

Research paper on role of judiciary in providing better environment to prisoners

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Abstract

The paper aims to analyse the role of Judiciary in uplifting the deplorable conditions of prisoners. Prison is the place where the inmates are kept and reformed in such a way that they do not become criminals thereafter. The doctrine behind the punishment for an offence has been changed a lot by the evolution of new human rights jurisprudence. The correctional mechanisms, if failed, will make the whole criminal procedure in vain, concept of the reformation has become the watchword for prison administration nowadays. Human rights jurisprudence advocates that, no crime or criminal should be punished in a cruel, degrading or in an inhuman manner. On the contrary, it is also held that any punishment that amounts to cruel, degrading or inhuman should be treated as an offence by itself. The Prisons Act of 1894 is the initial legislation related to the prison system in India. The transition to the criminal justice system and its correctional mechanism has been adopted worldwide. Here, the inquiry is made to know the extent of the inclusion of these human rights of the prisoners into Indian legislation.

“The research method followed here is empirical research. Data collection included both primary and secondary resources. Primary data was collected through questionnaires done by others. Secondary sources included published information from journals, reports and newsletters.”

Keywords: Judiciary, Prisoners, Rights, Administration, Reforms, Criminal.

INTRODUCTION

The British colonial rule in India marked the beginning of major penal reforms in India. The British authorities strenuously tried to improve the conditions of Indian prisons and prisoners. Radical changes were introduced in the then existing prison system keeping in view the sentiments of the local people. At the advent of British, initially some changes were introduced in the overall legal system. **The Regulating Act of 1773** established the Supreme Court at Calcutta to exercise all civil and criminal jurisdictions to come in tune with the English jurisprudence.

Even though Supreme Court has laid down guidelines for the business but it is not being implemented in the ground reality. Even a number of other crimes are also being committed against the women in the Indian society. Women are exploited in the society at the different levels because of their unawareness about their legal rights. Condition of the women prisoners, in Indian Prison, is also not good. They are being devastated, victimized and even harassed in the prisons. Custodial horror is a daily occurrence for women prisoners in our country and these are some of the factors which are affecting the topic related to the role of judiciary in protection of the prison reforms and awful conditions of prisoners.

The Indian Penal Code and the Criminal Procedure Code were brought into force in the years 1859 and 1860 respectively, laying down explicit definitions of different crimes coupled with the specific punishments prescribed and also the specific procedures to be adopted by the criminal justice dispensation machinery. Thus, **in the year 1860, imprisonment came to be applied uniformly across India as a recognized mode of punishment.** Jail, thus came to be recognized as the smallest unit of prison system, where the criminals condemned by the courts would be kept over a period.

Later in the year of 1980 the Government of India set-up a Committee on Jail Reform under the chairmanship of Justice A. N. Mulla. The basic objectives of the Committee were to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders in India. The Mulla Committee submitted its report in year 1983. the opinion of the committee was that prison conditions in India is critical and criticized by every section like media press etc. committee also depicted harmful effect of prison culture on offenders of non serious crime.

“**The Prisons Act of 1894** is the initial legislation related to the prison system in India. This Act was largely based on deterrent principles reflected mainly by British policy on the subject. The legislators took little pains to look into the other side of the problem. They were concerned more with the prison working than with treatment of the prisoners. This Prisons Act remained unchanged for more than one hundred years except very minor change.”

In **The Government of India Act 1935** to this act the subject of jails was transferred from the centre list to provincial governments and hence further reduced the possibility of uniform implementation of a prison throughout the nation. Now provincial or state governments have their own rules for the day to day administration of prisons, for keeping and maintaining the prisoners, and prescribing various rules related thereto.

In, **The Transfer of Prisoners Act, 1950** it contains procedure related to transfer of prisoners from one state to another, but for the application of provision both transferring state and receiving state must have give their prior consent. “This Act helps to reduce crowds from overpopulated jails to less congested jails. Due to the lacunae in legislature prisoners has to suffer even though they are law breakers and Jail is an institution for their reformation of the prisoners.”

The concept of prisoner’s rights in the current emerging judicial trends are as that it is requirement of a fair process under the Anglo-American system of criminal justice, which means that-

(a) The onus to prove that the accused is guilty lies upon prosecution and that the Court has to start with the assumption that the accused is innocent until proved to be guilty.

(b) The prosecution is put to strict proof, so that if there is any reasonable doubt in the mind of the Court upon the evidence adduced by the prosecution, the accused is entitled to the “benefit of doubt” and to be acquitted.

It is Held in K M .Nanavati v State of Maharashtra

The principle that the accused person is presumed to be innocent till his guilt is proved beyond reasonable doubt is of great importance in the administration of criminal Justice. Every criminal trial begins with the presumption of innocence in favour of the accused; and the provisions of the Criminal Procedure Code are so framed that a criminal trial should begin with and be throughout governing by this essential presumption.

The comparison has been done with the USA as The Eighth Amendment to the United States Constitution protects citizens against cruel and unusual punishments. In terms of prisoners' rights, this protection requires that prison officials afford inmates certain minimum standard of living. Additionally, prisoners retain some other Constitutional rights, including due process in their right to administrative appeals, freedom of religion, equal protection under the law (at least, as compared to other inmates), and a right of access to the parole process. Courts have held that the Equal Protection Clause of the 14th Amendment has been held to apply to prison inmates so prisoners are protected against discrimination or unequal treatment based on race, sex, religion, age, national origin, and creed. Other courts have held that certain "penumbral" rights, or rights that are not explicitly granted by the constitution, also apply to prisoners. This includes the right to reproduce, right to medical attention, and others.

Role of judiciary in regarding betterment of prisoner's :

1. The UN standard Minimum Rule states that, it is mandatory to provide the separate residence for young and child prisoners from the adult prisoners. Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
2. For the issues of the prison offences and punishment standard minimum rules are very clear. These rules state that "no prisoner should be punished unless he/she has been informed of the offences alleged against him/her and given a proper opportunity of presenting his/her defence".
3. It is also recommended that the corporal punishment placing in a dark cell and all "cruel, in-human or degrading punishments should completely be prohibited as the mode of punishments and disciplinary actions" in the jails.
4. Thus the poor prisoners in the prison did not always get the provisions in law though the State was obliged to provide the legal aid. As also observed by the Mulla Committee, most prison inmates belong to the economically backwards classes and this could be attributed for their inability to arrange the bail bond
5. Some of the suggestions provided were expeditious holding of trials, making it more possible for under trials to plead guilty at any stage of the trial system of plea bargaining. It finally suggested that there would be a need for law reform as essential to the entire system of legal aid.
6. A similar finding had been noted in the NIMHANS-National Commission for Women study in the Central Prison, Bangalore. In the Indian prison many of the women were illiterate, had never stepped out of their houses, had no financial resources and many had been arrested on petty charges. Most had no idea about legal procedures, such as, what is the process of trial, how to arrange for a defense lawyer, what laws exist to protect their children or property etc. (India. National Expert Committee on Women Prisoners)

7. Clemmer, 1953 defines that no society can be crime free and criminals are found in all age groups, among both sexes and in all strata of society. Apparently, the prison represents the worst of the social system.
8. Grosser, 1968 defined though the prison system has a unique position in the society in which organizations compete either for economic resources or for the loyalty and support of group members as it is non competitive in the sense that no other organization challenges it directly. (“The Doctrine of External Relations”)
9. For the Prisoners, the prison system is the most closed or protected system in India. Members of the larger society having no direct stake in the prison in terms of ownership, goods, services or reciprocal relation of any kind. Thus, the prison system is relatively most protected from outside scrutiny.
10. Morris, 1995 The prisons of the ancient world have disappeared. Those of its antiquity and medieval Europe have fallen into ruin, have been recycled into other uses or those have been preserved as Museums, their varied history usually explained only in the terms of the modern concept of penology.
11. Chowdhary, 2002 The first phase of ancient civilization in India when Dharma was Supreme, the offenders were shown maximum tolerance, but that was gradually ousted by the political party of the King in the middle ages.
12. Pillai 1984) Pillai, K.S. (1984) Principles of Criminology, Madras: TLL Criminalism may be the action of a person not yet criminal and a crime is the deviation from a breach of a conduct norm. This deviation or breach is punished by the society by means of its sanctions, rules and regulations. But the punishments are not only the criterion to give value. In India, the Religion, art, education and other social logical agencies also reveal value for Indian even for the outsiders.
13. The history for the prison establishments in India and subsequent reforms have been reviewed in detail by Manaworker (2006). In his work he found that the modern prison in India originated with the Minute by TB Macaulay in 1835.
14. Legal aid workers are needed to help such a person in getting them released either on bail or on personal recognizance. The bail provisions must be interpreted liberally in the case of women prisoners with children, as children suffer the worst kind of neglect in the world when the mother is in prison. (“Legal Aid for Prisoners”)
15. In India, the International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. India has ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice.
16. The International Covenant on Economic, Social and Cultural Rights (ICESR) states that the prisoners should have a right for getting the highest attainable standard of physical and mental health. Apart from the civil and political rights, so called second generation economic and social human rights as set down in the ICESR also apply to the prisoners.
17. Earlier, United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 consisting of five parts and ninety-five rules. Part one providing the rules for the general applications. It declares that there would be no discrimination on grounds of race, color, sex, the languages, religions, political views or other opinion, national or social origin, property, birth or any other status.
18. Though prisons are supposed to be leveling institutions in which the variables that affect the conditions of confinement are the criminal records of their inmates and their behavior in prison, other factors play an important part in many countries.

19. The lack of good and efficient lawyers in the legal aid panels at that time was also a concern. Several suggestions were made to speed up the trial processes, so that the population of under trials could be reduced to a lower population in prison.

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OBJECTIVES OF RESEARCH:

- To Study the role of judiciary in prison reforms
- To analyse the various remedies brought by the judiciary for prisoners
- To explore the areas in need of prison reforms.
- To study and analyse the current scenario of prisoners in prison
- To study various research data that already done over similar kind of subject.
- To explore the current situation of prisoners after judiciary activity on providing better environment.
- Good initiative for prisoners by judiciary

Prison administration needs to be reformed: Madras High Court

Prison administration needs to be reformed for creating a better environment and prison culture to ensure prisoners enjoy their right to dignified life under Article 21 of the Constitution, observed the Madurai Bench of the Madras High Court while passing a series of directions in this regard.

A Division Bench of Justices R. Mahadevan and J. Sathya Narayana Prasad passed a series of directions on a petition filed in 2017 by Madurai-based Human Rights Organisation People's Watch represented by its Executive Director Henri Tiphagne.

Prison inmates and their visitors can talk with ease thanks to intercom facility

The petitioner's plea was that the appointment of non-official visitors to the Board of Visitors to Prisons, in accordance with Rule 507 of the Tamil Nadu Prison Rules, 1983 was essential for addressing the grievances of prisoners and helping the prison administration. However, the same had not been done by the State promptly and the posts of non-official visitors were kept vacant in many prisons.

The court quoted former South African President and anti-apartheid activist Nelson Mandela who said, "No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones"

The judges directed the authorities to constitute a committee to ensure periodic appointment of the non-official visitors to all the prisons/jails within the State promptly upon expiry of the tenure of such non-official visitor and to constitute board of visitors in all prisons who could periodically review and advise prison authorities on various aspects of facilities training, correctional work etc. The minutes of the meeting of the board of visitors along with suggestions to the government should be uploaded on the website, district/prison wise.

The judges directed the authorities to amend the Prison Act, 1894 and the Tamil Nadu Prison Rules, 1983 in accordance with the Model Prison Manual, 2016 and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

The court directed the authorities to take appropriate measures to reduce overcrowding of prisoners in the prisons, if not taken earlier, to prepare a 'Prisoners' Rights Handbook' with information on their rights, applicable laws and regulations, mechanism for raising grievances/complaints with the board of visitors and other authorities concerned, expected behaviour from prisoners and disciplinary action for violations and to provide each prisoner with a copy of the same upon admission to the prisons. The same should also be made available online on the website of the prison department.

The Office of the Inspector General of Prisons should prepare the annual report with the remarks and suggestions of the visitors and board across the State, and the corresponding action taken by the prison department.

The annual report prepared by the Inspector General containing the remarks and action taken must be published on the website, the court directed.

Further, the court directed the authorities to make all the facilities viz., medical equipment, drinking water, hygienic food available to the prisoners, at all times. Regular training and refresher courses should be conducted in collaboration with the Academy of Prisons and Correctional Administration for officials and prison staff, who directly interact with the inmates in order to create a sensitive and dignified prison environment, to provide an effective grievance redressal system with the provisions of complaint box and CCTV cameras and alert system in the barracks of jails.

To ensure the effective functioning of visitorial system in reforming the prisons, the State government should organise a yearly conference under the aegis of the State Human Rights Commission with the official and non-official visitors of the Board of Visitors across the State, officials concerned with prison administration and correctional services to consider the status of prison administration, deliberate on the report of the board of visitors and recommend changes in the prison administration, the judges directed.

The overall appreciation of the legal framework prevailing in the State, Central and International levels would necessitate us to observe that prison administration and its reforms must be carried out by keeping the objective of the prison system in the first place i.e., reformation of inmates, their rehabilitation and successful reintegration into the society at the end of their incarceration. The prison environment and culture among the inmates instilled by such an environment are significant factors in determining the success of incarceration. Any reform in prison management in order to achieve the said purpose must start with the department of prisons and correctional services.

Improving the culture among inmates and the environment by certain administrative reforms will bring about a change in the behaviour of the inmates ultimately leading to an effective incarceration system

with due regard for prisoner's rights, the judges observed. With the set of directions, the court disposed of the petition.

SUGGESTION FOR PROVIDING BETTER ENVIRONMENT:

Providing a safe environment

The Annual Report mirrors this by reporting that safety in prisons has got worse over the last six years and that prisoners and prison staff are less safe than at any other point since records began. Lack of money and resources to match the growth in the prison population means that: Despite the best efforts of those working in the system, prisons are sinking under a tide of violence, of rampant drug abuse and increasing evidence of mental distress among prisoners. There were more alleged homicides in 2016 than in any other year on record. Assaults in prison rose by 33% in the twelve months to the end of September 2017. Assaults on staff rose by an even greater 44%.

Resources and staffing

Jails are a complex ecosystem with a variety of challenges. Staffing, health care, budgeting, adequate funding and resources, recruitment, hiring, and retention, aging facilities, jail planning, managing special populations, appropriate staff training, and a host of other items are all relevant issues for Indian Country jails. So it must do changes and recruit the adequate persons for the welfare of prisoners.

Insanitary, violent conditions

The criminal justice system over the past three decades has led to cuts in prison budgets and staffing. This has resulted in the prison system becoming overstretched and, due to overcrowding, no longer able to provide safety and decency standards expected in international rules and standards. The prisoners are facing various kinds of violence in prisons and has to be stop.

Health and mental well-being of prisoners

Due to them spending most of their sentence behind bars, prisoners are socially isolated. They are separated from their community, family, friends and are put into an alien environment, which brings feelings of loneliness, despair, and hopelessness. Moreover, the low standards of maintenance in Indian prisons have resulted in prisoners having to live in severely unsanitary conditions, with abysmal infrastructure, for not only mental health care, but also for basic physical ailments. A prolonged adaptation to such conditions and such frustrations and deprivations of life leads to various psychological disorders in prisoners. Confinement of prisoners leads to disorders like Post Traumatic Stress Disorder and other related issues like decreased self-confidence and self-esteem. Due to these reasons, it has been observed that inmates tend to suffer from mental illnesses three times more than civilians.

Alcohol and drug addiction

Many of the prisoners who are kept in jails are charged with committing petty offences. A lot of them suffer from substance addiction like addiction to alcohol, cigarettes, drugs, and other intoxicating substances. So, even though such inmates should have been sent to rehabilitation centres to help them overcome their addiction issues and the accompanying mental health problems, they are locked in prison cells, where loneliness and social isolation aggravate their existing problems

Good initiatives by judiciary:

- Providing education
- library facility in prison's
- Health care
- Vocational trainings
- Value the goods produced by prisoner's
- Wages
- Food and clothing
- Telephone facility
- Video conferencing and interview rooms
- Nursery facility for the children 's of prisoner's
- Games and recreation activities
- Spiritual and cultural activities
- Assistance of prisoner's
- NGO's
- Drug de-addiction centre's

CONCLUSION

Due to awareness among the central and state governments now prison reforms are visible in India now a days. "Through various techniques like using the new strategy of judicial activism and Public Interest Litigation, the Supreme Court of India had given expansive interpretation to the prisoner's rights in the light of **Articles 14,19 20,21 ,22 and 39-A of Indian constitution** which included right against handcuffing, right to speedy trial, right to get compensation for illegal arrest, right against double jeopardy, right against self-incrimination ,right to produce before magistrate, right to consult legal expert, right to get free legal aid etc ."

it is the duty of the executive to execute the various decisions regarding this which have been brought by the judiciary towards the welfare of prisoners for their conditions to be uplifted here after these rights has to prevail to all the citizens whether they are prisoners or just a citizens of republic nation. From the survey and research done it has been found that the respondents have been known that judiciary is meant for the upliftment of the prisoners but the various decisions which are being given by the judiciary are not being implemented and received by the prisoners due to the lack of execution by the executive in the various states as they are not aware regarding such decisions or guidelines are prescribed for the upliftment of prisoners . So judiciary tries their level best for upliftment of prisoner's conditions through PIL, judicial activism, paralegal camps, Lok Adalat etc.

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