**RIGHT TO HUMAN DIGNITY: THE PRISONER PERSPECTIVE**

By: -

**SHRIYA KHURANA**

3nd Yr, BA, LL.B.

BENNETT UNIVERSITY

Mob.: - 9717978844

E-mail: sk7948@bennett.edu.in



www.probono-india.in

**March20, 2021**

**ABSTRACT**

“***All human beings are born free and equal in dignity and rights. They are endowed with reason conscience and should act toward one another in a spirit of brotherhood***”

An excerpt of Article 1 of the Universal Declaration of Human Rights.

This article reiterates our truth that all human beings are equal and free in pride and rights. We’re worth the same and have the same rights as everyone else. The whole purpose of human rights is for humans to be respected by each other not because they have to, but because they are human. This particular article doesn’t stand for human rights it stands for humanity.

From the moment we are born we get these rights just because we simply exist, we have opposable working thumbs, a complex brain and other specifications which make us ‘human’; the point is being human is easy but on the other hand acting human is an entirely different thing.

These set of rights that are guaranteed to every individual are not imperative to us because they are about equality and respect, but because they define who we are and our righteous position in this society, because in the words of sir Nelson Mandela *‘To deny people their human rights is to challenge their very humanity’*. Be it the domestic context or the global one the importance of right to dignity has been highlighted ever since the dawn of civilisation due to the moral connotation attached with it. Dignity can be construed as the moral respect a human being owes to another one because of equal composition from which they origin.

When it comes to prisoners upholding their dignity becomes quite a challenge because of the perception that a convicted prisoner is a ‘bad’ person or does not deserve the respect guaranteed to all human beings. Law and morality often refute this statement because the generic accepted revelation is that the world exists in colour instead black and white. The idea nothing can be compartmentalised as an absolute wrong or right, our judgement however often falls short of this theory.

India is the largest democracy and has been battling against all odds of tyranny since ages.Being a secular country the closest thing we happen to have as unified holy book is the Constitution of India 1950, which upholds dignity above all. The enforcement of the same has attracted both appreciation as well as criticism an example which is often viewed in the black and white light is that of Ajmal Kasab. The government incurred an expenditure of 29 crores to keep him safe and healthy in prison for 4 years, in hindsight the scenario seems ambiguous open to criticism however we should also appreciate the dignity that was endowed upon him while majority of India had vilified him rightly or otherwise.

Dignity is not an option it is a right that we all deserve regardless of our societal portfolios.

**THE GRAVE REALITY**

**One Aspect of the Coin**

The prisons on average in India have an occupancy rate of 136 percent, the apparent overcrowding has significantly brought down the living quality of the prisoners. There are no substantial measures for medical aid, mental aid and so on. The scenario marking the status quo views an abrupt surge in police brutality, sexual abuse, fights between inmates and so on. The situation often goes uncovered however there have reports and articles covering the ambit of the same. A recent article talked about non-consensual gang rape of inmates as well as unwilling prostitution rings running in prisons.

In 2019, Citizens for Peace and justice took the initiative to compile stories of sexual horrors that took place within the dingy cells at the hands of the authority as well as fellow inmates. It includes stories of juveniles, old women as well as highlights the apparent social hierarchy prevalent in the prisons where Adivasis often face aggravated abuse because of their status.

The Commonwealth Human Rights Initiative hereinafter referred to as CHRI published a report based on the living conditions observed in prisons. The court in the case of *Re: Inhuman Conditions in 1382 prisons,* directed CHRI to publish a detailed report on the livelihood of the prisoners, while interacting with them it was discovered that more 40 percent of the inmates have faced some sort of abuse during their stay at a given prison. Abuse here includes but is not limited to water boarding, sexual assault, electric shocks, violence at the hands of the police itself. The report really brought out the dystopian reality engulfing the convicts. It was also noted that the facilities provided were abysmal and inhumane prima facie.

In yet another study carried out by human Rights Watch, the shocking reality of prison conditions was brought out which verbatim explained the social structure and its connotation along with authoritarian abuse that often goes unreported. The report segregated classes of prisoners based on their background and the crime so committed, in accordance to that it went on to list out forms of torture inflicted upon them for years resulting in permanent physical and psychological damage.

The Nirabhaya rape case managed to shake the entire nation to the core, oneof the convicted rapists in this case went on to commit suicide while in jail, using shoelaces. The incident took place at midnight and coincidently neither the two roommates nor the prison guards happened to stumble upon the same. There was no substantive inquiry behind it however his father alleged that forceful sodomy had taken place inside the jail.The problematic framework of thought here is that majority of population dismissed the entire incident using a simple logic, ‘You reap what you sow’. People often construe this as karma or even something that the person deserved therefore it is integral to go back to the basics and assert that there exists a system which decides and adjudicates upon punishments and our opinions are often irrelevant.

 Therefore, any act we do in the name of karma is an injustice no smaller than the previous one. Committing a crime does not make a person any less human and in no way equates with stripping that person of their dignity and respect. The entire cause of human rights origins from dignity and therefore trampling the same questions the very worth of the titular rights that we happen to harbour.

**THE CAMOUFLAGED IDEALOGY**

The prevalent notion when it comes treatment of prisoners is looking down upon them. The problem behind this scenario is rather than looking at a person as individual we dehumanise them by allotting numbers as their forward identity. The system of prisons came about for a multitude of reasons, one prevalent ideology however remains retribution, scope for change. It is imperative for us to treat them as humans rather than minimising their personality down to the crime committed by them.

The utopian perspective regards dignity as a given in the society, it is a right so basic that no person should ever have to fight for. The parallel however is quite contradicting in nature as observed through the multiplicity of reports and news pieces recorded above.

However there exists a positive side towards the institutionalised system of prisons often reflected in the form of retribution. Undoubtably there exist cases of torture however at the same it is important to not the effort made by the state to curb crime and improve the quality life within the system of prisons.

**A TRYST WITH DIGNITY: The State**

In the case of Sunil Batra V. Delhi Administration, it was held that mere conviction shall not result in vaporisation of fundamental rights. The court went on to state that prions exist to institutionalise criminals rather than afflicting a careless penitentiary system.

When in jail, it is the responsibility of the state to ensure than no prisoner is deprived of their fundamental rights and if so happens, the scenario fall shall in the ambit of Article 32 of the constitution.

In yet another case of Shyamsunder Trivadi V. State of Madhya Pradesh, the court reiterated the seriousness behind custodial deaths. Section 114 B was added to the Indian Evidence Act 1872, that placed the onus on the custodial officer to prove that no custodial torture took place. The idea behind the same was to introduce a sense of accountability in the otherwise morally ‘corrupt’ system.

Similarly, in the case of Nilabati Behera V. State of Odisha, the court established that the state owes accountability towards the prisoners and is therefore tasked with upholding their fundamental rights. The case was of custodial death and the state was held responsible along with the police officers against whom charges were levied with the purpose of serving justice.

The Prison’s Act 1894 is the first and foremost legislation that acknowledged the rights of the prisoners in India, ever since then several new statues have come up in order to build upon the foundation. Some of the vital rights mentioned in the statue are basic hygiene, safety, medical aid, as well as the act encloses stringent punishments in cases of ill treatment of the prisoners. This therefore marks one of the most supreme achievements in the field of prison rights.

There exist multiple instances of judicial activism against the cause of prison abuse and their also multiple statutes intricately dealing with the same.

With the aim of reducing societal recidivism and bringing about a semblance of the utopian ideology prisons now offer full-fledged vocation and educational training with the aim of adding worth to a person including school level education, graduate and post graduate course as well as offering courses based on specific skills such as weaving, computer skill and so on.

The 2003, Model Prison Manual attested to need of these additional facilities with the aim of benefiting the prisoners as well as upholding their intrinsic rights.

There lost lose job structures which aim to bring the prisoner financial independence post their release and therefore helping them start over in life.

The Tihar acts as a sort inspiration towards the wave dignity with setting up small factories as well as marketing and selling the products made by the prisoners in order to help them raise money.

The Balasore District Jail located in Odisha is teaching convicts the skill of organic farming which a step towards creating a stable livelihood as well as furthering the sustainability movement.

Much like these exist several prisons all across dedicated towards bringing about a change and furthering the cause of humanity.

**CONCLUSION: THE WAY FORWARD**

In the present scenario the ‘good’ and ‘bad’ clash that is there an abundance of positives as well as negatives when it comes to the prison system. Therefore, to begin with it is important to acknowledge and at the same work towards reforming the bad

**Reforming the Bad**

The first step forward is to sensitivise the population at large in order to do away with the notion of ‘inhumane’ when it comes to convicted prisoners. There is also a pressing need to acknowledge the prison abuse and constant loop of erasing the very essence of a prisoner. Several reports mention varied statistics each more gruesome than the previous all pointing towards the invisible reality of inhumanity portrayed by the authority towards the prisoners.

Dignity is uniform irrespective of external filters that people often view it with, it is unfair and illogical to define a human being by their one act while erasing the fact that at the end of the day we are all made up of the same.

Therefore, the state in its totality has come a long way when it comes to prison reforms in general through a series of judicial precedents, state-initiated programmes, governing statutes, NGOs’ and so on. Now the onus falls on us to recognise the wrong and work towards it.

**REFERENCES**

1. BUREAU, ET. Rs 31.40 crore spent on Ajmal Kasab's protection. *The Economic Times* [online]. 19 December 2012. [Accessed 30 January 2021]. Available from: https://economictimes.indiatimes.com/news/politics-and-nation/rs-31-40-crore-spent-on-ajmal-kasabs-protection/articleshow/17677138.cms
2. RAHMAN, Farah. Rape behind prison bars. *The Mint* [online]. 12 March 2013. [Accessed 30 January 2021]. Available from: https://www.livemint.com/Opinion/BzOQYSLEsQ9YrXmcbipwrN/Rape-behind-prison-bars.html
3. RAHMAN, Farah. Rape behind prison bars. *The Mint* [online]. 12 March 2013. [Accessed 30 January 2021]. Available from: https://www.livemint.com/Opinion/BzOQYSLEsQ9YrXmcbipwrN/Rape-behind-prison-bars.html
4. rep. Human Rights Watch, 1991. Library of Congress Catalog Number 91-71916.
5. SAHA, Kausaumi. Prisoners' Educational Reforms in India: An Institutionalised Insufficiency. *SPRF* [online]. 14 July 2020. [Accessed 5 February 2021]. Available from: https://www.sprf.in/post/prisoners-educational-reforms-in-india-an-institutionalised-insufficiency
6. SATALVAD , Teesta. Women prisoners recount Jail Horror Stories. *Citizens for Justice and Peace* [online]. 31 October 2019. [Accessed 30 January 2021]. Available from: https://cjp.org.in/women-prisoners-recount-jail-horror-stories/
7. Shaoping, Gan, and Zhang Lin. “Human Dignity as a Right.” Frontiers of Philosophy inChina, vol. 4, no. 3, 2009, pp. 370–384. JSTOR, www.jstor.org/stable/40343932. Accessed 30 Jan. 2021.
8. SHARMA, Aditya. Physical Abuse, Electric Shocks and Torture: What a Supreme Court Ordered Study Found in Haryana Jails. *News 18* [online]. 28 August 2019. [Accessed 30 January 2021]. Available from: https://www.news18.com/news/india/physical-abuse-electric-shocks-and-torture-what-a-supreme-court-ordered-study-found-in-haryana-jails-2287125.html
9. SHEKHAR, Raj. Rampant sexual abuse is a real nightmare in Tihar: Delhi News - Times of India. *The Times of India*[online]. 11 June 2015. [Accessed 30 January 2021]. Available from: https://timesofindia.indiatimes.com/city/delhi/rampant-sexual-abuse-is-a-real-nightmare-in-tihar/articleshow/47621742.cms
10. TIHAR JAIL , Initiative. TJ's  "REDIFINING LIFE BEHIND BARS". *Welcome to TJ | Tihar Jail Products* [online]. 2004. [Accessed 5 February 2021]. Available from: http://tihartj.nic.in/tj.asp
11. Universal Declaration of Human Rights. *United Nations* [online]. 1948. [Accessed 30 January 2021]. Available from: https://www.un.org/en/universal-declaration-human-rights/

**CASES CITED:**

Sunil Batra V. Delhi Administration, 1978 AIR 1675, 1979 SCR (1) 392

* Shyamsunder Trivadi V. State of Madhya Pradesh, (1995 SCC (crl.) 715)
* Nilabati Behera V. State of Odisha, 1993 AIR 1960, 1993 SCR (2) 581
* Re: Inhuman Conditions in 1382 prisons, WP(C) 406 / 2013

**ABOUT THE AUTHOR**

Shriya Khurana is a third-year law student studying at Bennett University with a fascination and vehement sense of respect and admiration towards all aspects of law. She has volunteered at several Non Profit Organisations and believes in the ideals of justice, equity and good conscience. In the future she plans to pursue International Human Rights in order to further the cause of humanity. The author has a Specific interest in human rights and lives by the quote: