

Prisoners, Their Rights and Reformation

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"Instead of making prisoners out of our students, we ought to make students out of our prisoners."

ABSTRACT

The prisons in India, which are often called as correctional institutes, are more or less being occupied by a very high numbers, much higher than the sanctioned capacity. Consequent upon this, the focus of reformation activities are been diverted. This paper attempts to bring about the right of the prisoners, where focus needs to be established, and also highlights the reformatory exercise which could be incorporated in the present administrative setup of the prison.

Keywords-- Rehabilitation, Correctional Administration, Under Trials, Incarceration, Model Manual of Prison Administration

Definition

The word Prison" connotes its derivation from the Latin words and means "seize" and "cage". The English Dictionary[1] defines prison as "*A building in which people are legally held as a punishment for a crime they have committed or while awaiting trial.*"

Prison Includes:-

(i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;

or

(ii) any reformatory, borstal institution or other institutions of a like nature.[2]

The term prison is often used in different forms such as Penitentiary, jail, detention centre, remand centre, correctional facility etc.

I. INTRODUCTION

Indian prisons are now crammed with prisoners. In many jails they are so over-crowded that the amenities designed for a far less number of inmates are now being shared by disproportionately large number of internees therein, e.g., as per the data[3] in the jails of U.P, there are 95336 prisoners as against the intake capacity of 58111, showing an occupancy rate of 164.10%. In Delhi, its 14058 against the intake capacity of 7818, and thus has 179.80 % occupancy rate. This overcrowding of prisons is threat to the facility to be provided and also hampers the administrative set up to a greater extent.

II. OBJECTIVE AND RESEARCH METHODOLOGY

The paper is mainly concerned with the right of the prisoners, and their rehabilitation. For this, mostly secondary data has been analysed and jotted down so as to provide the shape to the objective. Data has been taken from the internet, material available on the Ministries website, NCRB, BPRD etc.

III. ANALYSIS AND FINDINGS

There are principally two categories of prisoner:

- (1) under-trial prisoners, and
- (2) convicted prisoners (Besides them there are those detained as preventive measure, and those undergoing detention for default of payment of fine).

Those in the first category cannot be required to do any labour while they remain in jail, but they far outnumber all the remain categories put together. Statistics show that in most of the States, the under-trial prisoners have over-whelming majority when compared with the number of convicted prisoners

Jail authorities are enjoined by law to impose hard labour on a particular section of the convicted prisoners who were sentenced to rigorous imprisonment. **Section 53 of the Indian Penal Code** which falls under the Chapter entitled "of Punishment" describe punishments into five categories, of which the category "imprisonment" has been further sub-divided into two sub-categories as "rigorous" and "simple". Rigorous imprisonment is explained as "imprisonment with hard labour".

Section 60 of the Indian Penal Code confers power on a sentencing Court to direct that "such imprisonment shall be wholly rigorous or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple." The sentence of "imprisonment for life" tagged along with a number of offences delineated in the Indian Penal Code is interpreted as "rigorous imprisonment for life" and not simple imprisonment.

IV. RIGHTS OF THE PRISONERS RECOGNIZED BY HON'BLE SUPREME COURT

1. Reading and Writing Books in Jail:

In *State Of Maharashtra vs Prabhakar Pandurang Sangzgirir*[4] Art. 21 of the constitution was made available perhaps for the first time to a prisoner while dealing with the question of his right of reading and writing books while in Jail.

2. Liberal use of Parole:

The Government or any authority which the State Government may declare its powers on this behalf, may on recommendation of the District Parole Board direct that a prisoner may be specified in the direction, for any period not exceeding thirty days at a time excluding time required for journeys and the days of departure from, and the arrival *Suresh Chandra Vs. State of Gujarat 1976 SCC*, The Hon'ble Supreme Court while stating about penalogical innovation in the Slope of Parole to check recidivism because of which liberal use of the same was recommended.

3. Segregation of Prisoners:

A challenge was made to segregation of prisoners a three Judge bench of the Hon'ble Supreme court stated that resort to oppressive measures to curb political beliefs (the prisoner was naxalite because of which he was put in a "quarantine" and subjected to inhuman treatment) could not be permitted. In *B.M Pattnaik v. State of A.P.*[5] The court however, opined that a prisoner could not complain of installation of high-violative wire mechanism on the jail walls to prevent escape from prisons, as no prisoner had fundamental right to escape from lawful custody.

V. INTERNATIONAL RULES OF PRISONERS WELFARE

The Bangkok Rules[6]

It is known that the Standard Minimum Rules, which has been framed for the Treatment of Prisoners applies to all prisoners without discrimination however, the attention towards the women prisoners has been pending since a long time. With the increase in the number of women prisoners all over the world, it was the need to bring this issue and provide more comprehensive document so as to provide standardised rules for women prisoners in the jails. The General Assembly of the United Nation, in December, 2010, framed the rules called as "*The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*" popularly called as **Bangkok Rules**. These rules incorporate a variety of measures for treatment of women prisoners related to admission, personal hygiene, medical services, preventive health care services, safety and security etc.

The Nelson Mandela Rules[7]

Although, there existed rules for the maintenance of standards in respect of treatment of prisoners all over the world, the UN General Assembly,

in 2015, adopted the Revised rules called as "*United Nations Standard Minimum Rules for the Treatment of Prisoners*" to honour the late President of South Africa, Nelson Mandela, who had spend 27 years in prison in the course of his struggle for global human rights.

Some of the rules mentioned under "The Nelson Mandela Rules 2015" are as follows:-

- a. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
- b. No prisoner shall be subjected to, and all prisoners shall be protected from torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.
- c. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected
- d. Prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature.

It highlights some of the important aspects of inmates and provides direction for their welfare: Covering various modalities in the prison administration, these rules have been carved out to ensure that the inmates are safe, secure and not subjected to any kind of decimation, while development of education and imparting skills is other part of this declaration.

VI. POSITION IN INDIA

The situation in the prisons is quite varied and complex. The most important issues and challenges faced in prisons are:

- a) Over crowding
- b) Classification & Segregation
- c) Inadequate facilities for prisoners
- d) Scarcity of places for drying clothes and keeping personal belongings
- e) Threat to medical facility and preventive health care service
- f) Problem related to Food, laundry services etc

If we see the data as on 31.12.2016, of NCRB[8] in respect of inmates all over the country, the following needs to be observed:

Sr. no	No. of Prisons (States and UTs)	Available Capacity (Both Male and Female inmates) in States & UTs	Inmate Population (Both Male and Female) in States & UTs	Occupancy Rate
1	1412	380876	433003	113.7% (Over crowded)

VII. PRISON ADMINISTRATION vis- a - vis JUDICIAL INTERVENTION

The Supreme Court of India had to come strongly in favour of judicial scrutiny and intervention whenever the rights of prisoners in detention or custody were found to have been infringed upon. In **Sunil Batra v. Delhi Administration and Others**[9], **Mr. Justice V. R. Krishna Iyer**[10] pronounced: “prisoners have enforceable liberties, devalued may be but not demonetised; and under our basic scheme, Prison Power must bow before Judge Power, if fundamental freedoms are in jeopardy”.

In **Sunil Batra v. Delhi Administration**[11], again, the Court asked and affirmed: “Are prisoners’ persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanisation and to repudiate the world legal order, which now recognises rights of prisoners in the International Covenant on Prisoners’ Rights to which our country has signed assent”.

In a number of judgements on various issues related to prison administration, the Apex Court of India has laid down *three broad principles*

- (i) A person in prison does not become a non-person
- (ii) A person in prison is entitled to all human rights within the limitations of imprisonment
- (iii) There is no justification in aggravating the suffering already inherent in the process of incarceration.

The Following were Highlighted in the Said Case:

“It is imperative, as implicit in article 21, that life or liberty shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure. Fair procedure in dealing with the prisoners calls for another dimension of access of law-provision, within the easy reach of the law which limits liberty to persons who are prevented from moving out of prison gates”.

“No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him – to read and write, exercise and recreation, meditation and chant, creative comforts like protection from extreme cold and heat, freedom from indignities like compulsory nudity, forced sodomy and other unbearable vulgarity, movement within the prison campus subject to requirements of discipline and security, the minimum joys of self-expression, to acquire skills and techniques and all

other fundamental rights tailored to the limitations of imprisonment”.

The Supreme Court of India strongly felt that there is the need for bringing in a basic uniformity in laws and regulations governing different prisons in the country. The apex Court has specifically issued directions to various authorities to deliberate about enacting of new Prison Act to replace the century old Prisons Act, 1894 and to examine the question of framing of a new model All India Jail Manual.

In **Shri Rama Murthy vs State Of Karnataka**[12] the apex court dealt with the problems of overcrowding, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, deficiency in communication streamlining of jails visits, management of open air prisons and delay in trials of inmates in the prisons. The Hon'ble Supreme Court issued directions to the States, the Union Territories and to the Central Government as to why they should not act on the causes detailed in the judgment.

Reformative and Rehabilitation Activities:

Now a day's imprisonment does not mean to break the stones or grind the Chakkies but the sense has changed. Prisoners are given full chance to reform and rehabilitate themselves during the period of imprisonment. Tihar Jail which is the largest complex of the Asian Jails, adopted the many reformative and rehabilitative steps.

(a) Facilities Provided under the Jail: Now the days have gone when the prisoners were given hard punishment in the jail. Now, they are treated as human beings and being provided many facilities. Some activities for prisoners are re-creations, sports, Yoga, Meditation, adult education, library, computers learning facility, vocational training, embroidery and sewing etc. In female ward, educational classes are held for various courses of **Indira Gnadhi National Open University and National Open School** facilitating various courses like M.B.A., M.A., B.A. Courses and their school Courses. Teaching classes are taken by professional teachers as well as qualified and educated prisoners. Other facilities in the jail are necessary bedding, bed- sheet, durries, blankets & equipments like plate, glass etc. are provided to all prisoners from jail concerned. Break-fast, food(twice), tea (twice) and safe drinking water are provided.

(b) Treatment of the Offenders: In jail premises for the treatment of prisoners various techniques are used which helps prisoners to rehabilitate.

(i) Yoga and Meditation:

For cleansing and disciplining mind. Yoga and meditation classes were started in a big way with the help of various Voluntary organization. In the year 1999 Tihar jail created a history by organizing a **Vipasana meditation camp** for more than one thousand prisoners. Since then a permanent Vipasana Centre has been opened in Tihar Jail No 4. where two courses of 10 days duration are organized regularly. In the year 1998 **Shri Satya Narain Goenka** Teacher of Vipasana inaugurated "**pagodas**" Meditation cells in the Centre. Staff members are also encouraged to attend meditation courses. Meditation group like Brahma Kumari, Ishwariya, Vishva-vidhalya, Divya Jyoti, Jagriti Sansthan, Sahaj Yoga kendra have also opened their branches in jails for imparting moral education, counseling and techniques of meditation to the prisoners. This has helped many prisoners in changing the whole approach to life.

(ii) Creative Art Therapy:

Creative Art Therapy, which is physiotherapeutic in nature, is used in severe setting. In respect to prison setting, the therapy serves as reformatory process in several ways. First and most important, it helps to express, channelize and ventilate himself. One has to keep in mind that, anyone convicted or otherwise exiled from the rest of the world is initially bound to have tremendous anger, aggression, sense of helplessness, hopelessness and emotional problems. Therefore, by encouraging and promoting creative Art, the individual is able to pent up emotions and realize his worth as "self" having a positive desire of improving himself both consciously and unconsciously.

(iii) Social Participation in Reformation:

As a part of community participation in the reformation and social integration of prisoners after release, a large number of respectable members of non-governmental organizations, Retired Major General, Professors I.I.T., Delhi Eminent Psychiatrist, Psychologists, Principle and teachers of various educational institutions have been conducting various activities in the prisons. These NGOs have had very sobering and positive impact on the psyche of the prisoners, who have been shown the positive and constructive approach to life after interaction with them.

(iv) Rehabilitation:

In addition a programme for teaching various trades was started in other Jails also both for convicts as well as under trails. This programme includes pen manufacturing, book binding, manure making, screen printing, envelop making, tailoring and cutting, shoe making etc. Which has not only resulted in learning a trade, but also provided monetary gains to the prisoners. For the post-release rehabilitation of the Prisoners, the social welfare Department of Delhi Government provides loans for setting up self-employed units.

(v) Factories in Jails:

Generally now a days there are many factories in the Jails i.e. weaving, carpentry, chemical (shop, oil, etc.) paper, tailoring, bakery etc which helps the person in

getting the rehabilitation after release from the jail after the completion of sentence. There has been 1000% grown in the turnover of the Tihar jail factory within last two years. With the close participation of convicts and the jail staff and the NGOs they are producing articles under the brand name of "TJ" with products ranging from branded confectionary items to furniture, caprets oil & soaps etc.

VIII. CONCLUSION

No doubt, the applicability of international rules and regulation and model manual of prison administration is a cumbersome task, but in order to standardize the procedure and to provide the rights of the inmates lawful and purpose fully, we may take the following measures:

- 1. Health Care Services:** It would be essential for the prison administration to employ or associate better health care services for the prisoners, so as to provide prompt and preventive action for better care.
- 2. Vocational and Skill Development :** Tihar jail had been in news to start the VTI (Vocational Training Institute) concept in the year 2012-13, wherein, certain sill based courses such as Automobile Operations & Repairing, Air Conditioners repair and Maintenance, Welding, Stitching, Carpentry etc were provided to the inmates to focus on their employability after the sentence. The course was in co-ordination with the Ministry and on successful completion of course , the certificate is issued which is at par with the *ITI certificates* of short duration courses. These types of initiates may be taken up at a larger scale, and possibly, more industries should be associated with these tasks to make it more meaningful.
- 3.** There is also a need to synchronise and facilitate the staff of the prison. It is therefore essential to have Establishment of **Central Academy for Correctional Administration**, to eable the proliferation of corrective and sustainable activities across the prisons all over India.
- 4. MoUs** with the industries and **NGO for rehabilitation** of the prisoners and counselling for betterment is also needed. Active participation of Social Welfare department is needed.
- 5. Model Manual of Prison**, as per BPR& D guidelines, may be prepared and acted upon to bring betterment in the administration as well the inmates.
- 6. Special rehabilitation programmes** may be conducted with close co-ordination of Police, Prison and the Court.
- 7. Life Cover** to the Prisoners under Pradhan Mantri Suraksha Bima Yojana Insurance Scheme may be provided for further security of the family.

The rights of the inmates can only be addressed if we are eager to provide the legal rights own by them with prompt and fair display of our duties.

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"Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care" - - Mahatma Gandhi