

PRISONERS' RIGHTS



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TABLE OF CONTENTS:

INTRODUCTION.....3.

I. PRISON.....4.

II. PRISONS AND PRISONERS’ RIGHTS: AN OWERVIEW.....4 – 5.

III. HISTORY OF PRISONERS’ RIGHTS AND THE HANDS-OFF DOCTRINE.....5.

IV. HUMAN RIGHTS

4.0. PUNISHMENT.....6 – 7.

4.1. NATIONAL AND INTERNATIONAL INSTRUMENT.....7.

V. PRISONERS’ RIGHTS

5.0. THE RIGHT OF FREE SPEECH.....7.

5.1. THE RIGHT OF FREEDOM OF ASSOCIATION.....8.

5.2. THE RIGHT OF ACCESS TO COURT.....8.

5.3. THE RIGHT TO EQUAL PROTECTION UNDER THE LAW.....8 – 9.

5.4. THE RIGHT TO PRAVICY.....9.

5.5. RIGHTS IN CONFLICT.....9.

5.6. THE RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNUSHMENT.....9 – 10.

5.7. RIGHTS OF PROBATIONERS AND PAROLEES10.

5.8. RIGHTS UPON RELEASE.....10 – 11.

VI. CUNSTITUTIONAL RIGHTS

6.0. HUMAN CONDITIONS.....11

6.1. PRETRAIL.....11

6.2. DUE PROCESS.....11

6.3. PAROLE.....12

6.4. EQUAL PROTECTION.....12

CUNCLUSION.....13

REFERENCES.....14 - 1

INTRODUCTION

The subject chosen deals with two important and related concepts “Prisoner’s rights” and “Human Rights.” This research seeks to explore more into this relationship. Do prisoners have a human rights? What Rights Should Be Taken Away? Why we have to support prisoners rights? Should Constitutional rights apply for prisoners? Many people, including high ranking political leaders, sometimes argue that prisoners don’t have or should not be allowed to enjoy their human rights.

When an individual commits a crime the legal system prosecutes the criminal and ultimately incarcerates him. Prisoners are sent to prison or jail because they committed a crime, something that was considered unacceptable and wrong in society. Therefore, they are sent to prison or jail to pay for what they did, to be punished. However, a lot of these prisons and jails that they are being sent to are made to be too comfortable and too accommodating. Prisoners are being entertained rather than being reformed. They are entitled to the hypocrisy of programs such as arts & crafts, music, television, occasional live performances, and leisure sports. Along with these activities prisoners are entitled to programs such as education and trade instruction. Jail and prison may not exactly be the greatest place to some, but to many of the inmates, it is considered a better alternative than some other punishment. ¹

The lack of legal status began in the early days and well into the modern era as well into the days of the penitentiary. Back in the early days if a person was convicted of a crime they were then know as an outlaw and also became a dead man in the eyes of the law. They were no longer considered a member of society, therefore; they have no rights at all. A felon had no commonly accepted legal status and to the law they did not care what happened to the person even if it was death. Now a days when a person in convicted of a felony they are many times sent to prison and deprived of their liberties but are still entitled to their basic human rights. Many people now a day’s wouldn’t mind that the law went back to the old day style (taking away all the convicted person rights) but the convicted person is human/ U.S Citizen therefore they are entitled to their rights. Even if one was not a U.S Citizen he or she should be treated with respect and not a stray off the street.

Beginning in the 1960s federal courts responded to prisoner lawsuits alleging poor treatment and many other poor conditions within the prison. Such as the prison being faced with overcrowding, violence, poor food and medical care, and abusive treatment by guards, the federal courts placed many state prison systems under their control. The courts mandated that state legislatures appropriate money to improve and expand prison facilities (Prisoner’s Rights, 2002). Prison health care before the reform era was inconsistent and often “shockingly substandard,” in the words of law professor Sheldon Krantz (Corrections and Prisoners). The Eighth Amendment was created in order to allow the convicted to have his or her rights. The Eighth Amendment to the Bill of Rights of the U.S. Constitution contains these provisions: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments imposed.”²

I. PRISON

A prison, penitentiary, or correctional facility is a place in which individuals are physically confined or interned and usually deprived of a range of personal freedom. Prisons are conventionally institutions, which form part of the criminal justice system of a country, such that imprisonment or incarceration is a legal penalty that may be imposed by the state for the commission of a crime. In popular parlance of many countries, the term jail is considered synonymous with prison. There are various types of prisons depending upon the inmate population of the prison such as those exclusively for adults, children, female, convicted prisoners, pre-trial detainees and mentally ill prisoners only. In this research paper, “prisons” refer to the correctional facility for adults only. ³

II. PRISONS AND PRISONERS’ RIGHTS: AN OVERVIEW

Federal and state laws govern the establishment and administration of prisons as well as the rights of the inmates. Although prisoners do not have full Constitutional rights, they are protected by the Constitution's prohibition of cruel and unusual punishment (see Amendment VIII). This protection requires that prisoners be afforded a minimum standard of living. Prisoners retain some other Constitutional rights, including due process in their right to administrative appeals and a right of access to the parole process. ⁴ The Equal Protection Clause of the 14th Amendment has been held to apply to prison inmates. Prisoners are therefore protected against unequal treatment on the basis of race, sex, and creed. Additionally, the Model Sentencing and Corrections Act provides that a confined person has a protected interest in freedom from discrimination on the basis of race, religion, national origin, or sex. Prisoners also have limited rights to speech and religion.⁵

State prisoners have no rights to particular classifications under state law. Courts are extremely reluctant to limit the discretion of state prison officials to classify prisoners. (Classification, as it is used here is meant to describe the custodial classification of a prisoner once he or she is convicted -- i.e.: maximum vs. minimum security, solitary confinement, etc.)

Congress has given federal prison officials full discretion to control prisoner classification as affecting conditions of confinement. Generally, such matters are left to the control of the Federal Bureau of Prisons.

Courts tend to give deference to prison officials regarding prisoners' rights. So long as the conditions or degree of a prisoner's confinement are within the sentence and not otherwise violative of the Constitution, the due process clause does not require judicial oversight. For prison regulations that do impinge on inmates' constitutional rights, the strict scrutiny test does not apply. Rather, the rational relationship test is used (the lowest level of judicial scrutiny -- the

test is whether there is a rational relation to a legitimate state interest).⁶

III. HISTORY OF PRISONERS' RIGHTS AND THE HANDS-OFF DOCTRINE

The hands-off doctrine dominated thinking about correctional law in America during the 19th century. American courts regarded inmates as “slaves of the state.” Judges believed prisoners had no rights because they had forfeited them as a result of their crimes, and judges didn't interfere with the administration of correctional institutions because they didn't want to violate the principle of separation of power (in other words, the courts didn't want to interfere with the authority of the executive branch to administer prisons).⁷

During the 1960s and 1970s, the courts moved away from the hands-off doctrine and acknowledged that courts have a duty to resolve constitutional claims of prisoners. The assertiveness of Black Muslim prisoners in making claims upon the courts and the activist Warren Court's commitment to protecting the rights of minorities, including persons accused of crimes and persons convicted of crimes, caused this shift. In addition, several legal developments also led to the temporary demise of the hands-off doctrine.⁸

In *Monroe v. Pape* (1961)⁹, the U.S. Supreme Court ruled that citizens could bring Section 1983 suits against state officials in federal courts without first exhausting all state judicial remedies. Section 1983 of the Civil Rights Act of 1871, which imposes civil liability on any person who deprives another of constitutional rights, became a vehicle inmates could use to challenge the constitutionality of the conditions of prison life. In another significant case, *Robinson v. California* (1962)¹⁰, the Court extended the Eighth Amendment's prohibition against cruel and unusual punishment to the states.

Today, the Court recognizes that prisoners do have certain rights. At the same time, however, the Court holds that prisoners do have fewer rights than free citizens because taking away rights is a legitimate punishment and because the restriction of rights is necessary to maintain security in prisons. The current trend is back to the hands-off doctrine, with the Rehnquist Court granting correctional officials considerable discretion to decide what restrictions should be placed on inmates.¹¹

IV. HUMAN RIGHTS

4.0. PUNISHMENT

Why punish an individual? The most common answer is because someone has done something wrong. Although this response may seem sufficient at face value, theories underlying the purposes of punishment are much more complex. Punishment and human rights do not go hand in hand. They are two faces of the same coin. However, judicial punitive action is present across all the countries. Punitive action is been justified on various grounds against the human rights cry.

One of the well known controversies is ‘death penalty’ vs. ‘human rights’ In India this issue has been settled at the judicial level and justification of judicial execution has been granted.¹² In *Bachan Singh v. State of Punja*, the Supreme court, by a four-to-one majority verdict ruled that the death penalty is constitutionally valid, and does not constitute an “unreasonable, cruel or unusual punishment”. It was also observed that acceptance of the United Nation’s “International Covenant on Civil and Political Rights” by India does not affect the constitutional validity of the death sentence. The death penalty is thus considered to be a deterrent to serious crime. India is also not the signatory for torture convention. Four general theories of punishment employed all over the world are: a)retribution, b) deterrence, c) rehabilitation, and d) incapacitation. ¹³

The concept of ‘retribution’ can be traced to the Latin word “retribo“, which means “I pay back.” The theory of retribution involves the use of punishment in response to a law violating act simply because the offender deserves it. This philosophy can be summarized by the belief that an individual causing harm should be harmed. Under the law of *lex talionis*, equal and exact retribution was exacted as demonstrated in the words of the Hebrew scripture, “an eye for an eye, a tooth for a tooth, an arm for an arm, a life for a life”.

Under the theory of ‘deterrence’, punishment is imposed to deter or prevent the commission of future criminal acts. The concept of deterrence involves both specific and general deterrence. The theory of specific deterrence holds that punished individuals are less likely to re off end if there are imposed sanctions on their law-violating behavior. The theory of general deterrence proposes that by holding an individual accountable for his or her illegal actions, other members of the general public will also be less likely to offend because of their fear of legal consequences.

The ‘rehabilitative’ theory of punishment involves a philosophy that individuals are incarcerated so that they have an opportunity to learn alternative behaviors to curb their deviant lifestyles. Corrections, therefore, is a system designed to correct those traits that result in criminal behavior. The rehabilitative model argues that the purpose of incarceration is to reform in mates through educational, training, and counseling programs.

Under the ‘incapacitation’ principle, individuals are prevented from committing further criminal acts against free citizens through detention in a secure environment. A sentence of life without the possibility of parole is an extreme form of incapacitation. The ultimate form of incapacitation is the imposition of the death penalty. ¹⁴

4.1. NATIONAL AND INTERNATIONAL INSTRUMENT

The Constitution of India confers a number of fundamental rights upon citizens. The Indian State is also a signatory to various international instruments of human rights, like the Universal Declaration of Human Rights which states that:

“No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment”¹⁵

Also important is the United Nations Covenant on Civil and Political Rights which states in part:

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”

There are many United Nations codified standards of treatment for prisoners across different economic, social and cultural contexts in a number of documents. These concern themselves with ensuring those basic minimum conditions in prisons which are necessary for the maintenance of human dignity and facilitate the development of prisoners into better human beings.¹⁶

V. PRISONERS’ RIGHTS

5.0. THE RIGHT TO FREE SPEECH

The First Amendment provides in part that “Congress shall make no law ... abridging the freedom of speech.” Since 1970, the federal and state courts have extended the right of freedom of speech and expression to inmates, requiring correctional administrators to justify restrictions on these rights. ¹⁷ In *Procunier v. Martinez* (1974), prisoners challenged the constitutionality of state regulations covering censorship of prisoner mail on the grounds that they violated the prisoners' free-speech rights. One rule banned letters containing inmates' criticisms of prison conditions. Striking down the state regulations as unconstitutional, the Supreme Court set forth two requirements for future efforts to regulate communications of prisoners. First, restrictions on speech must be justified as being necessary for maintaining security or some other substantial governmental interest. Second, the rules can't stop inmate communications any more than is necessary to protect important governmental interests.¹⁸

5.1. THE RIGHT TO FREEDOM OF ASSOCIATION

Another right protected by the First Amendment is freedom of association. In *Jones v. North Carolina Prisoners' Labor Union* (1977), the Supreme Court upheld the constitutionality of restrictions on the activities of a prisoner labor union.

The right to freedom of religion

Another First Amendment right upon which much prisoners' litigation has concentrated is freedom of religion. The Supreme Court has declared that inmates do have the right to freedom of religion and that prison authorities must provide inmates opportunities to practice their religious faith. 19

5.2. THE RIGHT OF ACCESS TO THE COURTS

The right of access to the courts is the most important of all prisoners' rights. Civil rights suits filed under Section 1983 of the Civil Rights Act of 1871 have served as the main way for inmates to enforce their constitutional rights. Victories in such lawsuits have produced the right to receive assistance from a jailhouse lawyer (an inmate who provides legal advice to other inmates) and the right to be afforded access to adequate law libraries .

The Fifth and Fourteenth Amendments guarantee due process to all citizens. How much process are inmates due in disciplinary proceedings? In *Wolff v. McDonnell* (1974), the Supreme Court held that when inmates may lose good time, due process demands that certain procedures be in place so inmates are not arbitrarily deprived of their freedom. Inmates have:

- The right to be notified of charges against them before their disciplinary hearings.
- The right to call witnesses to testify at their hearings.
- The right to assistance in presenting a defense (which doesn't, however, include the right to an attorney).
- The right to a written statement explaining the evidence used in reaching a disposition.
- The right to an impartial decision maker. 20

5.3. THE RIGHT TO EQUAL PROTECTION UNDER THE LAW

The Fourteenth Amendment guarantees all citizens "equal protection of the laws." The most common equal-protection lawsuit by inmates claims racial discrimination. Claims alleging gender-based discrimination tend to center on fewer educational and work opportunities afforded to female as compared to male inmates. Courts have ruled that facilities, programs, and privileges provided to female inmates must be substantially equivalent to those provided for

5.4. THE RIGHT TO PRIVACY

Prisoners have no Fourth Amendment right to freedom from unreasonable search and seizure. Prison officials can monitor prisoners' movements throughout prisons, watch prisoners in their cells, and conduct warrantless searches inside prisons. In *Hudson v. Palmer* (1984), the Supreme Court ruled that prisoners have no reasonable expectation of privacy in their prison cells entitling them to Fourth Amendment protection. The Court has denied prisoners any rights to privacy because of the need for prison authorities to have access to cells and prisoners' personal belongings for security reasons.

5.5. RIGHTS IN CONFLICT

Some litigation in the right-to-privacy area relates to questions about correctional officers of a gender different from an inmate's searching or observing that inmate in the nude. This type of lawsuit is difficult because it involves conflicting rights and interests—inmates are concerned about their privacy; correctional officers, both male and female, have a right to equal employment opportunities; and prison officials have an interest in making prisons safe and secure. The courts have decided that prisoners' right to privacy is not violated by inadvertent or infrequent observation of a nude inmate by correctional officers of the opposite sex but that strip searches can't generally be performed by such a correctional officer. 22

The courts have wavered in their support of equal employment opportunities. In *Dothard v. Rawlinson* (1977), for example, the Supreme Court upheld a regulation prohibiting women from working in maximum-security prisons for men in Alabama. The Court found that this ban on employment of women was permissible because of the risk that male prisoners would sexually assault female correctional officers. In his dissent, Justice Marshall criticized the Court's paternalistic attitude toward women and commented that “once again, the pedestal upon which women have been placed has, upon closer inspection, been revealed as a cage.” In Marshall's view, women should be allowed to decide for themselves where they want to work and if they are willing to accept working in jobs with higher risks. 23

5.6. THE RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT

The Eighth Amendment prohibits cruel and unusual punishment. Eighth Amendment lawsuits claim problems in medical care, the use of force by correctional officers, the failure of prison officials to protect inmates from attacks by other inmates, and improper conditions of confinement. *Estelle v. Gamble*, 429 U.S. 97 (1976), was a case decided by United States Supreme Court that held that in order to state a cognizable Section 1983 claim for a violation of

Eighth Amendment rights, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. Though the court credited Estelle's complaint that doctors had failed to provide appropriate care, it held that medical malpractice did not rise to the level of "cruel and unusual punishment" simply because the victim is a prisoner. 24

A common complaint relates to prison crowding. The Court has declared that the double-celling of prisoners is not per se unconstitutional. In *Bell v. Wolfish* (1979), the Court declared there is no right of "one man, one cell." Sometimes an inmate sues correctional officials, alleging they have used excessive force. In these cases, the courts consider factors such as the need to use force, the seriousness of the injuries caused by the use of force, and whether or not inmates and staff were in danger. 25

5.7. RIGHTS OF PROBATIONERS AND PAROLEES

In *Morrissey v. Brewer* (1972), the Supreme Court identified the rights of parolees facing parole revocation. Among the procedural rights of parolees in such a situation are the following:

- written notice of the claimed violations of parole;
- disclosure to the parolee of the evidence to be used against him;
- opportunity to be heard in person and to present witnesses and documentary evidence;
- the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation);
- a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and
- a written statement by the fact finders as to evidence relied on and reasons for revoking. 408 U.S. at 789, 92 S.Ct. at 2609. 26

5.8. RIGHTS UPON RELEASE

When inmates are released from prisons, legal obstacles block their successful reentry into society. Ex-felons are often, for example, prohibited from voting, working in certain jobs, and serving on juries. A punishment known as "civil death" involves the termination of all civil rights of convicted felons. No state uses civil death today.

Voter disenfranchisement is the greatest civil penalty imposed on ex-felons. According to a study completed in 1998, 14 percent, or one in seven, of the 10.4 million black males of voting age in the United States are either currently or permanently barred from voting due to a felony conviction. This disenfranchisement is a direct effect of racial disparity in incarceration. Currently, all but four states prohibit inmates from voting while they are in prison. In 13 states, most, although not all, felony convictions result in the loss of voting privileges for life.

The tradition of voter disenfranchisement dates back to just after the Civil War when Southern conservatives gathered at state constitutional conventions. Representatives adopted an array of voting barriers, including literacy and property tests and poll taxes. The purpose of voting restrictions was to disenfranchise as many blacks as possible without violating the Fifteenth Amendment. While a century has passed since these conventions, criminal disenfranchisement remains as the only substantial voting restriction of the era still in effect. The cumulative effect of such large numbers of persons being locked out of the electoral process is to dilute the political power of the African-American community. 27

VI. CONSTITUTIONAL RIGHTS OF PRISONERS

6.0. HUMAN CONDITIONS

The 8th amendment of the Constitution protects inmates of American prisons from cruel and unusual punishment, giving prisoners the right to demand humane conditions. This means that prisoners must be allowed access to toilets, fed regularly and be housed in facilities that are not infested with disease and pests among other things. This same amendment protects prisoners from being abused either physically or sexually.

6.1. PRETRIAL

Inmates who have not yet been given a chance to prove their innocence are given special protection. The 8th amendment requires that inmates awaiting trial not be required to pay excessive bail. In addition to this, inmates not yet convicted of a crime cannot be treated as though they are guilty of the crime of which they are being accused, and as with all inmates, prisoners awaiting trial must be housed in facilities with humane conditions.

6.2. DUE PROCESS

The 5th and 14th amendments of the Constitution guarantee prisoners the right of due process of law. This means that inmates awaiting trial must be given a relatively speedy trial, an unbiased trial, the right to be represented by an attorney despite financial constraints and the right to present evidence, call witnesses and cross-examine the prosecution's witnesses. The right of due process also applies to prisoners already convicted of crimes when they file administrative appeals.

6.3. PAROLE

All prisoners, except those given a life sentence without the possibility of parole, have the right of access to the parole process. Parole is the process by which prisoners are released from incarceration conditionally, and then monitored by a parole officer. Paroled inmates must comply with the conditions of their parole or risk being sent back to prison. Inmates are selected for this process by the parole board in their jurisdiction.

6.4. EQUIL PROTECTION

The 14th amendment of the Constitution has a clause that grants prisoners the right to equal protection. This means that prisoners cannot be treated differently by corrections officers or other prison staff on the basis of race, gender or religion. Additionally, the Americans With Disabilities Act provides further protection of the rights of prisoners with disabilities. 28

CONCLUSION

Prisoners are human being and as such they retain their rights even when in prison. This is so because human rights are universal. This means that every person, including a prisoner, has human rights, no matter who he is, where s/he lives or his/her class, race, sex, age, social status, etc. Also, human rights are said to be inalienable. This means that they cannot be taken away from a person, including a prisoner. At the same time prisoners cannot enjoy all rights as everyone else. The enjoyment of human rights may be restricted or limited in certain circumstances.

Even though prisoners lose a lot of their citizen's rights when they are convicted, they still have certain rights that make sure that they are treated fairly. Some of those rights include freedom of speech and religion, freedom from arbitrary punishment and cruel and unusual punishment, and the right to have access to the courts through Habeas Corpus. These rights are guaranteed so that prisoners are not treated unfairly, or even in an inhumane fashion. If these rights were not guaranteed to prisoners, abuse and neglect would be rampant and violence would be worse than it is now.

The prisoners' rights movement has had its effects on the individual prisoner. They now have more access to the courts and benefit from internal procedures which help to resolve disputes within the prison. Because of the prisoners' rights movement, individual inmates now expect better treatment than prisoners before them had received.

The bad side of prisoners having more rights is that some may want more and more rights. This causes the social behavior of the inmates to be of the attitude that they deserve to be treated a certain way. Unfortunately, some prisoners believe that they should be given more freedoms than they currently have.

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