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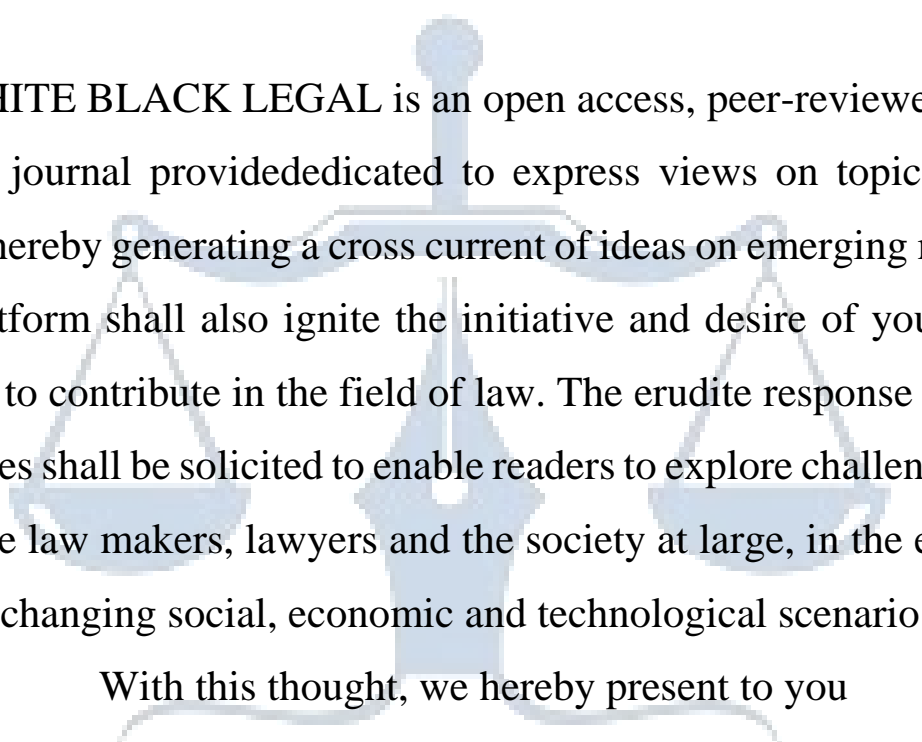


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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

W H I T E B L A C K
L E G A L

RIGHTS OF PRISONERS UNDER THE CONSTITUTION OF INDIA

AUTHORED BY - MANASHI SARMA

“Hate the crime and not the criminal”

Mahatma Gandhi

INTRODUCTION:

The prison system in India has a long history, dating back to ancient times. The system was influenced by the spiritual aspects of human life, with prisoners expected to undergo penance and remonstrance. Solitary confinement was common for self-introspection. Conviction for a crime does not reduce a person into a non-person, so they are entitled to all rights generally available to non-prisoners. However, they are not entitled to any absolute rights that are available to non-prisoners but subject to the same legal restrictions. The US and Indian Supreme Courts have ruled that a prisoner is a human being, natural person, and legal person. Major punishments within the prison system are conditional upon procedural safeguards. Prisons are a State subject under the Seventh Schedule to the Constitution of India, and their management and administration fall under the jurisdiction of State Governments.

RIGHT TO FUNDAMENTAL RIGHT:

Art 21 of the Indian Constitution guarantees personal liberty and prohibits inhumane treatment to all individuals, regardless of nationality. Articles 14, 19, 20, and 22 also address prisoners' rights, including equality, life, and personal liberty. The Supreme Court of India has expanded Art 21, promoting personal reforms and protecting prisoners' fundamental rights, which form the backbone of Indian human rights. “Patnaik v. State of Andhra Pradesh¹ (1974)” And everyone should be guaranteed equal protection under the law. The courts have found Art. 14's statement of reasonable categorization and the idea that all inmates should be treated equally to be a powerful tool in their examination of prisoner classifications. For classifying inmates, these publications serve as a valuable resource for prison officials. The Supreme Court ruled in the Prabhakar Pandurang “Sangiri Vs. State of Maharashtra” case that a person's basic rights cannot be infringed upon only

¹(1974)” 41 Law Ed 2nd 935 DBM; “Charles Wolff v. McDonnell (1974). No. 2092 (A/R 1974 Sc)”.

because they are held. The court also said that such conditions cannot be severed to the point where fundamental rights are deprived.

On December 2, 1985/1986, the right of the imprisoned person was established in Bom CR 272. Additionally, the Court determined that all prisoners maintain all rights appreciated by free individuals, except for the right that is inalienably lost due to incarceration. The case of “Charles Sobaraj Vs. Supdt Central Jail Tihar,”² established that inmates' rights guaranteed by Articles 14, 19, and 21 are not absolute but rather subject to change. When faced with adversity, they will inevitably achieve new heights for humanity.

By making the following assertion, Mr. Justice Douglas restated his theory. The reality of a prisoner's captivity naturally limits his freedom, but his desire in the little freedom that remains is far greater. Because a person's rights because of a conviction are not at the mercy of the prison administration, there must be procedural protections in place before any severe punishment may be imposed inside the prison system. "I have recently expressed my perspective that a prisoner doesn't shed his fundamental sacred freedoms at the jail entryway and I completely support the Court's holding that the interest of prisoner," Mr. Equity Marshall says, communicating his thoughts likewise.³ The Supreme Court ruled in “Andhra Pradesh v. Challa Ramkrishna Reddy”⁴ that, notwithstanding constitutional restrictions, a prisoner has the right to full enjoyment of all basic liberties. Cases like as “Sunil Batra v. Delhi Administration and DBM Patnaik v. State of Andhra Pradesh”⁵ have made it clear that prisoners are actual people with rights and responsibilities just like any other citizen. A person's humanity remains intact even after a criminal conviction; his rights should not be taken away by the jail administration because of this.

RIGHT TO LIFE & PERSONAL LIBERTY:

The right to live a free, full, and dignified life is one of the most basic principles of human existence. Every person is entitled to live their life on their terms, with no unfair interference from others. A successful democracy can only guarantee its citizens the right to protect their own life and liberty. In India, the protection of life and personal liberty is a fundamental right. These fundamental rights represent the fundamental values cherished by the people and are granted against the action of the state, meaning that no act of any state authority can violate any such right of a citizen except according to the procedure established by law.

² AIR 1978, 5CR(I) 512 SC 1514

³ The views were observed by Justice Bhagwati in “Francis Caralie Mullin Vs The Administrator, UT Delhi, AIR 1981 SC 746”

⁴ . AIR 2000

⁵ . A/R 1974, SC 2092 & AIR 1978

RIGHT TO LIVE WITH HUMAN DIGNITY:

Everyone in the world has the right to life, liberty, and the security of a person. This is the universal truth in the world and the right to life is undoubtedly the most fundamental of all rights. The right specially mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that this right has been provided against the state only. State here includes not just the Government departments, local bodies, the legislatures, etc. In *Menaka Gandhi Vs Union of India*⁶. The Supreme Court held that new dimension of Art 21. The court held that the 'right to life' does not mean mere confinement to physical existence but it includes within its ambit the right to life with human dignity. While expending this concept, the Hon'ble Supreme court held that the word life includes what goes with it, namely the bare necessities of the life includes that it goes along, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human being.

RIGHT TO HEALTH AND MEDICAL TREATMENT:

Health care is also a prisoner's right. Prison should also provide synergistic health education, patient education, prevention, and other health promotion interventions to meet the assessed needs of the prison population. The Supreme Court has recognized that the right to life is more comprehensive than a similar interest and it has also precious object a constitutional obligation to provide health facilities to all. Yet the health needs of the prisoner have been neglected. In the case of *Parmanand Katara Vs Union of India*⁷, the Supreme Court held that the State must maintain life regardless of whether the individual is innocent or guilty of a crime, setting a strong precedent for prisoner's rights in India, particularly the fundamental right to health. A doctor at the Government hospital positioned to meet this state obligation is, therefore duty bound to extend medical assistance for preserving life. Every doctor whether at the Government hospital or otherwise has the professional obligation to extend his services with due expertise for the protection of life. No law or state action can intervene to avoid/delay the discharge of the paramount obligation.

Overcrowding in India has worsened hygiene issues in jails, with many lacking basic amenities and testing for infectious diseases. Prisoners are not segregated based on their contagious diseases, and there is no national study on viral infection prevalence. Prison manuals provide for segregation of prisoners suspected of having contagious diseases. Violence in prison settings can stem from ethnic or clan-related conflicts, as well as closed living conditions. The monotonous prison environment,

⁶AIR 1978 SC 597

⁷ AIR 1989 SC 2039

lack of mental and physical activity, and boredom can lead to high-risk activities like drug use and sex between men. Some engage in these activities to combat boredom, while others are forced to do so for power or monetary gain. These risky lifestyles can lead to the transmission of diseases, which pose a serious public health risk if unchecked. Contracting any disease in prison is not part of a prisoner's sentence, especially when the disease is potentially fatal, such as HIV/AIDS. Prisons often have a high-risk environment, with violence and high-risk lifestyles often engaged by those in power or forced upon weaker prisoners. Prisoners have the right to live in conditions that guarantee their individual safety. The prison administration must be knowledgeable about HIV transmission and enforce better surveillance and intervention to protect targeted prisoners. HIV-positive inmates should not be denied access to recreation, education, or the outside world.

Segregation is not justified as long as the prisoner is healthy. Solitary confinement of HIV-positive inmates should be forbidden, and restrictions should be exceptional, such as mandatory testing for risky situations. Personal security may also be considered when prisoners known to be HIV-positive request secure units. Both prison reform and penal reform are crucial for resolving problems in Indian prisons. Diminishing the overall prison population will improve physical and working conditions, and ensure the security of all individuals in custody. Financial resources must be allocated to the prison systems, and offering alternatives to impr

RIGHT TO SPEEDY TRIAL:

Speedy trial is crucial for preventing justice miscarriage and repressive imprisonment, ensuring fair and just trials for all citizens. After two decades of independence, courts initially focused on the length of time an under-trial prisoner spent in prison. However, the post-emergency Supreme Court recognized the importance of preventing incarcerated individuals from languishing behind bars and developed a series of Fundamental Rights, including the Fundamental Rights of speedy trial under Article 21 of the Constitution.

In *Kadra Pahadiya & others Vs State of Bihar*⁸ The Supreme Court held that the right to a speedy trial is a part of the Fundamental Right envisaged under Art 21 of the Constitution. A delay in the disposal of cases is a denial of Justice, so the court is expected to adopt necessary steps for expeditious trial and quick disposal of cases. The Supreme Court has laid down detailed guidelines for the speedy trial of an accused in a criminal case but it declined to fix any time limit for trial of an accused in a criminal case but it declined to fix any time limit for trial of offences. The burden lies on the prosecution to justify and explain the delay. The court held that the right to speedy trial flowing from Art 21 is available to the accused at all the stages, namely, the stage of investigation,

⁸ AIR 1982 SC 1167.

Seen(<https://indiankanoon.org/search/?formInput=In+Kadra+Pahadiya+Vs+State+of+Bihar>)

inquiry, trial, appeal, revision, and re-trial. The court further said that the accused cannot be denied the right of speedy trial merely on the ground that he had failed to demand a speedy trial. The time limit has to be decided by balancing the attendant circumstances and relevant factors, including the nature of the offense, the number of accused and witnesses, the workload of the court, etc. The court concluded in the interest of natural justice that when the right to speedy of an accused has been infringed the changes of the conviction shall be quashed.

RIGHT TO LEGAL AID:

Legal aid is crucial for individuals to access justice in cases of human rights violations, especially in India's diverse population, where over half live in poverty, destitution, and illiteracy. Legal aid is now considered a constitutional right, and the legal machinery is expected to address this issue. The philosophy of legal aid is to make justice administration easily accessible and accessible to those who need it. Legal aid provides a challenging opportunity for society to address the grievances of the poor, thereby establishing the foundation of the Rule of Law. The 42nd Amendment to India's Constitution (1976) establishes Article 39A as a legal corporation for free legal aid under the Directive Principles of State Policy. Although not enforceable, these principles are crucial for the State to consider when creating rules and regulations for prisoners, criminals, or convicts. Article 142, along with Articles 21 and 39A, states that a prisoner cannot exercise their constitutional and statutory right of appeal for lack of legal assistance. The LSA Act, 1987, enacted by Article 39A of the constitution, provides free legal aid services to the weaker sections of society. Around 80% of Indians are entitled to legal aid, with Section 12 specifically providing aid to certain groups such as Scheduled Caste or Scheduled Tribe members, victims of human trafficking, women, children, or disabled individuals, those affected by natural or man-made calamities, those in custody, and those with lower incomes. However, the actual data of prisoners lodged in Justice Krishna Iyer emphasized that the right to free legal aid is the State's duty, not the Government's charity. The Constitution of India mandates that if a prisoner cannot exercise their right of appeal due to lack of legal assistance, they should be given competent counsel. The Supreme Court ruled that free legal assistance at State cost is a fundamental right for individuals accused of offenses involving jeopardy to their life or personal liberty. The State Government cannot avoid its constitutional obligation to provide free legal services to poor accused, which arises when the accused is first produced before the Magistrate. The Supreme Court extended this right and directed the Government to provide financial aid to affiliated law colleges, similar to medical and engineering colleges. The court also directed the State of Bihar and required every other state to grant free legal service. The Supreme Court has ruled that a Magistrate or Session Judge must inform the accused that if they cannot afford legal services due to poverty or indigence, they are entitled to free legal services at the state's cost.

The court also emphasized that a detainee's right to consult a legal advisor is not limited to criminal proceedings but can be used for securing release from preventive detention, filing a writ petition, or prosecuting any civil or criminal proceeding. The court also stated that prison regulations cannot prescribe unreasonable and arbitrary procedures for interviews between the director and the legal advisor. This ruling highlights the importance of social justice in cases involving offenses like economic offenses and child abuse. It also reveals that the effectiveness of legal aid is not adequately being provided.

Right against Inhuman treatment:

The Supreme Court of India has emphasized the right of every prisoner to be protected against cruel or inhuman treatment, directing state and prison authorities to regulate such practices. The court prohibited the use of instruments like handcuffs, chains, irons, and straitjackets in punishment, while other restraint instruments are permissible under specific circumstances. The text outlines the use of restraint instruments during prison transfers, with the condition that they must be removed when the prisoner is presented to an administrative or judicial body. If permitted by a medical officer, restraint may be used in certain medical situations. If preventing self-harm or damaging property is difficult, the director may order restraint. The central prison administration determines the use patterns and must only apply restraint for the duration strictly necessary.

Right to Education:

The Constitution (Eighty-sixth Amendment) Act, 2002, enacted Article 21-A in India's Constitution, ensuring free and compulsory education for children aged six to fourteen years. Education is a crucial tool for economic and social development, helping adults and children escape poverty and become fully active citizens. The Model Prison Manual in 2003 emphasized the importance of providing educational facilities to prisoners, stating that education is vital for their overall development, rehabilitation, self-sufficiency, and societal adjustment.

CONCLUSION:

The Indian Parliament has created and adopted a good number of legislation on the administration of the criminal justice system in the country. The improvement of the prison system coming under State list, various Constitutional as well as criminal legislation deals with the prison administration in the country. The prisons are no more the institutions designed to achieve only the retributive and deterrent aspects of punishment. They are now the places where the inmates are lodged not as forgotten and forsaking members of the society but as human beings who have to go out in their surroundings as well behaving and reformed persons. Now it is guaranteed to every person by Article 21 of the Constitution of India and not even the

State has the authority to violate that Right. In the State of Bihar the Supreme Court held that the right to speedy trial is a part of the Fundamental Right envisaged under Art 21 of the Constitution. The court held that the right to speedy trial flowing from Art 21 is available to accused at all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial. The time limit has to be decided by balancing the attendant circumstances and relevant factors, including the nature of offence, number of accused and witness, the workload of the court etc. The court comes to conclusion in the interest of natural justice that when the right to speedy of an accused has been infringed the charges of the conviction shall be quashed. The 42nd Amendment to the Constitution (1976) of India constitute as a legal corporation of free legal aid as Article 39A under the head Directive Principles of State Policy. It is incumbent upon the State to keep this article in mind while framing rules and regulations for prisoners, criminals or convicts. According to Art 142 read with Art 21 and 39A of Constitution of India provides that if a prisoners is unable to exercise his constitutional and statutory right of appeal including Special Leave to Appeal for want of legal assistance The LSA Act, 1987 in accordance with Article 39A of constitution provides for various provisions which are made for the benefit of the weaker sections of the society. Section 12 & 13 of the Act state on who all are entitled to free Legal Aid Services. 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 patterns and manner of use of instruments of restraint shall be decided by the central prison administration. The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. India's Constitution and Code of Criminal Procedure protect the rights of prisoners, including dignity, access to legal representation, speedy trials, medical examinations, and the right to be present during trial proceedings. They also have the right to be informed about their arrest, access bail, and be released on probation for good conduct. The principle of bail over jail is emphasized, especially for indigent or poor prisoners. These rights ensure justice, fairness, and human rights, ensuring respect and due process for all individuals in custody.