



ISSN: 2278 – 0211 (ONLINE)

Human Rights Violations of Kashmiri Prisoners: Need For A Modern Justice Based Approach

Faheem Iqbal Shayiq

(B.Sc, M.A(Eng), LL.M, UGC-NET)

Research Scholar, Department of Law,

University of Kashmir, Hazratbal Srinagar, 190006

Abstract:

The management of prison & prisoners is an important aspect of criminal justice delivery system. The change in emphasis from mere custody to correction & from punishment to reformation at the International & National level, courtesy the norm-setting organs operative at different levels, emphasizes the need to have a relook at the prison administration. Unfortunately but, the guidelines emanating from these International & National forums have not been implemented in letter & spirit, leading to the decline in justice administration in this area of vital concern. The situation becomes even more pathetic when it comes to the grief-stricken region of Kashmir, where mostly prisoners comprise not of the criminals, as understood in the normal parlance but of people with banned political affiliations or with a revolutionary bent. Irrespective of the nature of indictment, the prisoners continue to remain human beings & as such don't lose their fundamental rights merely by being prisoners. They continue to deserve a standard of treatment, of course subject to any valid restrictions but such restrictions ought not to be arbitrary & unreasonable.

Key words: Human Rights, Prisoners, Central Jail Srinagar, Implementation, Violation, Public Safety Act (PSA), Amnesty International (AI), Jammu and Kashmir (J&K).

1. Introduction

Imprisonment is the main form of punishment. In the primitive societies either it was unknown or was rare. It is a modern day development, originating somewhere in the 16th century. However in the 19th century it became a vital form of punishment & has continued to remain so. Imprisonment ordinarily means confinement within a specified area generally a penitentiary. It connotes nothing but the restraint on one's liberty, varying mostly from a day to that for life. The objective of imprisonment also varies from country to country & from civilization to civilization viz., punitive, incapacitating, deterrent or rehabilitative, depending upon the character of a given legal system, prompted by the level of cultural tolerance for a particular omission or commission considered to be anti-social in spirit. The place used to put such a restraint is usually named as a prison, jail or correctional facility in which individuals are physically confined & deprived of a range of freedoms. These institutions are an integral part of criminal justice system & include a range of types such as those exclusively for adults, children, female, convicts, under-trials & separate facilities for mentally-ill offenders. The prisoner is a living person who has been put in a state of confinement by depriving him of his liberty & isolating him from his social life.

However it is to be noted that despite the fact that imprisonment is warranted by law, yet the prisoner does not lose all of his rights. His natural rights shall avail to him for the simple reason that he is a human being & deserves a standard of treatment under whatever circumstances he is placed. Under the modern philosophy, a prisoner is treated as a patient who needs cure & care & is not a menace worth condemnation & destruction. This philosophy aims at the reintegration of the prisoner in the social milieu by cultivating in him the proper attitude. The prisoner is therefore afforded certain rights during his period of detention, like the right to food, clothing & protection from inhuman treatment, & torture. In the USA, in 1866, the passage of 14th amendment offered convicted persons the hope that 'due process of law' will apply to them as well. And in 1973, U.S National Advisory committee on the criminal Justice standards & jails, in its recommendations advocated creating a Prisoner's Bill of Rights. Similarly in India there has been a huge quantum of Judgements, laying down the inviolability of these rights. In *Sunil Batra v. Delhi Administration*, for instance, the Court observed,

"Whatever is punitively outrageous, scandalizing, cruel, is unarguably unreasonable & falls foul of Article 21"

Justice Desai, further observed,

“No Iron curtain can stand between prisoner & the constitution”

In this context, Justice Krishna Iyer made the following observation,

“Convicts are not by mere reason of the conviction denuded of all fundamental rights which they otherwise possess.”

In this backdrop, it would have been proper to treat prisoners in the manner as laid down under these international & national norms. Unfortunately the case seems to be otherwise with the prisoners especially in the Kashmir valley.

2. A study of the living conditions of Kashmiri prisoners:

The Amnesty International(A.I), recently released its second report about Public Safety Act (PSA), titled “PSA-still a lawless law”, a sequel to the earlier report in 2011“PSA-A Lawless Law” which maintains that no substantial change has occurred over a period of time . The report quoting police officials puts the number of PSA detentions at 15,600 during the last two decades.

The PSA and its implementation & other similar laws in Jammu and Kashmir continue to violate India’s obligations under International Human Rights Law, which it had undertaken to observe.Guruswamy for Amnesty International India, in his 2011 press statement stated,

“The J&K authorities continue to use the PSA to circumvent the Rule of Law and the criminal justice system. They resort to PSA detentions instead of charging and trying persons suspected of offences in the court. J&K authorities often keep persons in detention even after the detentions have been quashed by the High Court. The PSA violates International Human Rights Law and must be repealed. All PSA detainees must be charged and prosecuted through a fair trial in a court of law or else released.”

The report maintained that the detainees include political leaders and activists, suspected members or supporters of armed opposition groups, lawyers, journalists and protesters, including children.The delegates of the AI group had earlier during visits to Srinagar, Islamabad, Pulwama, Kupwara&Baramulla, in April and July 2012 analysed 110 PSA detention orders and conducted interviews with nine families where a family member had been detained under the PSA. They also interviewed members of the police,

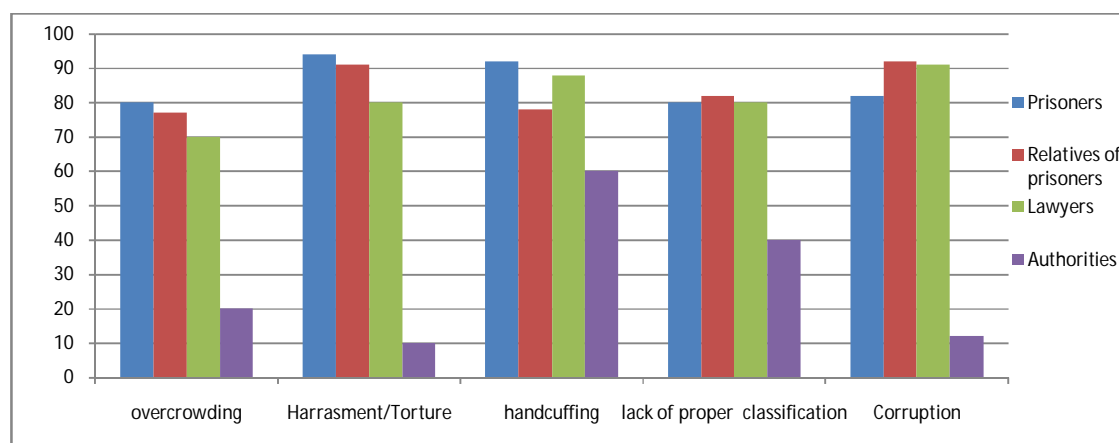
representatives of the Kashmir High Court Bar Association and the Human Rights Commission of the territory, media persons, lawyers and civil society organizations. These & other media reports motivated me to do a bit of a research in this direction, vitally concerning my focus on the Srinagar Central Jail.

The Jail system of Kashmir in general & Central Jail Srinagar in particular occupy a prominent place in the Criminal Justice Delivery System in the state of Jammu & Kashmir. The sensitivity of the area over which the Central Jail has jurisdiction makes its study all the more interesting. Before venturing out on the ways which lead to this institution, in connection with the research undertaken, a lot of apprehensions worked at the back of mind, coupled with the lack of knowledge regarding its working. However considering the enthusiasm & optimism, it was all going to be a great experience to say the least. It was very hostile, in the beginning. The scenes on day one were not encouraging and one could gather a few things that had an educating effect. The optimism started dwindling into a calculated one as one could now foresee how things will shape up during the course of the study. The first policing began at the gate itself. The “Authority Letter” from the Law Department, Kashmir University, as if carried little authority for the policemen and the in-charge at the office started interpreting the letter as per his dictates and convenience. The worst thing he could point out to was that the authority letter did nowhere order them but was a formal request instead. This was another signal to the conscience that “order” is the only word the policemen, in charge of the affairs in this important institution, are familiar with. The request did not sound proper to their reason. The measuring rod which they applied was equal and did not discriminate or differentiate a person on the basis of rank or calling. The officials on duty at different spots spotted with anxious eyes & tried to make sure any interesting reality from leaking out. The attitude of the Jail authorities, when it comes to dealing with prisoners, is not pleasing at most of the times. The Human Rights are rarely protected. It was shocking to witness one of the prisoners being beaten to pulp. The only fault he had committed was that he was consciously or ignorantly carrying some currency notes inside his ‘pyjama’, maybe in contrast to the Jail discipline. Whatever be the reason, the bash he suffered was uncalled for. The policemen on discovering the same denuded him. He was subjected to sheer indignity, contrastingly to the repeated Supreme Court judgments. The Supreme Court has in many cases held that a prisoner does not lose his fundamental rights merely by being a prisoner. In *Kartar Singh Vs Punjab*, the court decided that “3rd degree” interrogation is considered as torture and thus violated Article 21.

The prisoners & their families complained of not being allowed to communicate freely. Justice Bhagwati in Charles Shobraj v. Superintendent Jail had opined that the expression 'personal liberty' in Article 21 is of the widest amplitude and it includes in it to socialize with family members and friends, of course, subject to any valid restrictions but such restrictions must be reasonable and not arbitrary.

The issue of overcrowding is a challenge which has not been dealt with effectively and goes against the Jail Manual guidelines. Expressing concern over the overcrowding of the central Jail Srinagar, the State Human Rights Commission (SHRC) had directed the government either to go for expansion of the prison or relocate it. As per the reports, during an on spot inspection of the Jail, SHRC Chairman (then) Justice (Retd.) Bashir Ud Din found that 488 prisoners were lodged in the jail far higher than the sanctioned capacity of 300. In this report, the Commission had noted that out of 488 prisoners, 417 were under-trials, 41 detainees & 30 convicts. The report further stated that the inmates are not regularly taken to courts on their hearing dates. As per the reports on paper the compound of the Jail measures upto 150 kanals of land. But there are just seventeen barracks.

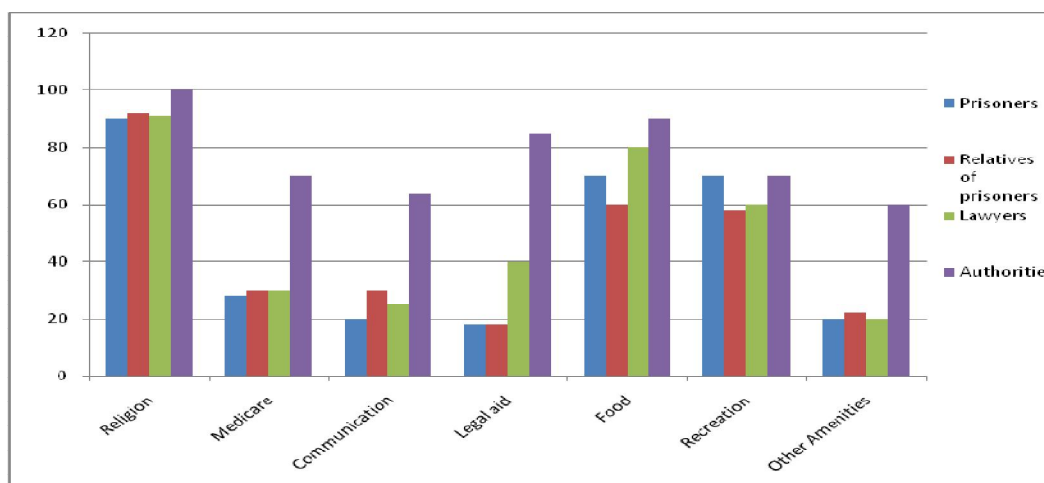
According to some lawyers, whose opinion was sought, the delay commences at the investigation stage itself. In many cases the charge-sheets are filed by police very late. The next bottleneck occurs in the service of summons to witnesses. This dilatory process leads to sheer injustice as is well explained by a well known maxim Justice delayed is Justice denied.



Graph 1: opinions of interest groups

The above Table shows the opinions of interest groups (Prisoners, their relatives, Lawyers, Authorities) in the matter of Rate of incidence (in %age approx.) of Human Rights violations of prisoners in J&K.

Similarly the rate of rights implementation shows a dismal trends on most of the chosen variables like the right to religion, medicare, communication, legal-aid, food etc.



Graph 2

Barring the Right to Religion, there is a huge variance in the opinions of prisoners, their relatives & lawyers on the one hand and the authorities on the other. Probably the first variable, i.e. right to religion or conscience is allowed to be practiced without much of restriction because of the geographical location of the jails & since the majority population as well as most of the officials happen to belong to the same faith. There is lesser rate of implementation so far as the other rights are concerned, which include the right to proper medicare, communication, legal aid, food, recreation & other necessary amenities of life.

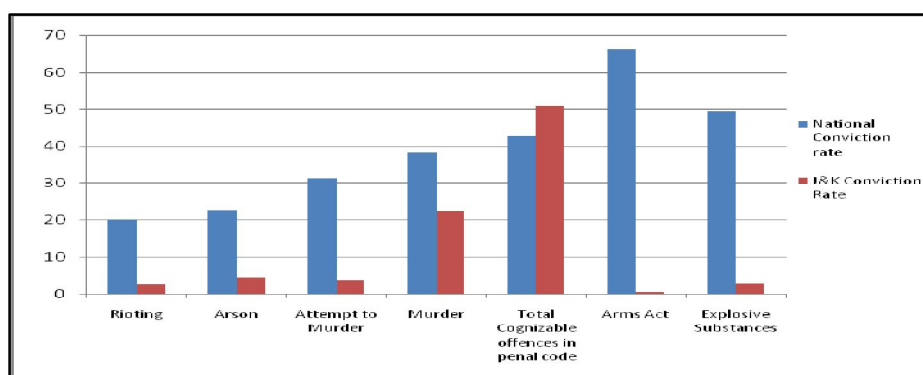
Over the past decade, according to official reports, there has been decrease in the overall number of armed groups operating in J & K, however the extra-ordinary measures have continued to be used by the authorities. By the police's own estimates there has been a resurgence of street protests while as there are only 500 members of armed groups operating in the valley. Some of the protesters, mostly young have resorted to throwing stones at security forces. However the authorities are continually resorting to the extraordinary administrative detention powers under Public Safety Act (PSA). Between January & September 2012 alone, 322 people were reportedly detained under PSA. This has furthered the overcrowding issue along with the problems that go with it.

Source	2000	2001	2002	2003	2004	2005	2006	2007	2008
NCRB	497	416	444	397	451	377	369	275	266
Greater Kashmir	503	318	504	401	510	402	920	NA	NA

Table 1: Table showing No. of persons held under preventive detentions in J&K

Table showing No. of persons held under preventive detentions in J&K from 2000 onwards (statistics from Govt. of India's National Crime Records Bureau (NCRB) & Greater Kashmir newspaper)Source: Amnesty International Report, PSA-The Lawless Law, 2011.

The Rate of conviction for possession of unlawful weapons, one of the most common charges brought against alleged members is 0.5 per 100 cases; over 130 times lower than the national average. Similarly the conviction rate for the offence of murder in J & K is 8 timeslower than the national average. In contrast the number of persons in administrative detention is 14 times more than the national average.



Graph 3: Comparison of Rate of conviction (India & J&K)

The Table shows comparison of Rate of conviction (India & J&K) for selected offences in the year 2008. Source; Amnesty International

The possibility of detention on vague and broadly defined allegations violates the principle of legality required under Article 9 (1) A of the International Covenant on Civil & Political Rights. The United Nations Working Group on Arbitrary Detention (WGAD) in November 2008 opined on 10 PSA cases from J&K that the detentions did not conform to International Human Rights Obligations that the government of India is bound by.

The handcuffing has time and again been prohibited by the Apex court except under grave necessity. Men apart, witnessing even a female inmate being escorted out handcuffed, was grossly against such guidelines. These anomalies violate Human Rights and the authorities seem to be doing so with impunity.

The literature on prison justice and prison reform shows that there are some major problems which afflict the system and needs immediate attention. These are overcrowding, delay in trial, torture and ill-treatment, neglect of health & hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication, streamlining of jail visits etc. The

Central Jail Srinagar as well as other jails in the region suffer from almost all of these vices and fallacies, though the variance in degree may be there. These institutions truly speaking need a complete overhaul to make the modern criminal justice philosophy, which gives importance to reform & rehabilitation, rather than punishment, workable in such institutions of prime significance.

3. Conclusions & Suggestions:

The analysis makes it abundantly clear that there are gross human rights violations in the prisons of Kashmir valley. A duty is, as such, cast upon the state authorities to ensure proper attention towards this problem. The government must learn to accord respect to the recommendation of bodies entrusted with the protection & enforcement of human rights.

The State Human Rights Commission's (SHRC) directions to the institutional authorities, being in consonance with the earlier committees on prison reforms like Mullacommittee, are to be implemented in letter & spirit. The Commission's concerns regarding the relocation of central jail Srinagar or as an alternate measure to renovate it, to bring it close to the recommended standards in regard to space and facilities, need to be taken seriously. The direction of SHRC was prompted due its discovery of insufficiency of space & other factors, on surprise inspections of the prison in the recent past.

There is a Jail Manual to guide the authorities about the management of the prison & prisoners. But it was unfortunate to discover that most of the officials, working in the jails are not conversant with the Jail manual. In such circumstances that implementation of rights will remain a farther dream. It is suggested that at the first place the officials be trained & disciplined consistently in accordance with the guidelines emanating from the Manuals as well as the directions of Superior courts in this directions.

At the same time consistent efforts should be made to educate the prisoners of their rights while they are in prison. This must be done in a language understandable to the prisoners, most favorably in their mother-tongue. The same has been directed by the High Court of the territory in the case of *AsiyaAndrabi v. State of J&K* in 2010.

There is a dire need of maintaining a healthy atmosphere inside the prison. This can be done by doing away with the hostility and developing a humane approach towards tackling problems. In this backdrop, it is suggested that an office of an independent ombudsmanbe created, which will look into the grievances of the prisoners & report it to the concerned officials for appropriate measures. Similarly a complaint box, whose access is restricted to a

neutral body, for prisoners to lodge their complaints without any fear, be placed within such premises.

An effort has to be made to regularize visits of Judicial officers to prisons. This measure would insert an element of accountability on the otherwise unaccountable officials. This is necessitated by the fact that most of the officials violate the Human Rights with impunity. Stringent punishments need to be meted out to the reckless & negligent authorities.

All said & done, this positivistic work approach will only yield if we develop an atmosphere of trust & confidence amongst all interest groups. The hostility of the prison is to be diluted by striking a balance between the protection of social order & protection of human dignity. This will obviously minimize the rate of incidence of unlawful behavior & prove fruitful in realizing the highest possible social order, much in league with the modern criminal justice philosophy, which gives primacy to reformation & rehabilitation rather than punishment.

At this point of conclusion, I am reminded of the quote by Venkatachaliah J,

“If it (imprisonment) is intended to reform the person when he comes out... the system is a dismal failure. He goes into the prison as an undergraduate in crime and comes perhaps as a postgraduate in crime.”

4. Reference

1. Alpert, Geoffrey (Prisoners Rights, Sage Publications London, 2006)
2. Amnesty International Report, PSA-The Lawless Law-2011.
3. Amnesty International Report, PSA-Still A Lawless Law, 2012.
4. Annual Reports, 2005-11 Jammu & Kashmir State Human Rights Commission
5. Jail Manual, J&K Government, 2008
6. Mir, Meharajudin, (Prison System in India, Deep & Deep Publications, Delhi, 2008)