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Prisoner's rights and prison reform in India: A legal critique

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Abstract---Every person is born with certain human rights and that cannot be curtailed for being a prisoner. These are fundamental and inalienable to all human beings. The Constitution of India grants certain fundamental rights that live with the persons and die with them and violation of which is a grave injustice towards the person. The treatment of prisoners in prison and violation of their rights on a daily basis is the mirror how prisoners are neglected by the higher authorities and the various reports of their inhuman treatment is the hypocrisy of the police officers in the society. The basic idea of rights provided by the government to the prisoners is not to show mercy for their crimes rather not forbidding any person from their basic civil rights or encouraging inhuman treatment. The prison reforms being single of the major parts of criminal justice structure is also the one to which everyone has turned a blind eye. If the very root idea of criminal justice in India is reformative then treating prisoners with so less of humanity will further break the justice system. The article discusses about the conditions of prisoners, the need of prison reforms, and the

steps taken by judiciary and the government of India. Should we shift towards more liberal regimes or towards more custodial control? How does the social system in prison function? Today's scenario of prison and treatment of one human towards other force to raise the question that what is the difference between a person behind the bars and the authority keeping them. The very idea of reformative criminal justice system in our country essentially includes treatment of prisoners and the guard of their human rights.

Keywords---criminal justice, human rights, prisoners, prison reforms.

Introduction

The term "prisoner" refers to a person who has broken the law and is being held in a jail or other kind of confinement as a result of their actions. The term "prisoner" refers to any individual who is held in prison for a period of time as a consequence of a court order or other legal necessity. An inmate is a person who has been imprisoned for an extended period of time. An institution where inmates are detained and denied many liberties by the state is referred to variously as a prison, jail, penitentiary, detention centre, or remand centre. To keep pace with shifting social dynamics, laws and jail missions went from purely custodial to coercive, then to strictly remedial. In the past, society's view of inmates and penalties for them was vile and cruel, but this has changed. Currently, the Indian penal system is founded on a policy of rehabilitation and reformation. Many changes have taken place in the Indian jail system throughout the course of its history, from the pre-British era to today's law of the land. (Jain, 2016) The Indian Prison Act, 1894, and the state-specific jail manuals now control prison administration and management in India. Today, no one can be denied their most basic fundamental right just because they are a criminal. Long-term incarceration results in a phenomenon known as deculturation or desocialization, depending on who you ask. Prisoners are rendered momentarily incapable of managing some aspects of everyday life in the outside world while they are "unlearning" these skills. As a result, prison reform is critical to ensuring that inmates are able to reintegrate into society after their release.

Structure of prisons and classification of prisoners

At the time when crime meant punishing criminals, there was no need for separation of prison and everyone was kept inside the same prison without any discrimination of sex or age which made life more horrible than death itself. It was during the end of 19th century when the idea of different prison came in the mind of penologist and it is since been firmly established. The main objectives of classification of prisoners were:

- To separate different type of offenders according to sex, and nature of punishment.
- Avoid moral contamination and maintain security inside the prison
- To provide training and for reformative purposes. (N.V. Paranjape, 2016)

Indian jails are made and the offenders are confined according to the view of the objectives, the different types of Indian prisons are-

- Central jails- The offenders who are sentenced for their crime for more 2 years are confined in central jails. These jails also have rehabilitation facilities.
- District Jails- The district jails are situated in the headquarters of the district and sub-divided in categories. In district jails offenders are imprisoned for three to six months.
- Sub-jails- Sub –Jails are smaller institutions situated at a sub-divisional level. The offender is imprisoned for 3or less months.
- Open Jails- These are prisons with minimum security, and the prisoners with good behaviour are allowed in these prisons to work for living. Today 17 states have jurisdiction for open prison in India.
- Special Jails- These jails have highest amount of security as only particular class of offender convicted for offences like terrorism, habitual offender, violent crimes, grave violation of prison discipline are kept in these prisons. Kerala has highest number of special jails (16).
- Women`s Jails- These jails are exclusive to women offenders only and the exist in every level (central, district, sub-divisional). There are 20 women`s jail across India.
- Borstal School- These are type of youth detention centre exclusively used for minor and juvenile offenders. The schools provide care, education and rehabilitation so that they can be given another chance in the society.

Today, in India there are 137 central jails, 394 district jails, 732 sub jails, 20 women jails, 20 borstal schools, 64 open jails, 42 special jails, and 3 other jails. Prison population in USA is the world highest with 2,193,798 and India is 5th highest country with the prison population of 332,112. (World Prison Population, 2009).

Human rights in relation with prisoners' rights

People are born with a set of fundamental human rights that they are entitled to and cannot be taken away from them. Human rights cannot be taken away from anybody convicted of any crime. Many liberties granted to the people by the law are stripped away from a prisoner when he or she is imprisoned, but essential rights are protected. International Human Rights Law protects against various inequalities such as racism, discrimination between the poor and elite, torture. According to them, no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Clothing has a sufficient standard of living to be considered a component. A good hygiene system should be in place in prisons. (Rawat & Bhatt, 2016) A proper medical examination and treatment shall be offered to all prisoners as soon as possible after acceptance. They also recognize the rights of particular groups, including women, children and people with disabilities.

Prisoners in India have rights guaranteed to them under the country's constitution, elevating the status of the penal system. A breach of Article 14 (the right to equality and equal treatment of the law), which states that no one shall be deprived of his life or liberty unless in accordance with the method provided by

law, is grounds for Article 21's injunction. It is against the law for someone to be penalised or prosecuted for the same offence more than once, as stipulated in Article 22. Prison officials cannot force inmates to submit testimony that might lead to criminal charges against them.

- Protection against physical harm – It is the responsibility of the prison authorities (on behalf of the state) to ensure the health and well-being of the inmates. They should also make sure that the jail is clean and safe, and they should inspect incoming detainees to determine what kind of job should be assigned to them.
- Separation- male and female convicts shall be kept in separate jails or separate part of same buildings.
- Solitary confinement- Solitary detention is used as a mode of punishment but they must be examined by the medical officer if they are kept for 24 hours.
- Under-trials- Under trials may be permitted to have their own clothing, food and other accessories from their reasonable sources but at reasonable hours.
- Civil Prisoners- Civil prisoners are also treated as under trials. They are allowed to work in jail according to their will.
- Work- A offender who is punished to work in prison shouldn't be allowed to work more than 9 hours a day. The medical examiner must check him every fourth day to check the effect of work in his body.

The court decided on a wide range of prisoner and trial rights and privileges. Inmates' constitutional rights must be construed in a way that ensures that the public interest is not compromised while attempting to be empathetic toward the prisoners. (*Shri Rama Murthy v. State of Karnataka, 1997*). Prisoners' fundamental rights were recognised by the Madhya Pradesh High Court notwithstanding restrictions on their freedom. Under the Prison Rules, for example, a prisoner must be supplied with appropriate accommodations so that he or she can maintain a healthy lifestyle. (*S.P. v. State of Madhya Pradesh, 2007*). The Supreme Court reaffirmed and established criteria for the payment of fair remuneration to inmates for labour they perform while incarcerated. The court also ruled that a person's rights are not forfeited just because they have been convicted of a crime. (*State of Gujrat v. High court of Gujrat, 1998*)

The Supreme Court held that maladministration in prison often leads to violation of prisoners' rights. The jail authorities oblige inmates by giving them illegal concessions and at time even leads to misappropriation of jail fund in connivance with the inmate criminals. (*State of Maharashtra v. Asha Arun Gawali, 2004*). The Supreme Court set out certain guidelines for the prison authorities. The death of women prisoners and suicide committed by them during their prison term was a serious cause of concern for the court and jail authorities were directed to avoid such incidents by upgrading their health care and security programmes in prisons. (*R.D. Upadhyaya v. State of Andhra Pradesh, 2006*) Other inherent rights can still be protected by Habeas Corpus, even if a person is now in jail. The Supreme Court ruled in this instance. Supreme Court argued that the mere incarceration of offenders did not infringe on their constitutional rights. (*D.B.M.Patnaik v. State of Andhra Pradesh, 1974*)

Abuse of Prisoners' Rights

The prisoners are deprived of many rights and at the same time are given a set of rights with subject to reasonable restrictions. But the rights provided and the rights the prisoners get access of in reality are vast different, the abuse of prisoner's rights in every step by other inmates or by the jail authorities are constant.

Custodial Torture

The process or the method used by the police to extract confession of a crime from a criminal or a suspect is the clear picture of supremacy of power over the weak with no respect of the rights of the criminal or the suspects of any crime. In the following case the police suspected some people for committing the crime theft and arrested them for the same. During interrogation the torture led to the death of one of the suspects. The medical examiner revealed the death was caused due to asphyxiation. The police investigator was convicted under section 302, I.P.C. and awarded life sentence. The court held that the custodial torture is violation of Article 21. (*Ragbir Singh v. State of Haryana, 1984*). Custodial torture is a naked violation of human dignity and degradation which destroys to a very large extent, the individual personally. (*D.K. Basu v. State of West Bengal, 1996*)

The petitioner, a journalist complained of custodial violation of women prisoners and they are assaulted by the police. The court held that women suspects should be guarded by female constables and interrogation must be carried out in front of the female police officer/constable. The session Judge should make surprise visit in prison periodically. The prisoners should be provided legal assistance and the magistrate must inquire to the arrested person if there was any police torture when the person was in custody. (*Sheela Barse v. State of Maharashtra, 1980*)

Solitary Confinement

Solitary confinement is one of the most inhuman and torturous way, of punishment to an offender. The right against solitary confinement was challenged, when the petitioner was condemned to death on a murder charge and was lodged in a single cell completely isolation from all inmates. He challenged this quasi-solitary confinement and alleged that section 30 of the Prison Act, 1894 was violation of Arts. 14, 19 and 21 of the constitution. The court rejecting the plea held that putting a prisoner who is under a 'final executable death sentence' in confinement is not solitary confinement since it is only a part of procedure for execution of death sentence. (*Sunil Batra v. Delhi Administration, 1978*)

Under trial Prisoners

A new level of difficulty has been attained in dealing with inmates awaiting trial in the modern day. There are a large number of convicts awaiting trial or confession in jail cells that are longer than the maximum sentence they might have been sentenced to. Though Article 21 of the Constitution guarantees a prisoner the right to a quick trial. If someone is detained without being convicted of any crime, it becomes an offence against the individual. One of the primary causes of the

trials' pain and suffering for those involved is the judiciary's or police's inefficiency or slowness. As per Prison Statistics India -2020 Occupancy rate at the end of the year was 118%. Where the actual capacity of Prison was 4,14,033 and number of Prisoners at the end of the year were 4,88,511. Most of the prisons are occupied by undertrial prisoners, if prison overcrowding has to be brought down, the undertrial population has to be reduced drastically. As provided by Prison Statistics India-2020 out of 4,88,551 prisoners 3,71,848 were undertrial prisoners, which makes 76% of total prison population. Overcrowding brings with itself numerous difficulties in the life of prisoners. (Prison Statistics by NCRB, 2020)

Provision of Bail for Undertrial prisoners

The primary object of arrest or detention of the accused is to secure his appearance at the time of trial and to ensure that in case he is found guilty and convicted for the alleged offence he is accused of, he is available to receive the sentence. However, there had been instances where undertrial prisoner was in detention for period beyond the maximum period of imprisonment given for alleged offence. To check such instances new section 436-A was added in Code of Criminal Procedure by the Code of Criminal Procedure (Amendment) Act, 2005 which provides for the release of the accused on bail on his own surety if he has served half of the maximum term prescribed for that offence for which death is not one of the prescribed punishments. In no case a person be detained beyond the maximum period prescribed for the offence. If delay was, however, caused by the accused the period may not be computed as aforesaid. It is a beneficial provision that addresses the long-standing issues of under-trial prisoners who have been detained for periods longer than the maximum term allowed for that very offence. Also, there is provision of Default Bail under Section 167 of Code of Criminal Procedure. It is, in fact, a bail release based on the prosecution's failure to file a charge sheet within the stipulated time frame. The right to bail is absolute under Section 167(2) proviso (a). The accused in detention should be released on bond if the investigating agency fails to file a charge-sheet within the 90 or 60-day deadline, depending on the situation. Mr. Justice V.R. Krishna Iyer highlighted the agonies of pre-trial prisoners in the following words:

“The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to psychological and physical deprivation of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family. (Moti Ram v. State of Madhya Pradesh, 1978). Under Article 21, the court found that a method that kept a significant number of persons in prison for so long could not possibly be considered to be reasonable, just, and fair with respect to Article 21 of the Constitution. (Hussainara Khatoun v. Home Secretary, 1979)

Prison Labour

The prisoners are given different jobs in prison and according to the Minimum Wages Act, wages can't be less than the minimum wages fixed by the government.

This rule was made so that the person can support his family outside and save them from being completely ruined. But the prison authorities abuse the prison labour and wages are not paid to the prisoners according to their work. As a result of this ruling, the state is now required to make sure that the employee's wages are being paid fairly. If the regulations for the payment of wages to convicts are to be finalised, this element should be considered, and the wage policy should have retrospective effect. (Mohammad Giasuddin v. State of Andhra Pradesh, 1977). The court viewed that where a person provides labour or service to another for remuneration which was less than minimum wage, the labour or service provided by him clearly fall under the scope and ambit of the words 'forced labour' under Article 23. (People's Union for Democratic Rights v. Union of India, 1982)

Police Encounters

Police Encounters are one of grossest violation of human rights. The act was necessary or justified in question that is asked with every encounter. The act is direct violation of the law by the police. The two Judge Bench held that killings in police encounter effects the credibility of the rule of law and the administration of the criminal justice system, and was certainly violation of right to life and human dignity as enshrined in Article 21 of the India Constitution. (Peoples Union Of Civil Liberties v. State of Maharashtra, 2014)

The growth of prison reform in India

Prison reform in India has been through different changes throughout the years, to create a favourable condition for the prisoners so that the reformatory justice system of India can fulfil its objectives. The first committee on prisons was appointed in 1836 known as the Indian Jail Committee. It gave report in 1838, it drew attention to the horrible condition and abuse of prisoners and also the rising level of corruption on the lower staff. The committee didn't give any suggestions and rejected education, moral lectures and reward to the inmates and laid stress to hard and monotonous life in jail therefore on retributive punishment. In the year 1864 on the recommendation of the committee two significant changes were made-Jail Manual was framed in 1870 and Segregation system was introduced in prisons, segregation of male from the females, adults from the children, and civil offenders from the criminal offenders. In the year 1889 on the recommendation of the committee under trials were segregated from the convicted criminals and the habitual offenders from the casual offenders. The 1892 committee recommended on nine hours of work in prison. But the utmost significant references which change the face of prison reform was given in the year 1919 jail committee which was implemented in 1920 which was the breakthrough in the prison system of India, the important recommendations were:

- Segregation of offenders on the basis of sex, age, conviction and type of offenders,
- Introducing classification system for residence and work assignment purposes, giving training to inmates on various crafts,
- Giving education to offenders below 25 years of age,
- Adopting recreation measures like indoor games, music competitions, etc,

- Permitting offenders to maintain social contacts with outside world by writing or receiving letters and meeting relatives and friends on prior appointment basis,
- Arranging moral and religious lectures, introducing remission system, and economic aid to prisoners on release from the prison. (Ahuja, 2015)

Some recommendations of the committee which can't be implemented by the government immediately but was implemented afterwards are:

- Introducing probation system (suspending judgement and releasing criminals by courts on certain conditions without sending them to jails).
- Beginning borstal school for the juvenile or adolescent offenders.

These rules are followed today by the Indian prison system for providing a future and a better prison culture to the inmates inside the prison.

The Malimath Committee's Reform Recommendations

In 2000, the NDA government appointed *Judge V.S. Malimath*, the former chief justice of Kerala and Karnataka, to propose a reform of India's century-old criminal justice system. The Committee submitted its report with recommendation in 2003. The main recommendations are as under:

- All cases with a sentence of three years or less must be tried summarily, and the maximum sentence that may be issued in summary trials should be extended to three years.
- The Committee supports the establishment of a permanent Statutory Committee to establish sentencing standards. It was said that pregnant women and mothers with children less than seven years can be placed under home arrest instead of being incarcerated, with consideration for the child's future.
- In circumstances where the public interest is not at stake, the law should favour out-of-court settlements, as proposed by the Law Commission. The fine amount can be multiplied by fifty. In instances where the offender cannot pay the fine or has defaulted, community service may be imposed.
- The Committee also supported replacing the death penalty with life imprisonment without commutation or reprieve. The Indian Penal Code must be revised to strengthen, diminish, or implement alternate ways of punishment in light of new and developing offences.

Some key *recommendation by Law Commission of India in report no. 268:*

In Section 2(a), it is proposed to remove the relatively general definitions of bailable and non-bailable offences, as well as the reference to Schedule 1, and replace them with a more specific definition of bail. Since u/s 41, police officers have extensive arresting authority. In order to preserve a balance between individual liberty and society interests, the panel considered that arrest without strict compliance with the provisions should entitle an individual to bail. The magistrate has been charged with ensuring such compliance. In addition, a

disciplinary investigation against the offending authorities has been requested. The demand of financial responsibilities, either via the execution of a personal monetary bond or through sureties, should be a last option when all other methods have failed. In deciding the conditions of bail, the court must consider the financial circumstances of the individual accused of a crime and ensure that the requirements are neither exorbitant nor overly burdensome. It is inappropriate to reject sureties only on the basis that they are not located nearby.

Amendment to Schedule I – It has been recommended that the period of imprisonment for offences and their classification as bailable or non-bailable should be consistent. Amendment to S. 438 pertaining to pre-trial release – The panel recommends that anticipatory bail not only be given with care, but also be made effective for a limited length of time. Given the unique status of section 438 of the Criminal Procedure Code and the potential for abuse, each order issued according to this provision must be supported with grounds for denying or granting anticipatory bail. Bail in economic offences – All forms of economic offences, including tax evasion, customs violations, and bank fraud, should be dealt with strictly, and provisions for restricted bail in such offences should be incorporated into the Criminal Procedure code or special statutes for the purpose of granting or refusing bail. Bail in Special laws - It has been claimed that in terrorist legislation, NDPS law, etc., there should be a stiffer standard for granting bail, and that bail should only be given in extreme instances.

Recommendations of the supreme court

The supreme court in the last 15 years through various cases of different states provided guidelines for the better prison system in India. The most landmark case was: Andhra Pradesh (Giasuddin 1977; Patnaik, 1974), Maharashtra (Sheela Barse, 1983), Delhi (Sunil Batra and Prem Shankar, 1980), and Bihar (Rakesh Chand, 1986) and National Expert Committee Report on Women Prisoners, 1989. The guidelines given through various judgements are as follows:

- When a prisoner wants to work, he or she has to be assigned employment that they enjoy. The state government was ordered by the Supreme Court justices to ensure that prisoners are not given boring, mechanical, or demeaning work, but rather cerebral, intellectual, or similar activity combined with some manual labour, within the confines of the jail laws.
- Although unpaid employment is humiliating and bound labour, a prisoner should be given an appropriate portion of earnings for the task they undertake.
- Yoga, meditation & games: Person –expression and self-realisation have positive and curative effect on human body and mind. Thus, aforesaid type of activities will enhance the prisoner's creativity and sensitivity.
- Parole release: One of the numerous methods to keep inmates sane and connected to the outside world is through this system. Every three months, for at least a week, the prison sentence is punctuated by a parole release. If the prisoner is making improvement, the jail officials should keep an eye on things.
- Therapeutic outlook: The main purpose of this system is to change the criminal, and stop the effect of incarceration and prison atmosphere in the

criminal mind. It helps restore the offender's dignity and create atmosphere favourable for prisoners to have another chance to change.

- Legal assistance- Legal assistance is a constitutional right of the poor. Nothing rankles human heart more than injustice towards the person who can't afford to fight for the justice. Thus, it is absolutely necessary that legal assistance is provided to the prisoners as it is provided to the under trials.
- Human action and guard of fundamental rights: A fundamental right is the persons birth right and it can't be curtailed due to conviction. Every person in earth has the right to life and human dignity. Thus, prison authorities can't resort oppressive measure for having political belief or government can't ban any prisoner from publishing a book.
- Handcuffs- Handcuffing a prisoner while he or she is being transported from one facility to another for trial should only be done under very specific circumstances. Prem Sankar's case was heard by the Supreme Court of India, which ruled in 1980: "We share the worry and anxiety about changing our view on inmates and implementing meaningful reforms in prisons sooner rather than later.
- Complaint boxes: Complaint boxes should be kept inside the jail, and appropriate action should be taken when complaints are submitted. All inmates will have access to these boxes.
- Visits by magistrates-Personal or proxy visits to prisons under their jurisdiction are required by district magistrates and session judges so that inmates can air their complaints. They're going to look into it and do what needs to be done.

Conclusion

Criminal justice system is one of the major pillars of Indian justice system which reflects the principal of reformative justice system. To make the offenders better person and accepted by the community there must be a better environment inside the prison walls which give the prisoners a better life to grow both physically and mentally. Implementations of the above programmes to convert prison into corrective centres can't be achieved without involving some extra expenditure by the government. But till the time the goal is not achieved the prisons will continue to work as human warehouse. The improvement and success of correctional centres are very important as it will affect in the long run, to reduce the rate of crime and improve the inmate's lifestyle and behaviour. Financial input is not only the input that is required, but eradication of corruption in prison and the victimisation of the prisoners by the society, partisan politics and inhuman treatment of the prisoners must be stopped. Every person in the world has fundamental rights and its time that the people inside the walls get the rights which they are legally entitled off.

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