

‘PRISONER'S RIGHTS AND PRISON ADMINISTRATION IN INDIA’

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INTRODUCTION

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”¹. 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”². Therefore, both under national as well as international human rights law, the state is obliged to uphold and ensure observances of basic human rights.

One of the best tenets of human rights law is that human rights are inalienable and under no circumstances can any authority take away a person’s basic human rights. The fact that this tenet is not sometimes made applicable to prisoners is well documented. There are innumerable judgments of Supreme Court and High Courts, showing how prisoners’ rights are violated. The judgments highlighted the highly unsatisfactory conditions prevailing inside the prisons and the failure of the prison authorities to provide an environment which is conducive to the maintenance of prisoners’ rights, partly rooted in the belief that the prisoners do not deserve all the rights and the protections that the constitution provides to all citizens. Besides being morally wrong and legally invalid, this belief does not show adequate recognition of some basic facts about the prison population.

Out of the total population of 2,26,158 in the country on 1.1.1997, 1,63,092 were undertrials.³ Thus 72% of the prison population is not even convicted of any crime. Secondly, even those who are convicts, a large number of them are first time offenders involved in technical or minor violations of law. Very few are recidivists or hardened criminals.⁴ Also, as was observed by the Mulla Committee, a majority of the inmates come from the “underprivileged sections of the society, as persons with the means and influence generally manage to remain beyond the reach of law even if they are involved in violation of law.”

It is against the above backdrop that some important rights of the prisoners were discussed in a paper presented at the workshop by Ms. Marion Macgregor of the Commonwealth Human Rights Initiative (CHRI).⁵ The paper provided an outline of some important rights of prisoners, like the *Right to Live with Human Dignity*, *Right to Punishment as Prescribed by Law*, *Right to be Free of Fetters or Handcuffs*, *Right to Communication and Information*, *Right to Counsel*, *Right to Writ of Habeas Corpus* and the *Right to Air Grievances*.

Besides discussing the legal sources of the rights, the paper made some suggestions which could prove helpful in ensuring an element of transparency and accountability in prison administration. Some of the suggestions made in CHRI’s paper will be discussed later in this report.

Prison Conditions: First Hand

The workshop provided a unique opportunity to ex-prisoners to narrate their experiences, and to the delegates to share and learn from them about the conditions prevalent behind the prison walls. The family members of ex-prisoners, who also spoke at the workshop, informed the delegates about the sufferings and hardships faced by them while coping with the problems of detention of their close relatives in the prisons. This session constituted a very important part of the workshop, as the ex-prisoners and their family members gave fairly graphic, vivid and moving accounts as well as valuable insights into the problems of those held in custody.

The first speaker in this session, Mr. Guddu Koshti, had been in and out of prisons on several occasions during the last 18 years. He mentioned that he was transferred from prison to prison throughout the state and once even out of the state to Maharashtra. This, he alleged, was due to his continued protests against the appalling conditions prevailing inside the prisons and against the abuse of authority by the prison staff. He spoke of the atmosphere of repression existing in prisons which discourages

¹ Universal Declaration of human Rights, Article 5.

² United Nations International Covenant on Civil and Political Rights, Article 10

³ Source: Ministry of Home Affairs, Government of India

⁴ J Guha Roy, *Prisons and Society: A Study of the Indian Jail System*, Gian Publishing House, New Delhi. 1989

⁵ *Prisoners’ Rights – Need for Transparency and Accountability* – CHRI’s paper presented at the Workshop

the prisoners from voicing their grievances and complaints against authority. Mr. Koshti said that the extreme 'third degree' measures that he had been subjected to during the eighteen long years had left him far too weak physically to earn livelihood through labour, and that his long terms in prisons had not equipped him with vocational skills that would sustain him as a skilled worker. He also claimed to be a victim of social stigmatisation which made rehabilitation all the more difficult.

Mr. Koshti complained that those with money, power and clout are privileged with remission of sentences, better food, medical care etc. He alleged that often on payment of money to members of staff, prisoners are given special diet or admitted to hospital even though they do not have access to these facilities.

Mr. Koshti blamed the MPHRC for its failure to bring about any change in prison conditions and complained that all his petitions have thus far been ignored.

The second ex-prisoner, Mr. Patel, complained of overcrowding as well as of poor medical facilities. He had suffered due to absence of adequate medical care in the prisons, which resulted in his losing one eye. He also spoke about the incidence of lunacy resulting from mental strain in prisons. Mr. Patel alleged that it was local bosses in the prisons having money or muscle power or political clout, who were invariably given privileged treatment. The delegates were informed about the compliant system and that prisoners could write to their relatives or friends or to relevant authorities about their problems. However, the letter were to be given open to the warder at the weekly parade, thus suggesting a lack of privacy which could account for the loss of several letters containing complaints of prisoners.

Mr. Patel informed the delegates that the system of monitoring prison conditions was extremely ineffective. In his experience, visitors, official or non official, hardly ever came and even if they did, their check was merely routine, while most of their time was spent chatting with the prison authorities. He also mentioned that there was hardly any legal aid available to prisoners and that lawyer rarely visited the prisons to give legal advice to the prisoners.

The next person who spoke was the younger brother of Mr. Patel. He said that he had visited his brother frequently in the jail during the eight year period. The main problem faced by him was to avail his visiting rights without bribing prison staff. Although bribes were not openly asked for, it was an unspoken rule that the visiting time was in direct proportion to the money that one secretly paid to the warder. One could meet one's relatives without paying bribes, but the frequency would be greatly reduced and the time allowed would be very short. In his experience, on payment of a bigger amount, one could even go inside and talk to the prisoner from the visitor and provides little privacy. He also alleged that often the food or some other items sent to the prisoner did not reach the person. Much of it was either stolen or consumed by the prison staff.

The last speaker in this section was Mrs. Malati Maurya whose husband was convicted and sentenced to the life imprisonment. Mrs. Maurya explained her plight as a woman without financial or social support, while having to support two children and an aging mother-in-law. She gave instances when she was not allowed to meet her husband and had to pay bribes to various members of the prison staff. Not only was she shown little sympathy but was also humiliated at times by the staff. Mrs. Maurya complained that in spite of a number of petitions on her part to stay the transfer of her husband to another prison, he was moved far away from their home town, making visits all the more difficult. Mrs. Maurya also cited the instance when her husband was not let out on leave despite his mother being ill and was finally only granted leave for the day when she died.

Review of existing literature.

According to Dr. Hira Singh, Consultant, NHRC, optimum population capacity of prisons needs to be assessed and provisions made accordingly. Thus, no central jail should hold more than 750 prisoners and no district jail, more than 400. However, it was observed that even though in some cases as in MP, where more space is being commissioned and larger prisons are being constructed, the problem of overcrowding persists. According to a study done by the MP Prison Department, prison population is rising by 6.92% a year. As per expansion plans of the state government and presuming that all plans are completed, the total capacity of the prisons in MP would go up to 20,931. Although this seems to be a huge growth in capacity terms, the extent of overcrowding would still be to the tune of 56.43% by the year 98-99, and by the year 2005-6 it would go up to 151.18%.⁶

A serious and long term solution to the problem of overcrowding in prisons needs a review of the functioning of the entire criminal justice system, including the system of arrests, sentencing policies and notions of crime.

The National Police Commission had pointed out that 60% of all arrests were either unnecessary or unjustified.⁷ The police often look upon imprisonment as an easy solution and use preventive sections of law, like 151 of the Criminal Procedure Code indiscriminately. The liberal use of the power to arrest, while contributing significantly to the problem of overcrowding, leads to increased expenditure on jails. One way to deal with the problem of overcrowding is to decriminalize certain offences and find alternatives to imprisonment, particularly in petty offences and make minor offences compoundable.

Delay in completing cases is responsible for overcrowding in jails. An important factor responsible for delaying trials is the failure of the agencies to provide security escort to the undertrials to the courts on the dates of trial hearings. The prison department blames the police for failing to provide adequate escort when required. The police, however, have their own problems and cite law and order requirements and security duties for VIPs as having overriding priority in deciding deployment of manpower. The only solution to the problem is for the State Government to provide trained manpower exclusively for prison department's requirement of escorting prisoners. It was suggested that the armed police sanctioned for this purpose should always be kept at the disposal of the prison department.

⁶ Source: Prison Headquarters, Madhya Pradesh.

⁷ The National Police Commission: *The Third Report, Chapter XXII, 1980*

Conceptualization.

The laws are made to regulate the human conduct in the society, as it is the primary duty of the state to maintain the public peace and tranquility in the society, the state legislatures has made deferent enactments to regulate the human conduct in the society, for the implementation of the laws a kind of machinery is required for the state for that the government appoints some qualified persons for the implementation of laws in the society for the advancement of the law and order in the society. For the implementation of the criminal justice administration a systematized well established organizations like police department to bring the accused before the court of law and to investigate the offence and finally to file a final report in the court. Once the investigation is completed and final report of investigation is filed in the court the duty of the police comes to an end, than the duty of the judiciary begins, once the court takes cognizance of the offence than the duty of the investigating police officers turns into witness, if the case is proved beyond all the reasonable doubt, than the trial court convicts the accused and passes a sentence of imprisonment, it may be a day or days, a month or months, a year or years or it may be life or death, it depends upon the nature and gravity of the offence committed by the accused.

Mr. Agarwal was of the opinion that the prison administration was not able to recruit and retain competent people due to its unattractive service conditions and lack of recognition by the government and the public of the needs of the department. It was suggested by him that the recommendation to set up an All India Prisons Service made earlier by Dr. W.C. Reckless, an UN expert, who was invited by the Government of India to study prison problems in the country (1951-52) and other recommendations contained in the reports of the All India Jail Manual Committee (1957-58), the Working Group on Prisons (1971-72), the Mulla Committee (1980-1983) and by the Kapoor Committee (1988) should be implemented by the Central Government.⁸

Mr. Agarwal further pointed out that most prisons suffer from severe under staffing. He indicated the need for other infrastructure related posts, like those of engineers who could aid in making living and sanitary conditions more comfortable for inmates and thus lessen the load on the prison staff. He said that support was required from departments like the PWD or the Health department to ensure the smooth running of prisons. A conscious policy towards the induction of women in the prison administration is necessary to bring about a gender balance and sensitivity within the system. This could create a more tolerant culture towards marginal and weaker sections within prison walls.

The workshop generated some debate regarding the post of convict warders which the new Prison Bill drafted by the NHRC seeks to abolish. This post is occupied by convicts, who, on the basis of their good conduct, are given charge of certain duties that would normally have been undertaken by the warders. This, according to the prison staff, not only works as an incentive to the prisoner who is entitled to remission of sentence as a holder of the post, but also helps lessen the work load of the prison staff. The prison department is constantly short of manpower and the system of appointing convicts as warders does prove helpful in meeting the shortage of manpower at the grassroots level. This viewpoint expressed mostly by the prison staff was challenged by others in the workshop. It was pointed out that the system was being misused and the convict warders were generally working as touts of prison authorities, misusing their positions to terrorize other prisoners and thus commit gross human rights violations. Mr. Hira Singh vehemently opposed the retention of the system.

The Jail Reforms Committee 1980-83 has also made recommendations regarding prisoners' rights and the committee appears to have been inspired and influenced by judicial pronouncements on various issues. The committee has recommended the incorporation of the following rights in the proposed scheme of „National Prison Legislation“: 1. Right to be lodged appropriately based on Proper Classification. 2. Special Right of young prisoners to be segregated from adult prisoners. 3. Rights of women prisoners. 4. Right to healthy environment. 5. Right to bail. 6. Right to speedy trial. 7. Right to free legal services. 8. Right to basic needs such as food, water and shelter 9. Right to have interviews with ones Lawyer. 10. Right against being detained for more than the period of sentence imposed by the court. 11. Right to protection against being forced into sexual activities. 12. Right against arbitrary use of handcuffs and fetters. 13. Right against torture, cruel and degrading punishment. 14. Right not to be punished with solitary confinement for a prison offence. 15. Right against arbitrary prison punishment. 16. Right to air grievances and to effective remedy. 17. Right to evoke the writ of habeas corpus against prison authorities for excesses. 18. Right to be compensated for violation of human rights. 19. Right to visits and access by family members of prisoners. 20. Right to write letters to family and friends and to receive letters, magazines, etc. 21. Right to rehabilitation and reformative programmes.

Focus of the problem

The problems relating to the health of prisoners and lack of adequate medical facilities in Indian prisons received considerable attention in the workshop. Justice Venkatachaliah referred to a recent study of custodial deaths in judicial custody done by the National Human Rights Commission, which revealed that a high percentage of deaths were attributable to the incidence of tuberculosis amongst prisoners. In recent times, there has also been a disturbing rise in the percentage of HIV positive inmates. Special and urgent care is required to look after such cases.

Man is not an individual. He is a social organism. God loves him only who serves other beings-man, cattle and other creatures. His glory lies in being a member of a big family. On the one hand, man is bound by blood kinship his parents, his wife, his children and on the other, he is linked with every individual of society whether near or far from his, it is given to man to link himself with those who constitute his ancestry and also think of those who would be his posterity. Man possessed of certain inalienable rights. Thus lives, works and dies for society. Man is expected to develop his craft, science and technology and lead society from poverty to prosperity with a happy today and a happier tomorrow.

⁸*Role of Prison Personnel and their Problems* – A Paper presented in the workshop by Mr. G.K. Agarwal, Additional IG (Prisons), MP

Due to overcrowding, inmates have to live in extremely unhygienic conditions, with little concern for health or privacy. Often cells built to house one or two persons now accommodate twice or three times the number. Most toilets are open, denying the prisoner his basic right to privacy and human dignity, and are also dirty. Water shortage being the rule than the exception the toilets prove to be the ideal breeding grounds for health hazards and epidemics.

Justice Leila Seth gave a firsthand account of the health facilities available to prisoners, based on her experience as the chairperson of the enquiry committee set up to investigate the death of Rajan Pillai in Tihar Jail. Health care of the prisoner should be treated as a special responsibility of the prison administration as the prisoner, in fact, is handicapped by the inability to choose the kind of medical treatment required. There is often little provision for support and succour from family or friends and the prisoner is solely dependent on his custodians to provide him adequate medical facilities. Quite often the prison authorities do not take this responsibility as seriously as they should. Medical checks are routine and complaints of ill-health are not attended to urgently.

The complaints of the ex-prisoners and their relatives need to be highlighted not as cases of individual suffering but as examples of the general systemic malaise that affects the prison system, leading to serious human rights violations. The following are some of the important problems of the prisons and related issues, having a bearing on prisoners' rights, which were discussed by the workshop.

Overcrowding: Overcrowding in Indian prisons is seen as the root problem that gives birth to a number of other problems relating to health care, food, clothing and poor living conditions. Mr. Justice Venkatachaliah, while inaugurating the workshop, referred to this problem. He said that the prison population of about 2,24,000 in India in relation to the total population of the country was one of the lowest in the world. He pointed out that while some jails were comparatively empty, there were others which were overcrowded by about three times the capacity, though the percentage of overall overcrowding was about 9%. In some of the prisons inspected by Justice Venkatachaliah, the problem of overcrowding was so acute that inmates often had to sleep in shifts of 3-4 hours due to lack of space.

Overcrowding has also begun to affect the attempts of the prison administration to empower prisoners with skills that would involve them in gainful employment after release. These attempts come in form of workshops where prisoners are taught carpentry, printing, binding, doll-making, typing etc. however, due to the pressing need for space, more and more workshops are being used to house prisoners. In Madhya Pradesh, currently only 16 out of 120 prisons can afford the luxury of maintaining workshops and these are also increasingly coming under threat due to the increasing problem of overcrowding.

The modern version of human rights jurisprudence may be said to have taken birth in India at the time of the British rule. When the British ruled India, resistance to foreign rule manifested itself in the form of demand for fundamental freedoms and the civil and political rights of the people; Indians were humiliated and discriminated against by the Britishers. The freedom movement and the harsh repressive measures of the British rulers encouraged the fight for civil liberties and fundamental freedoms.⁶⁴ Prison is a place where the criminal justice system put its entire hopes. The correctional mechanism, if fails will make the whole criminal procedure in vain. The doctrine behind punishment for a crime has been changed a lot by the evolution of new human rights jurisprudence. The concept of reformation has become the watchword for prison administration. Human rights jurisprudence advocates that no crime should be punished in a cruel, degrading or in an inhuman manner.⁹ The punishment amounting to cruel, degrading or inhuman should be treated as an offence by itself.¹⁰ The transition caused to the criminal justice system and its correctional mechanism has been adopted worldwide. The inquiry is made to know the extent of inclusion of these human rights of prisoners into Indian legislations.¹¹ Judicially no enforceable rights in Part IV of the Constitution are chiefly those of economic and social character. However, Article 37 makes it clear that their judicial non enforceability does not weaken the duty of the State to apply them in making laws, since they are nevertheless fundamental in the governance of the country. Additionally, the innovative jurisprudence of the Supreme Court has now read into Article 21 (the right to life and personal liberty) many of these principles and made them enforceable.¹² According to Human rights jurisprudence no prisoners should be punished in a cruel, degrading or in an inhuman manner, this type of punishment should be treated as an offence by itself. The correctional systems and criminal justice system have been adopted worldwide.

The judiciary must therefore adopt a creative and purposive approach in the interpretation of Fundamental Rights and Directive Principles of State Policy embodied in the Constitution with a view to advancing Human Rights jurisprudence. The promotion and protection of Human Rights depends upon the strong and independent judiciary. The Apex judiciary in India has achieved success in discharging the heavy responsibility of safeguarding Human Rights in the light of our Constitutional mandate. The major contributions of the judiciary to the Human Rights jurisprudence have been twofold: the substantive expansion of the concept of Human Rights under Article 21 of the Constitution, and the procedural innovation of Public Interest Litigation. The Supreme Court of India is taking more steps to prevent the violations on human rights of prisoners and for the protection of prisoners is done through Public Interest Litigation almost all the basic rights are identified to come under Art 21 of the Constitution. The three organs of Government, the judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions of the Constitution. The Supreme

⁹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

¹⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Art. 4

¹¹ P. C. Harigovind, The Indian Jurisprudence on Prison Administration and the Legislative Concerns, IOSR Journal Of Humanities And Social Science , Volume 9, Issue 5 (Mar. - Apr. 2013), PP 24-29

¹² Justice Sujatha V. Manohar, "Judiciary and Human Rights," Indian Journal of International Law ,Vol. 36,1996,p, 39-54.

Court of India has in the case *Ajay Hasia v. Khalid Mujibe*¹³ declared that it has a special responsibility, to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence. The judgment given in the *Chairman, Railway Board and others v. Mrs. Chandrima das*¹⁴, the Supreme Court observed that the Declaration has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly of the United Nations. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In a number of cases the Declaration has been referred to in the decisions of the Supreme Court and State High Courts. The Indian Judiciary identified certain rights of Part IV of the constitution and implemented those rights under Part III of the Constitution of India and has given several directions to the Central as well as State Governments. This can be attributed as a success to Indian Apex Court.

Conclusion and suggestions.

The present study concluded that the Prisons are built with stone of law and so it behoves the court to insist that, in the eye of law, prisoners are persons, not animals and punish the deviant “guardians” of the prison system where the so berserk and defile the dignity of the human inmate. Incarceration in its pure and simple form is a kind of cruel sanction, its object being primarily to deprive the offender of his liberty, which is the most serious damage, which can be caused to a human being. Prior to the arrival of British, there were no prisons, in the modern sense in India. Imprisonment as a mode of punishment was not the normal feature. Only under trials, political defectors war offenders were kept in custody as prisoners in ancient India. The pre-Buddhist prison system was most inhuman. Although the imprisonment was a very usual form of punishment in Mughal India, there were no specific rules governing it. Prisoners were treated as animals because there was no regard for their rights. The Prisons in India, at the time of the takeover of the country by the East India Company were in a terrible condition. This was inevitable in the criminal justice system where deterrence was the only aim of the Prison system. In 1786 Cornwallis formulated a new scheme, which may be referred to as “the trying birth of the modern Prison System in India.” Accordingly the control and management of the jails were transferred to European hands. He had tried to secure health and moral as well as safety of the prisoners. The Supreme Court took to big stride forward on the issue of prison reform and fundamental rights of prisoners in *Sunil Batra v. Delhi Administration*. For the first time in the Indian prison history the Chief Justice of India Justice Beg with other judge visited the Tihar Jail to ascertain the actual condition. The Court held in this case that prisoners are entitled to all fundamental rights consistent with their incarceration and the legal regime of prison is as much subject to constraints of legality and Constitutionality. The following principles were accepted by the Court in this case:

1. Prisoner could not be wholly denuded of fundamental rights. No “iron curtain” could be drawn between the prisoner and the Constitution.
2. The prisoners’ liberty was circumscribed by the very fact of his confinement.
3. Conviction of a person did not reduce him to a non-person.
4. The question of prisoners’ fundamental rights must be viewed against the background of modern reformist theory of punishment.

The Court held that where rights of a prisoner either under the Constitution or under other laws are violated, the power of the court can and should run to his rescue. Thus *Batra’s* case has significantly highlighted judicial concern for condition of detention.

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