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**HUMAN RIGHTS OF PRISON INMATES - WITH SPECIAL  
REFERENCE TO UNDERTRAIL PRISONERS, WOMEN PRISONERS,  
JUVENILE PRISONERS & OTHERS**

- Priyanshi Bhatia<sup>1</sup> & Dr. Bhavna Batra

**INTRODUCTION**

Article 21 has not only protected the right to life, but it has also ensured the right to personal liberty; and nobody may be robbed of them unless it is done so in accordance with the method that is set by law. The Indian court system has shown its most innovative side whenever it has been tasked with interpreting article 21, with the possible exception of the brief interregnum that occurred under the emergency rule. Today, article 21 stands out as the guiding light for all those who cherish freedom, guaranteeing the development of further rights when they are required and assuring a minimum degree of justice in all judicial procedures<sup>2</sup>. This article has become a beacon light for all those who cherish freedom. Under the rubric of "procedure established by law," the Supreme Court took on the role of a freedom fighter for the American people and instituted a method that adhered to the principles of "reasonableness, fairness, and justness<sup>3</sup>."

The inclusion of reasonableness in article 21 broadened the scope of the article and gave the incentive to bring about justice in a number of different areas. The expansive scope that is currently accorded to this right encompasses a variety of facets that the people who drafted the constitution may or may not have envisioned, such as the "right to privacy, the right to travel abroad, the right to one's livelihood, prisoners, health, the right to timely medical aid, free legal aid, a speedy trial, the right to live in a healthy environment, shelter, education,

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<sup>2</sup> National Human Rights Commission, *Rights of Prisoners*, (2021), available at: <https://nhrc.nic.in/sites/default/files/11%20Rights%20of%20Prisoners-compressed.pdf> (last visited on April 24, 2025).

<sup>3</sup> Mohd Tariq Umar & Prof. Hashmat Ali Khan, 'A Predicament of Women Under-Trial Prisoners and Its Impact on Their Basic Human Rights', 3 Symbiosis Law School Nagpur Journal of Women, Law & Policy 50 (2023).

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affirmative action, and compensation for the violation of one's right to life and personal liberty.<sup>4</sup>

Despite the fact that all people, even those incarcerated, are entitled to enjoy their human rights, there are particular problems that need to be addressed with regard to a specific type of prisoners.

## **BASIC RIGHTS**

### **i. Right to speedy trial**

#### **Right to a prompt and public trial**

There is an urgent need for the institutionalization of legal aid services in correctional facilities throughout the nation at this time. There is a critical need for awareness to guarantee that the suffering of inmates is neither hidden from view or ignored. High remand numbers contribute to overcrowding in the nation's correctional facilities. The following problems are well known to exist within the system in relation to prisons and inmates: extreme overcrowding in prisons, lengthy delays in the judicial process, torture and other forms of ill-treatment, lack of attention to health and hygiene, insufficient food, and inadequate clothes<sup>5</sup>. Inadequacies in communication, the standardisation of visits to jails and the management of open-air prisons, and a failure to properly categorise inmates as habitual, casual, juvenile, or political inmates are a few examples of additional deficiencies. The examples are endless. The great majority of people who are incarcerated are low-income, and they lack the means necessary to defend their legal rights.

### **ii. Right to free legal aid - right to appeal**

The provision in the Criminal Procedure Code that allows for an appeal to be made directly from the Sessions Court to the High Court is considered to be an essential element of civilised jurisprudence and a component of fair procedure.<sup>6</sup> Every action or inaction that

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<sup>4</sup> Babasaheb Bhimrao Ambedkar University, LL.M. 203 Unit 4: Rights of Prisoners (2023) (Unpublished course material, Department of Human Rights, Babasaheb Bhimrao Ambedkar University, available at <https://www.bbau.ac.in/dept/HR/TM/LL.M.%202023%20Unit%204.%20Rights%20of%20prisoners.IGNOU.pdf>).

<sup>5</sup> Drishti Judiciary, 'Right to Speedy Trial' (24 July 2024) <https://www.drishtijudiciary.com/current-affairs/right-to-speedy-trial> accessed 24 April 2025.

<sup>6</sup> Drishti Judiciary, *Right to Free Legal Aid*, (October 24, 2024), available at <https://www.drishtijudiciary.com/current-affairs/right-to-free-legal-aid>.

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stifles the right of appeal is considered unfair and unconstitutional, and every move that is taken that makes the right of appeal productive is believed to be mandatory.

### **iii. Right to bail**

In the case of *Babu Singh v. State of Uttar Pradesh*<sup>7</sup>, the Supreme Court of India ruled that denying bail to an accused individual in the absence of legitimate reasons would constitute a violation of his personal liberty in violation of Article 21. According to the decision of the Court, personal liberty under Article 21 includes the right to bail, and the Court's refusal to grant bail would constitute a deprivation of that liberty, which might be permitted in line with the legal framework that has been created.

### **iv. Right against hand-cuffing**

The practise of handcuffing someone has been deemed to be inhumane on its face, making it illogical, excessively severe, and seemingly random at first glance. It has been determined to be in violation of Article 21 as well as unnecessary.<sup>8</sup> The Court ordered the Union of India to establish adequate guidelines in this respect as a result of its decision.

### **v. Right against bar fetters**

In the case of *Sunil Batra v. Delhi Administration*<sup>9</sup>, the Supreme Court of India ruled that any treatment of a human being that violated human dignity, resulted in unnecessary agony, and lowered the status of man to that of a beast would unquestionably be arbitrary and might be called into question under Articles 21 and 14. As a result, it is clear that it would not be appropriate to assign bar fitters to work in the jail for an abnormally extended length of time without giving enough consideration to the safety of the inmates and the safety of the facility.

### **vi. No right to escape from custody**

No matter how extensive or limited the basic right to life and personal liberty that prisoners enjoy under Article 21, they do not have the fundamental freedom to run away from legal custody.<sup>10</sup> The Supreme Court, in the case of *D.B.M. Patnaik v. State of A.P.*<sup>11</sup>, dismissed the contentions and came to the conclusion that they do not have the basic right to flee. A

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<sup>7</sup>*Babu Singh and Ors. v. The State of U.P.*, AIR 1978 SC 527.

<sup>8</sup>*Prem Shankar Shukla v. Delhi Administration*, AIR 1980 SC 1535.

<sup>9</sup>*Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579.

<sup>10</sup>Jain, Riya. "Article 21 of the Constitution of India: Understanding Right to Life and Personal Liberty from Case Laws." *Academike*, Lawctopus, 31 Jan. 2025, <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>.

<sup>11</sup>*D.B.M. Patnaik v. State of Andhra Pradesh*, AIR 1974 SC 2092.

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convicted offender has no righter than anybody else did to make decisions about whether or not guards should be stationed to prevent the escape of other convicts.

vii. Right to write a book

Petitioner Prabhakar Pandurang was held in custody under the Preventive Detention Act, 1950, in the case *State of Maharashtra v. Prabhakar Pandurang*<sup>12</sup>. He authored a book on science while he was being held in prison, and he asked the authorities for permission to send the manuscript of the book to his wife so that she might have it published once he was released. The federal government did not provide approval.<sup>13</sup> Due to the fact that the limitation was not permitted under the preventive detention act of 1950, the court ruled that the denial constituted an infringement on the individual's right to personal liberty. The judge ruled that a person has the right to personal liberty, as outlined in article 21, which includes the ability to create a book and have it published.

viii. **Right against solitary confinement**

In the case of *Sunil Batra v. Delhi Administration*<sup>14</sup>, the petitioner, Sunil Batra, had been given a death sentence by the Delhi Sessions Court, and his appeal against the judgement was now being heard by the high Court. During the time that the appeal was being processed, he was held in custody in Tihar. He grumbled about being held in solitary confinement ever since the moment the Session Court handed down its verdict in his case. Batra argued that the section 30 of the Prisons Act, 1894 did not authorise the prison authorities to impose the penalty of solitary confinement, which was a substantial punishment under sections 73 and 74 of the India Penal Code, 1860 and could be imposed by a court of law on its own. That, it could not be left up to the whims and caprice of the officials at the correctional facility. The reasoning presented by the petitioner was adopted by the Supreme Court, and the court decided that the enactment of solitary confinement on the petitioner constituted a violation of article 21.

ix. **Right against inhuman treatment**

In the case of *Kishore Singh v. State of Rajasthan*, the court ruled that it was a violation of article 21 for the police to adopt measures that were considered to be of a "third

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<sup>12</sup> *State of Maharashtra v. Prabhakar Pandurang Sangzgiri*, (1966) AIR 424 (SC).

<sup>13</sup> *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

<sup>14</sup> *Sunil Batra v. Delhi Administration*, (1980) 3 SCC 488.

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degree<sup>15</sup>. "putting prisoners in bar fetters or putting them in solitary confinement for long periods of time (eight to eleven months) on flimsy grounds like loitering in the prison, behaving insolently and in an uncivilised manner, or ripping of his history ticket, the Court said must be deemed barbaric and against human dignity and must therefore be considered to be in violation of Articles 14, 19, and 21. When addressing on behalf of the court, Justice Krishna Iyer made the following observation: "Human dignity is a clear value of our Constitution and it is not to be bartered away for mere apprehension entertained by jail officials."

#### **x. Right against custodial violence**

The Supreme Court of India, in the case of *Sheela Barse v. State of Maharashtra*<sup>16</sup>, took serious notice of the brutality that was performed on female detainees who were imprisoned in the police lock up in the city of Bombay<sup>17</sup>. The Court emphasised the need of providing legal representation to an accused individual who was unable to pay for it and whose life or personal liberty was in peril as a result of his arrest.

The importance of establishing a mechanism to provide legal assistance to prisoners in jail was brought to the attention of the court by the Inspector General of Prisons for the state of Maharashtra, who was ordered to issue a circular to all of the Superintendents of Police in the state, instructing them to require their subordinates to offer establishments and data to the Legal Aid Committees in order to offer legal help to prisoners who are currently awaiting trial.

#### **xi. Right against delayed execution**

It has been determined that prolonged incarceration in anticipation of the carrying out of a death sentence is unjust, unfair, and irrational, and thus in violation of Article 21. In the case of *T.V. Vatheeswaran v. State of Tennessee*<sup>18</sup>, the appellant was given a death sentence; nevertheless, his punishment was not carried out until eight years after it was handed down. He argued that it would be a grave breach of the basic right granted by Article 21 to take away his life after holding him in prison for 10 years, eight of which were spent in unlawful

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<sup>15</sup> Simran Bali, "AN ANALYSIS OF THE RIGHTS OF PRISONERS" 2 IJRL 1 (2022), available at <https://ijrl.com/wp-content/uploads/2022/04/AN-ANALYSIS-OF-THE-RIGHTS-OF-PRISONERS-.pdf>.

<sup>16</sup> *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 378.

<sup>17</sup> K. Kaviyakannan, "Outlawry of Torture in Constitution of India and International Law," 11 IJRAR 1 (2024).

<sup>18</sup> *T.V. Vatheeswaran v. State of Tamil Nadu*, 1983, AIR 361.

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solitary confinement. He said that this would occur after keeping him in jail for eight years.<sup>19</sup> The Supreme Court agreed with the appellant's argument and came to the conclusion that the only way to right the harm that had been done to him would be to overturn his death sentence.

## HUMAN RIGHTS OF AN UNDER-TRIAL PRISONERS

According to Justice J.S.Verma, the then chairperson, NHRC, more than 70 percent of prisoners of the jails in the country, are under trial and most of them have been under trial for years.

Supreme Court of India in *Sunil Batra Etc. v. Delhi Administration and Ors. Etc.*, observed that under-trials shall be deemed to be in custody, but not undergoing punitive imprisonment. Hence law restricts unnecessary interventions into human rights of undertrial prisoners.

Since an under-trial prisoner faces criminal proceedings while being in prison, it is necessary to ensure that he get complete and fair chance to face such proceedings.<sup>20</sup> His right to fairness of criminal process including fair trial can get compromised if his detention in prison becomes a hindrance to his effective participation in criminal process. From the time he is detained in prison till his release, he may have to prepare for his bail application and process, consult lawyer, appear before courts conducting hearing, etc. These are few of the examples of such criminal process an accused may face while being in prison<sup>21</sup>. These are also legally recognized as „legal rights“ of an accused and hence laws and institutions must ensure its protection<sup>22</sup>. So is also the need to ensure that an accused is provided with all possible opportunities to exercise these rights. Additionally legal services and legal aid to such inmates leads to better guarantee of these rights. Hence the need to ensure that a prison inmate facing trial gets access to legal services and legal aid. Legal services clinics inside prisons hence are also of great importance.

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<sup>19</sup>**SCC OnLine Blog**, 'SC Issues Directions to Tackle Delays in Execution of Death Penalty' (10 December 2024) <https://www.scconline.com/blog/post/2024/12/10/sc-issues-directions-to-tackle-delays-execution-of-death-penalty/> accessed 24 April 2025.

<sup>20</sup> National Human Rights Commission, *Rights of Prisoners* (National Human Rights Commission, 2025).

<sup>21</sup> Madhurima Dhanuka, *Undertrial Prisoners and the Criminal Justice System* (Commonwealth Human Rights Initiative, 2015).

<sup>22</sup> Tata Institute of Social Sciences, *MALE PRISON LEGAL AID* (2025), available at: [https://tiss.ac.in/uploads/files/MALE\\_PRISON\\_LEGAL\\_AID\\_compressed.pdf](https://tiss.ac.in/uploads/files/MALE_PRISON_LEGAL_AID_compressed.pdf) (last visited on April 24, 2025).

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Further production of accused before court can be facilitated even through video conference. This helps an accused to appear before court while being in „judicial custody“ that is, prison. Also, this even eases the prison authorities“ task of transporting under trial prisoners from prison to court.

## **HUMAN RIGHTS OF WOMEN PRISON INMATES & THEIR CHILDREN**

International human rights instruments insist for equal protection of human rights of women. So is also insisted by Indian Constitution. Hence a woman like any male prisoner also has all human rights – including right not be discriminated on the basis on gender.

Though in India a woman is placed mostly in the same prison where male prisoners are detained, yet prison rules require a separate cell for women prisoners. Hence, she should be separately detained and be supervised only by women officers and staff<sup>23</sup>.

Due to the gender related concerns, special care must be taken to protect and promote human rights of women prisoners. According to research finding following problems are faced by women prisoners:

- Women are vulnerable: Generally, Women prisoners come from economically and socially disadvantaged segments of the society. Many have histories of alcoholism and drug abuse. Most of the women prisoners experienced violence or sexual abuse before incarceration.

A woman prisoner also faces various gender specific problems and hence needs more a care in terms of sanitary and hygiene related needs. Their nutrition, health and safety requirements must be of paramount concern for prison administration<sup>24</sup>. Women prisoners emotional and psychological stress is a matter of concern too. Many of them also suffer with stress caused due to fear of social stigma, family separation, etc. Children living in prisons with their mothers who are prison in-mates needs to be taken care of too, including with respect to such children’s health and education needs.

The BPRD’s 2003 Model prison manual makes several suggestions with regard to women prisoners including the following:

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<sup>23</sup> Dolly Biswas, *Human Rights of Women Prisoners in India: A Critical Analysis* (2016) (Unpublished thesis, Mohammad Abdul Bari Institute of Juridical Science, University of Kalyani).

<sup>24</sup> Ananya Pathak, *Human Rights of Female Prisoners in India*, Jus Scriptum Law, Dec. 23, 2023, <https://www.juscriptumlaw.com/post/human-rights-of-female-prisoners-in-india>.

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- When incarcerating female criminals, every effort should be made to segregate them into institutions designed specifically for their gender. Where such arrangements cannot be made, the inmates are to be housed in separate annexes of the jails, with the appropriate safeguards in place. Only female employees will be allowed to work in these institutions and annexes, according to this mandate. All forms of exploitation of female prisoners must be prevented at all costs. Work and treatment plans will be designed specifically for them that take into account the unique requirements they have.
- The current enclosures for women in common jails will undergo renovations to ensure that female inmates will not come into view of male inmates when making their way to and from these enclosures during the process of the renovations. These enclosures will be equipped with a double lock system, with one lock located on the exterior and the other located on the interior.<sup>25</sup> The keys to the interior lock will always be kept by a female guard who is stationed within the enclosure. The institutions and enclosures that house female inmates will be equipped with all of the necessary amenities to cater to their unique requirements, including provisions for segregation, protection, pregnancy, childbirth, and family care; medical attention; education and rehabilitative programming; and so on.
- A woman has a greater need for minerals and protein when she is pregnant or breastfeeding than she does at other times. The additional protein can be achieved by exchanging a portion of the cereal portion of the diet for a greater quantity of milk, fish, meat, and eggs; in the case of vegetarians, this can be accomplished by placing a greater emphasis on milk and milk products. This would also guarantee the adequate additional supply of minerals that is required<sup>26</sup>. Women who are pregnant or nursing require an additional 3100 calories per day.
- If the pregnancy of a women prisoner is found out by the Medical officers, it is necessary that this matter be come up to the notice and attention of the Inspector General of Prison soon. The Inspector General of Prisons must then seek the order of

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<sup>25</sup>Ministry of Home Affairs, *Prison Manual A 2016* (2016)[https://www.mha.gov.in/sites/default/files/2024-12/PrisonManualA2016\\_20122024.pdf](https://www.mha.gov.in/sites/default/files/2024-12/PrisonManualA2016_20122024.pdf)

<sup>26</sup> National Institute of Public Cooperation and Child Development (NIPCCD), *Report on Conditions of Women in Detention in the State of Punjab*, (NIPCCD, 2001) [http://www.nipccd-earchive.wcd.nic.in/sites/default/files/PDF/Report\\_On\\_Conditions\\_of\\_Women\\_in\\_Detention\\_in\\_The\\_State\\_Of\\_Punjab%20\(1\).pdf](http://www.nipccd-earchive.wcd.nic.in/sites/default/files/PDF/Report_On_Conditions_of_Women_in_Detention_in_The_State_Of_Punjab%20(1).pdf) (last visited on April 12, 2025).

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the Government to either commute the death sentence or postpone the execution until the woman has given birth to the child. If the commutation is not granted, the woman will be executed. Before the directives from the government have been obtained, the execution will not take place. When a woman prisoner who has been condemned to death announces that she is pregnant, and the Medical Officer is unable to instantly verify whether or not the statement is true, the Medical Officer is required to explain the amount of time that will be necessary for him to be able to satisfy himself on the subject. It is imperative that the Superintendent promptly report the incident to the government and request further action. When a woman prisoner's execution of a death sentence has been suspended due to either of the circumstances described above, the sentence shall not afterwards be carried out without the express order of the Government, which the Superintendent shall request for. In this case, the execution of the death sentence shall not occur.

- In most circumstances, female officers of the law should accompany female detainees who are awaiting trial. They should be escorted by a female Prison Guard in the event that there are no female police officers available<sup>27</sup>. It is recommended that women who are awaiting trial be transported in a separate mode of transportation whenever it is at all possible to do so. Women on staff will be responsible for supervising female inmates who are currently awaiting trial.
- After their release from jail, women who are currently the subjects of a criminal proceeding should be returned to the custody of their families if at all possible. In the event that this is not feasible, the freed woman prisoner who is currently awaiting trial should be escorted by a female member of the police or the prison security staff to the closest station or bus stand.

## HUMAN RIGHTS OF JUVENILE INMATES

Like adults, a juvenile prison inmate too is entitled to enjoy all human rights. Additionally it is essential to ensure that he is separated from adult prison inmate<sup>28</sup>. Further his right to

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<sup>27</sup>Law Commission of India, 135th Report on Women in Custody (1989).

<sup>28</sup> UNHCR, United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, (1990), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-protection-juveniles-deprived-their-liberty> (last visited April 24, 2025).

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education and prison authority's duty to facilitate his reformation is paramount in the context of a juvenile prison inmate. Following rules must be applied in case of juvenile inmates:

- The Children who are in detention must be handled in a manner that upholds their sense of dignity and worth, makes it easier for them to be readmitted into society, represents their highest and best interests, and takes into account any special requirements they may have.
- The use of physical punishment, the death penalty, or life sentences without the chance of parole are not permitted for children under any circumstances.
- Children who are being held in custody have to be kept in a separate area from adult inmates. Juveniles who are accused of a crime must be isolated from adults and brought to trial as quickly as is humanly possible.<sup>29</sup>
- Extraordinary measures must be taken to ensure that detained children are able to receive visits from and maintain contact with members of their families.
- The imprisoned child's right to privacy must be respected, and it is required that all records be stored in a secure and comprehensive format while also being kept under wraps.
- Children and teenagers who have reached the age at which they are required to attend school have the right to an education as well as to vocational training.
- It is against the law to carry a weapon into a facility that houses children or teenagers.
- Disciplinary procedures must be structured to instill in children a sense of fairness, self-esteem, and respect for human rights, as well as regard for the dignity of the child. - Procedures must also recognise the kid as an individual.
- It is required that parents be informed whenever a juvenile is admitted, transferred, released, becomes ill, gets injured, or passes away.

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<sup>29</sup> Bureau of Police Research and Development, *Handbook on Prisoners' Rights and Obligations*, Ministry of Home Affairs, Government of India, 2022, available at <https://bprd.nic.in/uploads/pdf/Hand%20Book%20on%20prisoners%20rights%20and%20obligation.pdf>.

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