

Historical Evolution of Jails and Perspectives from Legal Lens

Arun

Research Scholar (Law), B.S.A. College, Dept. of Law, Mathura, DBRAU, Agra

Abstract

Prisoners' rights is a very novel concept in international arena. From the dawn of the society and State system, the prisoners had been treated as criminal. Punitive punishment and inhuman behaviours were obvious to them. Till the mid of the 20th century, people were not even aware about the rights of the prisoners as human beings. But with the advent of the Human Rights norms across the globe, the notion of rights of the prisoners has come up with wider connotation in recent years. This paper unfolds the various committees, commissions, reports and the legislative Acts in respect with Prisoners.

Keywords - Prisoners' Rights, Human Rights, Criminal Justice System, Punitive Punishment, Inhuman Treatment, Legislative Acts, International Law, Prison Reform and *etc.*

Introduction

In India, the idea of rights of prisoners was long suppressed under the colonial rule and has only recently emerged in public discourse. 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 of punishment" (UDHR, 1948). Prisoners refer to individuals stripped of their freedom and liberty, confined, or placed in custody under the authority of a court of law. A person may become a prisoner either during the trial period until proven innocent or while serving a sentence in a prison. Specifically, individuals committed an offense prohibited by state law, been found guilty of the offense, or are undergoing trial for the offense are subject to detention in facilities commonly known as jails or prisons, and they are commonly referred to as prisoners. In accordance with Section 1 of the Prison Security Act of 1992, the term "prisoner" is defined as "any person currently in a prison due to a requirement imposed by a court or any other directive necessitating their detention in legal custody. Article 14(6) provides the basis for prison authorities to determine various categories of prisoners and their classification with the object of reformation. All the basic rights of prisoners include the right to food and water; protection from violence and torture; right to have a legal representative. The most important, Articles 20 and 21 that deal with the rights of prisoners in particular. Article 20 of the constitution of India has implied Right which is a right against custodial violence. It is the most authoritarian violation of the appendages of an existent. Despite the promise of article 21, that no person shall be denied life or liberty except by due process of law¹.

¹ Indian express Editorial <<https://indianexpress.com/article/opinion/columns/for-indias-undertrials-the-legal-process-is-the-punishment-7411017/>>

The history of prison establishments in India and subsequent reforms have been reviewed in detail by *Mahaworker*². The modern prison in India originated with the Minute by TB Macaulay in 1835. The committee namely Prison Discipline Committee, was appointed and submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, Central Prisons were constructed from 1846. The term prisoner “means any person for the time being in a prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody.”³

The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care. In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail Management. In 1894, the draft bill became law with the assent of the Governor General of India.

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*”⁴. In India, prisoners’ rights have developed significantly by case laws in which the *Hon’ble Supreme Court* gave liberal interpretation to the fundamental rights for instance *Article 21* in the case of *Maneka Gandhi*. Supreme Court held that the laws should be tested on grounds of reasonableness and non-arbitrariness.

Reformative Theory in Indian context

In progressive states, provision is made for the prevention of habitual offenders. Borstal schools have been set up. Provision is made for a system of probation for First Offenders. This theory is being growingly adopted in the case of Juvenile Offenders. The oldest legislation on the subject in India is the Reformatory Schools Act, 1890 that aimed at preventing the depraved and delinquent children from becoming confirmed criminals in the coming years. It applied to children under the age of 15 years. The Reformatory Schools Act has been extensively amended in its application to the various States by State legislatures. Following this the government of India passed the Children Act in 1960 that is applicable in the Union Territories. This Act was later amended in 1978. This amendment broadened the aim of the Children Act, 1960.

The Probation of Offenders Act, 1958 has been passed with a similar object in view. About the Act, the Supreme Court observed in *Rattan Lal v. State of Punjab* that the Act is a milestone in the progress of the modern liberal trend of reform in the field of penology.

² Prison Management: Problems and Solutions 2006.

³ Section 1 of the Prison Security Act, 1992

⁴ UNICCPR, 1966

In *Musa Khan v. State of Maharashtra*, the Supreme Court observed that this Act is a piece of social legislation which is meant to reform juvenile offenders with a view to prevent them from becoming hardened criminals by providing an educative and reformatory treatment to them by the government.

Section 27 of the Criminal Procedure Code, 1973 provides that any offence not punishable with death or imprisonment for life committed by any person who, at the date when he appears or is brought before the court, is under the age of 16 years, may be tried by the court of a Chief Judicial Magistrate or by any court especially empowered under the Children Act, 1960 or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders. Section 360⁵ empowers the court to order the release on probation of good conduct or after admonition.

Prison System

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. On the contrary, it is held that any punishment that amounts to cruel, degrading or inhuman should be treated as an offence by itself. The term prison has been defined by the Prisons Act, 1894 in an exhaustive manner. Prison can be any place by virtue of a government order being used for the detention of prisoners. Thus even a jail will come under the definition of prison according to this definition. The modern idea about prison has been envisaged by judges through the decision making process. Even the concept of open jails has been evolved by time. No longer can prisons be called as an institution delivering bad experiences. Krishna Iyer, J opined prison as- “A reformatory philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner’s personality through a technology of fostering the fullness of being such a creative art of social defense and correctional process activating fundamental guarantees of prisoner’s rights is the hopeful note of national prison policy struck by the constitution and the court.”

All the dignity that human holds can also be availed inside the four walls of prison. The traditional definition and concept about the prison is unfit for the time. The human rights jurisprudence contributed much for the penal reforms and the same had its impact in India. The penal reforms made all over the world have its impact in India too.

The concept of penal reform had its birth from the reformatory theory of punishment. Prison of the time should have a meaning that incorporates the reformatory values into it. The reformatory aspect thinks of incorporating humane values into the prison system and the prison officials have to work for the achievement of the same. The extent of protection assured by the legal system for the reformatory treatment of prisoners should be made under a national legal framework and India lacks the same.

Legal Framework on Prisoner’s Rights under Prisoner’s Act -

1. The Prisoners Act 1894 was enacted on 22nd March and enforced on 1st July 1894. The act clearly focuses on the prisoners inclusively as buildings maintained by the state government with the purpose to detain and to deal with the prisoners. This act also focused on the criminal and civil prisoners. There were XII chapters and has 62 sections in that Act.

⁵ Section 360 of the Code of Criminal Procedure, 1973.

2. This act talks about the appointment of staff which includes the superintendent, medical officer, jailer and officers like inspectors. The state authorities are bound to take action in the appropriate manner.
3. Further this act clearly defines the duties of superintendent who are there to comply the orders and to look after the prisoners in matters of their labour work, punishment etc. they are completely responsible for their sanitary issues. The jailer has some certain responsibilities where they are not allowed to leave the prison.
4. The admission, removal and discharge of the prisoners are done by this act. Their custody timing, their belongings everything should get recorded. Their report if someone is suffering from an acute disease then there transfer should be done. And all of this should get recorded.
5. Employment of prisoners also covered by this Act. They are permitted to work under the direction of superintendent. But there were some provisions that a criminal prisoner will only work for 9 hours of the day and only in the case of emergency.
6. Health of prisoners has always been the main motto and human rights also suggest some ways to keep a record of their health. So for that this Act provided the medical care to the prisoners. If the prisoner is a habitual offender then in that case he should get forwarded to the District Magistrate. And there are clearly punishment provisions in case prisoners commit any disobedience or offence against the subordinate.

The Act was for the prisoners and for their rights but this Act has a colonial approach which defects the contemporary ideology of reformation of Prisoners on the humanitarian ground.

Indian constitution intimates prison administration as a portfolio of state to legislate on. The fundamental responsibility of prison management is to secure custody and control of prisoners. Legislations if made by the states will always lack the unique standards for the protection of prisoner's rights. There should be a national policy frame work that substitutes the varying state legislations. It is true that the system normally demands for reformative framework that too one in tune with the international human rights law. This objective can be easily achieved by a national legislation rather through varying state laws. India still runs with century old legislation for prison administration. Prisons Act is only concerned about the classification and segregation of prisoners by their nature and status of imprisonment. It failed to incorporate many of the principles laid down by the judiciary into its premises as well as recommended by the human rights law. Prisons Act also attempt to cast the responsibility of prison administration over the state.

Even the solitary confinement is still retained in the Act against which the judiciary had made their vehement dissent. The liberty to move, mix, mingle, talk, share company with co-prisoners if substantially curtailed would be volatile of Art. 21, unless the curtailment has the backing of law and this law should lay down a fair, just and reasonable procedure. Prisons Act is also concerned about the prisoner's right to and meet visitors but that too is confined to under trial prisoners and civil prisoners. The concept of prison labour and earning are very vague from the Act. State on the other side, follows different practices in prison administration. Moreover the prison environment is an unseen one and that makes things more complicated. To conclude over the approach of the Act, it is important to point out that it still maintains separate confinement as a punishment for the offences done inside the prison. This indicates that the strategy of rehabilitation and reformation still have to be made into the Act.

Probation

The law relating to Probation of Offenders in India is contained in the Probation of Offenders Act, 1958 which is a comprehensive legislation on probation law. *Section 562*⁶ made a provision for the release of certain offenders on Probation. Spelling out the object of the release of offenders on probation, the *Supreme Court* in *Ramji Missar v. State of Bihar*, observed -

“The purpose of release of youthful offenders on probation is to stop their conversion into stubborn criminals as a result of their association with hardened criminal of mature age. Modern Criminal Jurisprudence recognizes that no one is born criminal & that a good many crimes are the result of socio-economic milieu. Although not much can be done for hardened criminals, yet a considerable emphasis has been laid on bringing about reform of juveniles who are not guilty of very serious offences by preventing their association with mature criminals.” It is reformatory technique of treatment & rehabilitation of offenders.

The **Mulla Committee** - In 1980, the Government of India set-up a Committee on Jail Reform, under the chairmanship of *Justice A. N. Mulla*. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. The Mulla Committee submitted its report in 1983.

The **Krishna Iyer Committee** - The Government of India in 1987 appointed the *Justice Krishna Iyer* Committee that had to undertake a study on the situation of women prisoners in India. It has recommended the induction of more women in the police force in view of their special role in tackling women and child offenders.

Subsequent developments via precedents

Following a *Supreme Court direction (1996)* in *Ramamurthy vs State of Karnataka* to bring about uniformity nationally of prison laws and prepare a draft model prison manual, a committee was set up in the *Bureau of Police Research and Development (BPR&D)*. The jail manual drafted by the committee was accepted by the Central government and circulated to State governments in late December 2003. As in the case of the recommendations of the *National Police Commission (1977)*, which had sought the creation of a State Security Commission and the promulgation of a new Police Act, implementing jail reform recommendations rests with the States. The Home Ministry can do precious little if there is no political will on the part of States to push through both police and prison reforms.

In 1999, a draft *Model Prisons Management Bill (The Prison Administration and Treatment of Prisoners Bill- 1998)* was circulated to replace the Prison Act 1894 by the Government of India to the respective states but this bill is yet to be finalized. In 2000, the Ministry of Home Affairs, Government of India, appointed a Committee for the Formulation of a Model Prison Manual which would be a pragmatic prison manual, in order to improve the Indian prison management and administration. The *All India Committee on Jail Reforms (1980-1983)*, the *Supreme Court* of India and the *Committee of Empowerment of Women (2001-2002)* have all highlighted the need for a comprehensive revision of the prison laws but the pace of any change has been disappointing. The Supreme Court of India has however expanded the horizons of prisoner's rights jurisprudence through a series of judgments.

The court stated that it must be realized that a prisoner is a human being as well as the natural person or legal person⁷, the Prisoners are no longer considered as a slave of the nation who would leave at the

⁶ Section 562 of the Code of Criminal Procedure, 1898.

⁷ DBM Patnaik v. State of Andhra Pradesh, 1974 AIR 2092 1975 SCR (2) 24

prison and convicted to the civil death and it does not disqualify a person to be a person just because he did an offence and going through the imprisonment.

Conclusion

Concern over the condition of prisons has grown in recent years. This issue has been under scrutiny by the judiciary, particularly in the 1980s when there were several cases that examined the problems related to prison administration. Additionally, legal experts have also discussed the matter, with a priority on human rights. These discussions and developments can be attributed to the increased awareness and emphasis on human rights in the international community. Therefore, the issue of prison administration and the condition of prisoners has become an important topic of conversation and concern.

Recent attention from the Supreme Court has shed light on various challenges within the prison system, including inadequate living conditions, health facilities, and sanitation, as well as instances of custodial torture and deaths. The mismanagement of prison administration further exacerbates these issues, resulting in a systemic violation of both human and constitutional rights. To address these challenges, there is an urgent need for comprehensive reforms in the justice delivery system, adopting a practical approach based on the reformatory theory. While prisons play an important role in the justice system, they often become grounds for discrimination in the treatment of prisoners, with disparities between those from affluent backgrounds and those from impoverished sections of society. This paper explores the prisoners' rights, constitutional rights, and human rights. Additionally, it delves into Supreme Court judgments that highlight the rights of prisoners, aiming to bring attention to systemic issues and advocate for a more equitable and just treatment of prisoners within the legal system. International standards, as stated in the United Nations Charter and various conventions and declarations, emphasize the dignity and value of prisoners as human beings. Principles such as non-discrimination, rehabilitation, and fundamental freedoms guide the treatment of prisoners globally. It is imperative that these principles are implemented in the Indian context to ensure the humane treatment of prisoners. Furthermore, the Indian Constitution guarantees fundamental rights to all individuals, including prisoners. Despite being convicted, prisoners retain their humanity and basic rights such as equal treatment, freedom, life, and personal liberty. Landmark decisions by the Supreme Court reinforce the enforceability of these rights, emphasizing the need to protect prisoners from arbitrary violations. In light of these findings, it is recommended that the government and relevant authorities take immediate steps to address the systemic issues within the prison system. This includes improving living conditions, healthcare facilities, and sanitation. To align with international standards, it is crucial to implement and adhere to the principles outlined in the United Nations Charter and other relevant international instruments. This would contribute to fostering a prison environment that upholds the dignity and well-being of prisoners while promoting their rehabilitation. In summary, the prisoners' rights protection requires a multi-faceted approach involving legal reforms, systemic changes, and adherence to international standards. By prioritizing these efforts, India can move towards a more just and humane treatment of individuals within its prison system, upholding the principles of equality, dignity, and fundamental rights for all.