f India, (1995) 3 SCC 42; Kishore Brothers Ltd v. Employee's State Insurance corporation, (1996) 2 SCC 682.

¹¹ "Rasikbhai Ramsing Rana v. State of Gujarat, (DB) 1997 Cr LR (Guj) 442."

¹² "Kadra Pahadiya v. State of Bihar, AIR 1983 SC 1167."

V. Right to free legal aid:

A significant portion of the prison population in the country comprises undertrials and individuals whose trials are yet to begin. Therefore, access to courts and legal resources is crucial to ensuring a fair trial for these inmates, as mandated by Article 21 of the Constitution. The Supreme Court strongly criticized the failure of Sessions Judges to appoint counsel for impoverished accused individuals in serious cases. It emphasized that defendants should never be denied legal aid from competent counsel. This obligation includes providing the accused with the necessary legal documents and ensuring the availability of counsel for their defence.¹³

The Supreme Court ruled that free legal assistance at the State's expense is a fundamental right for any person accused of an offense that could endanger their life or personal liberty.¹⁴ In considering the right of prisoners to consult with a lawyer, the Court emphasized that a detainee's right to consult a legal advisor of their choice is not limited to criminal proceedings. It extends to securing release from preventive detention, filing writ petitions, or pursuing any civil or criminal matter. The Court also stated that prison regulations cannot impose unreasonable or arbitrary procedures to restrict or regulate meetings between a detainee and their legal advisor.¹⁵

VI. Right to Consult and to be Defended by Legal Practitioner :

Article 22(1) guarantees the right to secure the services of a lawyer, but it does not mandate the State to provide legal aid. Instead, it obligates the State to ensure that reasonable facilities are available for an arrested or detained person to engage a lawyer of their choice. The right to consult with a lawyer arises immediately upon arrest.

In *Janardhan Reddy v. State of Hyderabad*¹⁶, one of the key arguments raised by the petitioners was that in criminal cases Nos. 17 & 18 of 1949, the accused were denied a fair trial because they were not given the opportunity to instruct counsel, leaving them undefended throughout the trial. It was argued that the entire trial was invalid due to the denial of the right to be defended by a lawyer. Under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS 2023), the right of an accused person to legal representation is articulated in Section 340, which states:

¹³ "Rachod Mathur Waswa v. State of Gujarat, AIR 1974 SC 1143

¹⁴ Sukdas v. Arunachal Pradesh, AIR 1986 SC 991."

¹⁵ "Francis Corahe v Delhi Administration, AIR 1981 SC 746

¹⁶ AIR 1950 SC 7."

“Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Sanhita, may of right be defended by an advocate of his choice.”

This provision ensures that individuals facing criminal charges have the unequivocal right to select and be represented by legal counsel of their choosing, thereby upholding the principles of fair trial and justice.

Additionally, **Section 341** of BNSS 2023 addresses legal aid, stipulating: *“Legal aid to accused at State expense in certain cases.”* This section mandates the provision of legal assistance at the state’s expense for accused individuals who may not have the means to secure private legal representation, ensuring equitable access to justice for all.

In *Nandini Satpathy v. P.L. Dani*¹⁷ the Supreme Court observed that Article 22(1) ensures that no person arrested shall be denied the right to consult an advocate of their choice. This right, however, extends beyond those under arrest or in custody, as it is fundamental to the rule of law that anyone facing near-custodial interrogation should have access to legal counsel. The Court further emphasized that the right against self-incrimination is best protected by granting the accused the opportunity to consult a lawyer. The presence of a lawyer, in certain circumstances, is constitutionally guaranteed and serves as a safeguard to ensure the right to silence, as outlined in Article 20(3). In this context, the Court referred to the *Miranda* decision, which mandated that if an accused person requests legal assistance during interrogation, it must be provided before questioning proceeds.¹⁸

In *Joginder Kumar v. State of U.P.*¹⁹ the Supreme Court affirmed that an arrested person has the inherent right, under Articles 21 and 22 of the Constitution, to have someone informed of their arrest upon request and to privately consult with a lawyer. The Court emphasized that an arrest cannot be made solely because it is within the police officer's legal authority. While the power to arrest exists, the officer must justify the necessity of the arrest. The Court pointed out that arrest and detention in police custody can severely damage a person's reputation and self-esteem. Therefore, no arrest should occur unless the police officer has reasonable grounds, based on investigation, to believe that the complaint is genuine and that the arrest is necessary due to the person’s involvement in the crime.

¹⁷ A.I.R. 1978 S.C. 1025.

¹⁸ (1966) 384 U.S. 436.

¹⁹ A.I.R. 1994 S.C. 1349.

The Supreme Court laid down the following requirements:

1. An arrested person, upon request, has the right to have a friend, relative, or any person who is known to them, informed about the arrest and the location of detention, as far as practicable.
2. The police officer must inform the arrested person of this right when they are brought to the police station.
3. An entry must be made in the police diary, recording who was notified of the arrest.

The protections against the abuse of power must be derived from Articles 21 and 22(1) of the Constitution and enforced rigorously. The requirements outlined in *Joginder Kumar v. State of U.P* must be adhered to in all cases of arrest until appropriate legal provisions are enacted. Section 56(1) of the Police and Criminal Evidence Act, 1984, in England, serves as a comparative reference. In *Joginder Kumar's* Case, there was a noticeable shift in judicial focus toward ensuring the constitutional rights of arrested persons. A new interpretive approach to Article 22(1) was adopted, with Article 21 being used as a guiding framework to reinforce these protections.

VII. Protection against instruments of restraint:

Instruments of restraint, such as handcuffs, chains, irons, and straitjackets, must never be used as a form of punishment. Additionally, chains or irons should not be employed as restraints. Other forms of restraint may only be used under the following conditions:

(a) "As a precaution to prevent escape during a transfer, with the restraints removed when the prisoner appears before a judicial or administrative authority. (b) On medical grounds, as directed by the medical officer. (c) By order of the director, if other methods of control fail, to prevent the prisoner from harming themselves, others, or damaging property. In such cases, the director must immediately consult the medical officer and inform the higher administrative authority. The use and methods of applying instruments of restraint shall be determined by the central prison administration, and they must not be applied for any longer than absolutely necessary."²⁰

VIII. Handcuffing of undertrial prisoner is unconstitutional:

In a majority judgment, *Hon'ble Justice Krishna Iyer* ruled that the provisions of the Punjab

²⁰ "Rules. 33 and 34 of "Standard Minimum Rules for the Treatment of Prisoners".

Police Rules, which mandated the handcuffing of every undertrial accused of a non-bailable offense punishable by more than three years of imprisonment, were in violation of Articles 14, 19, and 21 of the Constitution of India. As a result, these provisions were declared unconstitutional.²¹

In another case, the Supreme Court addressed a challenge by an undertrial prisoner who was placed in bar fetters and kept in solitary confinement by the Superintendent of the jail. The Court deemed this action unusual and contrary to the spirit of the Constitution, declaring it a violation of the right to freedom of movement.²² The Court directed the Government to take appropriate action against the escort party responsible for this unjust and unreasonable treatment of the petitioner.²³

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS 2023), which replaces the Criminal Procedure Code (CrPC) of 1973, introduces specific provisions regarding the use of handcuffs during arrests. Section 43(3) of BNSS permits police officers to use handcuffs during the arrest of a person or while producing such person before a court, considering the nature and gravity of the offence.

IX. Protection of custodial torture and mal-treatment in prisons :

The right to life and personal liberty may be limited to some extent when a person is imprisoned, but it is not entirely revoked. Even while incarcerated, individuals retain their fundamental rights, including the residual protections afforded by Article 21. The State does not grant law enforcement officers the right to take away a person's life or violate its essential aspects. If an offender's life is taken without following the due process of law, it constitutes a clear violation of Article 21 of the Constitution. Similarly, an offender's life cannot be endangered through illegal physical abuse by jail authorities.

X. Delay in release from jail amounts to 'illegal detention':

The Supreme Court expressed shock and concern over a disturbing case where a person, despite being acquitted by the court, was unlawfully detained by jail authorities for 14 years. The writ petition for habeas corpus, filed by the petitioner seeking the release of the individual, revealed

²¹ Prem Shankar v. Delhi Administration, AIR 1980 SC 1535

²² Sunil Batra v. Delhi Administration, AIR 1980 SC 1579

²³ Sunil Gupta v. State of MP, (1990) 3 SCC 119.”

this shocking state of affairs. The petitioner also sought compensation for the unlawful incarceration, which resulted in the loss of 14 precious years of the individual's life behind bars, even though he had been acquitted.

XI. Right to compensation in case of custodial violence :

In response to the concerns raised by D.K. Basu through a letter regarding custodial violence and deaths in police custody, the Supreme Court took the matter seriously and treated the letter as a writ petition. On February 9, 1987, the Court issued a notice to the State regarding the issue. The Court established the following principles:

1. The rights guaranteed under Article 21 of the Constitution cannot be denied to convicts, undertrials, detenues, and other prisoners in custody, except in accordance with the procedure established by law.
2. Any form of torture or cruel, inhuman, or degrading treatment falls within the scope of Article 21, whether it occurs during investigation or otherwise.

XII. Right to compensation in case of custodial death:

The Supreme Court observed that due to gross negligence by the jail authorities, an undertrial prisoner, 'R', suffered serious injuries within the jail, which ultimately led to his death. The petitioner, 'M', the mother of the deceased, stated that 'R' was the sole breadwinner for the family, and his death left her as a helpless widow with three sons to support. The Court held that it was the duty of the jail authorities to protect the life of an undertrial prisoner. In this case, the authorities failed to ensure the safety and security of 'R'. Consequently, the Court directed the State to pay Rs. 2,50,000 to the petitioner within six weeks.²⁴

Conclusion

In conclusion, the rights of prisoners, undertrials, and detainees in India have evolved significantly through judicial intervention, particularly under Article 21 of the Constitution. The Supreme Court has consistently emphasized that prisoners retain their fundamental rights, including the right to life, dignity, and protection from inhuman treatment, even while incarcerated. Cases addressing custodial violence, denial of medical treatment, lack of legal assistance, and unlawful detention highlight the need for continued reforms within the prison system. Despite the judicial recognition of these rights, practical implementation remains a

²⁴ Murti Devi v. Delhi Administration, (1998) 9 SCC 604.

challenge, with many instances of neglect and abuse still being reported.

The legal system has rightly identified the need for the state to provide safeguards, including the right to a speedy trial, medical care, legal aid, and protection from torture or mistreatment. However, the lack of codified laws on prisoners' rights and the inadequate resources allocated to address these issues continue to hinder meaningful change.

Although judicial precedents hold greater authority than legislation and are binding on all courts in India, the absence of codified prisoner rights creates significant gaps in awareness and implementation. It is strongly felt that these rights should be systematically codified to ensure greater awareness among state authorities and prisoners alike. Furthermore, many prisoners are either unaware of their rights or do not know how to exercise them effectively.

