



ISSN 2278 – 0211 (Online)

Rights and Duties of Prisoners: An Overview about the Global Aspect with Special Emphasis on India

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Abstract:

This paper essentially describes the rights of the prisoners and the protection of their rights through different national and international legislation. There are several case laws laid down to ascertain the judiciary's approach towards the right of prisoners. The recent trend of reformation over deterrent and retribution has also been highlighted in a very simple language. It further brings forth the problems that is faced in our prison system and provides suggestion that can help evade these problems to a large extent. Lastly I have given a personal analysis about prisoner's rights with special emphasis on the adaptation of New Penology.

1. Introduction

The general or layman definition of prison is a building to which people are legally committed as a punishment for crimes they have committed or while awaiting trial. Confinement in prison, also known as a penitentiary or correctional facility, is the punishment that courts most commonly impose for serious crimes. For lesser crimes, courts usually impose short-term incarceration in a jail, detention center, or similar facility.

Prisoner is a person held in custody, captivity, or a condition of forcible restraint, especially while on trial or serving a prison sentence. He is devoid of the right to liberty but has all other rights intact and as collateral to the rights bestowed on them by the state, they have certain duties as well.

The concept of prison as a therapeutic approach is a recent growth even in countries where great progress has been made in science, education, business and industry. In countries like India, the approach so far has been in a somewhat rudimentary form. Before the British rule in India, the Muslim law of crimes was applied in country which, like other medieval systems, was severe in its attitude towards criminals and treated them as incorrigible without having the slightest prospect of reformation. Though the British introduced a criminal law of crimes in terms of punishments, the basic attitude towards the criminal remained the same, i.e. punitive. It was only in the later part of the British rule and during last three decades after Independence that there had been a change in the attitude towards criminals, the change from punitive to therapeutic or correctional approach.¹ Whatever has happened in India in the field of correctional approach is the direct outcome of developments taking place in the penological thought of various countries, particularly in England and the USA.

The Indian socio-legal system is based on nonviolence, mutual respect and human dignity of the individual. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity. Even the prisoners have human rights because the prison torture is not the "last drug in the Justice Pharmacopoeia" but a "confession of failure to do justice to living man." For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. Article 21 of the Constitution guarantees the right of "personal liberty" and thereby prohibits any inhuman, cruel or degrading treatment to any person whether of this right affects the provision of Article 14 of the Constitution which enshrines right to equality and equal protection of laws. In addition to this, the question of cruelty to prisoners is also dealt with specifically by the Prison Act. If any excesses are committed on a prisoner, the prison administration is responsible for that. Any excesses committed on a prisoner by the police authorities not only attract the attention of the legislature but also of the judiciary. The Indian judiciary, particularly the Supreme Court in the recent past has been very vigilant against encroachments upon the human rights of the prisoners. It is the inhuman treatment meted out to the prisoners in the prison that the Supreme Court is compelled to delineate the broad boundaries of judicial jurisdiction, vis-à-vis, and prison justice. The judicial pen also started to recognize many other rights of prisoners, viz., protection against torture in the prison, right not be put in solitary confinement and

¹ Ahmad Siddique, Criminology & Penology, 6th ed., Eastern Book Company.

saving from handcuffing and bar fetters save in the cases provided by this protective organ of the State itself. The prisoner's right to bail, right to meet friends, relatives and lawyer are also considered by the Apex Court. Being conscious to human dignity, the court also granted the right to medical examination. Judicial conscience recognized the human right of the prisoners because of its reformist approach and belief that convicts are also human beings and that the purpose of imprisonment is to reform them rather than to make them hardened criminals.²

2. Judicial Pronouncement in India and Foreign Nations Regarding Prisoner's Right

- **In Charles Sobjar v. Supdt, Central Jail, Tihar, New Delhi**³, the Apex Court observed: Imprisonment doesn't spell farewell to fundamental rights although, by a realistic reappraisal, courts will refuse to recognize the full panoply or Part III enjoyed by the free citizen. Article 21, read with Article 19 (1) (d) and (5), is capable of wider application than imperial mischief which gave birth and must draw its meaning from the evolving standards of decency and dignity that mark the progress of a mature society.
- **In Sunil Batra v. Delhi Admn.**, the Supreme Court stated: In constitutional order it is axiomatic that the laws do not swallow up the fundamental rights of the legally unfree and as sentinels on the qui vive, courts will guard freedom behind bars, tempered, of course by environmental realism but intolerant of torture by executive echelons. The policy of the law is beyond purchase by authoritarians glibly invoking 'dangerness' of inmates and peace in prisons.

The court further held:

Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority.

Thus, it is evident that the Supreme Court has taken the view that every fundamental right of the prisoner cannot be infringed. The procedure for restriction should have been found in article 21, its reasonableness should be tested under article 19(5) and if the "anathema" by virtue authority is used arbitrarily, it would be of article 14.

After Sunil Batra, "the dynamic role of judicial remedies" painted the writ of habeas corpus as "a versatile vitality" and "operational utility" in order to make "the healing presence of the law live up to its reputation as bastion of liberty even within the secrecy of the hidden cell. The court observed: When prison trauma prevails, prison justice must investigate and hence we broaden our 'habeas' jurisdiction. Jurisprudence cannot slumber when the vey campuses of punitive justice witness torture.

In Sunil Batra, the writ petition originated through a letter by a prisoner, Batra, to a judge of the Supreme Court in which it was complained that the head warden caused assault on another prisoner, Prem Chand. This letter was admitted as writ petition forsaking the formal procedure because the freedom of a prisoner was at stake. So this case changed the status of habeas corpus. Previously, it used to be available to help the release of the person. But now it can be evoked even to save the prisoner from prison torture. And moreover, no formal procedure is needed now.

- **In R. v. Board of Visitors of Hull Prison ex p St. Germain**,⁴ Shaw, L.J. expressed the view that the rights of a citizen however circumscribed by a penal sentence or otherwise, must always be the concern of courts unless their jurisdiction is clearly excluded by some statutory provision. In his opinion it is irrelevant that the Secretary of State may afford redress where the rules have been infringed or their application has been irregular or unduly harsh.
- **In Raymond v. Honey**⁵, Lord Bridge was of the view that a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication.
- **In Pell v. Procunier**,⁶ Douglas, J., in his dissenting opinion stated that though the prisoner's rights may be dismissed by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisoners of this country (USA).

3. International Laws Recognising and Protecting Prisoner's Rights

There are some international documents or soft laws which are very much concerned with prison justice and recognition of the inherent quality of prisoner as human being and their inalienable rights as members of human family and protective rights against tyranny and oppression. Some of the important provision of those international instruments is discussed hereunder:

3.1. Universal Declaration of Human Rights

In the year 1948, a movement was started in the United Nations in the form of Universal Declaration of Human Rights which was adopted in the General Assembly of the United Nations. This document is commonly known as human rights and the document provided some basic principles of administration of justice. These principles embodied some universal concepts like equality of treatment, right to life, liberty and security of person, freedom from torture, and freedom from inhuman cruel or degrading treatment. Among the important provisions in the said Universal Declaration of Human Right, 1948, following are the relevant provisions:

² S.K. Pachauri, Prisoners And Human Rights, APH Publication Corporation, New Delhi, 1999.

³ 1978 AIR 1514, 1979 SCR (1) 512

⁴ 1979QB425:(1979) 2 WLR 42: (1979) 1 All ER 701 (CA).

⁵ (1983) 1 AC 1: (1982) 2 WLR 465:1982) 1 All ER 756 (HL).

⁶ 41 L Ed 2d 495: 417 US 817 (1974)

- **Article 1.** No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- **Article 3.** Everyone has the right to life, liberty and security of person.
- **Article 5.** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- **Article 6.** Everyone has the right to recognition everywhere as a person before the law.
- **Article 9.** No one shall be subjected to arbitrary arrest, detention or exile.
- **Article 10.** Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him.
- **Article 11.** Everyone charged with penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

3.2. Declaration on Protection from Torture, 1975

On 9th December, 1975, the United Nations General Assembly by consensus adopted it. The main objective of the declaration is protection of all persons from being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

- **Article 2.** Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the charter of United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.
- **Article 3.** No state may permit or tolerate torture or other cruel, inhuman, degrading treatment or punishment. Exceptional circumstances such as a State of war or a threat of war; internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

3.3. Standard Minimum Rule for the Treatment of Prisoners

The Standard Minimum Rule for the Treatment of Prisoners were adopted on 30th August 1955 by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The treatment of prisoners is also addressed in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Although not legally binding, the Minimum Standards provide guidelines for international and domestic law for citizens held in prisons and other forms of custody. The basic principle described in the standards is that, there shall be no discrimination on grounds of race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Part I contains Rules of General Application. It contains standards which set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of penal institutions. Specifically, it covers issues related to minimum standards of accommodation (rules 9 to 14), personal hygiene (rule 15 and 16), clothing and bedding (rule 17 to 19), food (rule 20), exercise (rule 21), medical services (rule 22 to 26), discipline and punishment (rule 27 to 30), the use of instruments of restraint (rule 33 and 34), complaints (rule 35 and 36), contact with the outside world (rule 37 to 39), the availability of books (rule 40), religion (rule 41 and 42), retention of prisoners' property (rule 43), notification of death, illness, transfer (rule 44), removal of prisoners (rule 45), the quality and training of prison personnel (rule 46 to 54), prison inspections (rule 55).

Part II contains rules applicable to different categories of prisoners including those under sentence. It contains a number of guiding principles (rules 56 to 64). Rule 61 is key to the guiding principles and states: "The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it." Part II also covers the treatment (rehabilitation) of prisoners (rule 65 and 66), classification and individualisation (rule 67 to 69), privileges (rule 70), work (rule 71 to 76), education and recreation (rule 77 and 78), social relations and after-care (rule 79 to 81).

Part II also contains rules for prisoners under arrest or awaiting trial (generally referred to as remand), rules for civil prisoners (for countries where local law permits imprisonment for debt, or by order of a court for any other non-criminal process) and rules for persons arrested or detained without charge.

3.4. The European Convention on Human Rights

The European Convention of Human Rights is an international treaty to protect human right and fundamental freedoms in Europe. All Council of Europe members states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity. The Convention established the European Court of Human Rights. Any person, including prisoners who feel that his or her rights have been violated under the Convention by the State party to it can take the case to the court. Judgements finding violations are binding on the State concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors the execution of judgments, particularly to ensure payment of the amount awarded by the Court to the applicants in compensation for the damage they have sustained. The establishment of court to protect individuals from the human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on international arena. However, unfortunately like many other International Conventions, this convention also failed to attract the citizens of member countries.

The relevant provisions are:

- **Article 2.** It protects the right of every person to his or her life.
- **Article 3.** It prohibits torture and inhuman or degrading treatment or punishment. There are no exceptions or limitation on this right. This provision usually applies, apart from torture, to cases of severe police violence and poor condition in detention.

- **Article 4.** It prohibits slavery, servitude and forced labour.
- **Article 5.** It provides that everyone has the right to liberty and security of person. Everyone who has been the victim of wrongful arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.
- **Article 6.** It provides a detailed right to fair trial, including the right to a public hearing before an independent and impartial tribunal within reasonable time.

Thus, from the important provisions of International Documents on Prison Justice it is revealed that the basic requirement of human dignity and conditions necessary for prisoners to return to normal life is common in all those documents. Due process of law, rule of law, right to know, freedom of person, freedom of expression subject to reasonable restrictions, prevention of torture, right to speedy trial, legal aid in deserving cases, open justice system, etc. all are regarded as sine qua non for a good prison justice system and legal order for a correctional justice accepted globally as major modern penological thinking towards treatment of offenders.

4. Present Status of Prisoner's Right in India

In India Supreme Court observed in Sunil Batra's case that, "It's no more open to debate that convicts are not wholly denuded of their fundamental rights... However, a prisoner's liberty is in very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial. Conviction for a crime doesn't reduce the person into a non-person whose rights are subject to the whims of the prison administration..."

Subsequently, various aspects of prisoner's rights have been coming before Indian courts and they have interpreted the rights rather liberally in spite of the absence of anything like a "due process" clause in our Constitution. This in particular has been made possible by giving a deeper and innovative meaning to the concept of "procedure" and "liberty" in Article 21 of the Constitution; a trend which commenced with the Supreme Court's decision in *Maneka Gandhi v. Union of India*⁷ and which has made a significant contribution to what is referred to as the emergence of "judicial activism" in the country. The constitutional rights of prisoners cover a wide range of rights of personal and political nature including rights such as pertaining to religion, associates and elections; what, however, follows in regarding rights which are more vital and of direct relevance in the context of prison reforms in India.

The following rights are now available to the prisoner's in India.

- Access to court and legal facilities
- Meeting with family members and friends
- Expression and communication
- Compensation

The Jail Reform Committee⁸ 1980-1983 has made certain recommendations regarding prisoner's rights. The Committee has recommended the incorporation of the following rights in the proposed scheme of "National Prison Legislation":

- Right to human dignity
- Right to minimum needs
- Right to access to law
- Right to communication
- Right against arbitrary prison punishments
- Right to meaningful and gainful employment
- Right to release on due date

All the above rights are more or less already contained in the Constitution, jail manuals and judicial pronouncements but the real challenge is regarding their implementation. This can be illustrated by the experience of Kuldip Nayar, who got first-hand information of prison life during his incarceration during the Emergency in 1975, are quite revealing:⁹

"There were only three dry latrines for the twenty-eight inmates in our 'dormitory' (the number rose to ninety-six in a fortnight), and we had to queue up in the morning. A long-sentence prisoner was our scavenger and he was getting a princely sum of ten rupees a month for the job. He would clean the latrines only once a day, and in the evening even burning incense, which some detents had brought along, could not get rid of the smell brought to the 'dormitory' by the fitful breeze."

Writing about the food, he had the following to say:

"the dal (lentils) was watery and the chapattis half-baked.. I could see a few flies floating on the surface... After some days I became so accustomed to finding flies in food that I would simply fish them out and start eating without a qualm..."

This revelation of the truth gave a crystal clear picture of what the much hyped about prisoner's right actually holds for the prisoners. They do not even enough resources to maintain their very basic needs to sustain themselves. And what makes the situation even worse is this has been the condition of a well-known public figure who were political prisoners kept in "better conditions". Therefore what would be the plight of ordinary criminal prisoners needs no explanation.

⁷ (1978) 1 SCC 248

⁸ Ahmad Siddique, *Criminology & Penology*, 6th ed., Eastern Book Company.

⁹ *In Jail* (1978) at p.29

5. The Most Noticeable Defaults in Prison S

The objective of prison sentence is of course not just retribution looking the prior discussion. It's to make him a better human being so as to be more useful to society. Obviously it is a stupendous task since it involves the reconciliation of two apparently conflicting forces of punishment and reformation. Even if it is assumed that reformation is possible, the response to various measures will be different for different categories of offenders. Hardened criminals obviously do not have much likelihood of changing themselves. There may be, on the other extreme, convicts who might have committed even serious offences like murder in highly-exceptional situation and do not need any reformation since they are not criminals in true sense. For such people prison doesn't act as a place for reformation but as an institution that can cause more damage to his personal and social image and to deter other potential killers in a similar situation, who are not killer at the first place but a victim of certain situation, having no mens rea of murdering someone. This is a very noticeable issue regarding the extent of applicability of prison on all kinds of prisoners.

Secondly, there is the problem of overcrowding which is a soaring threat to prison system worldwide. The prison authorities face over population of prisoners in prisons. Overcrowding¹⁰ results in inadequate infrastructural facilities and lack of essential facilities to jail inmates. The occupancy of any jail changes on daily basis. The prisons of Jharkhand were three times the capacity of prison followed by Chattisgarh, Bihar and Gujarat. The total prisoners in jail are 66.2% in the country and share of convicted prisoners is 30.3%. The high presence of under trails indicates the slow pace of trails in the courts. In some states the under trails remained in prison beyond 3-5 years during 2005.

Overcrowding in prisons is a global problem and is the major concern for all governments worldwide. The comparable rate of imprisonment (Prisoners per 100,000) during the year 2002 is as under:

United States	700 prisoners
South Africa	400 prisoners
U K	132 prisoners
Canada	102 prisoners
Japan	48 prisoners
India	28 prisoners

Table 1

From the above table it is revealed that the rate of imprisonment in India per one hundred thousand of population is lowest in the world. The main cause of overcrowding in Indian prisons is due to the higher number of under trials prisoners.

To overcome this problem of overcrowding Parliament has intervened by introducing Section 436 of CrPc which will overcome this problem to a greater extent. In addition to this introduction of plea bargaining will reduce the number of prisoners in prisons to a large extent. Some of the suggestions to reduce prison population are as under:

- Releasing the prisoners on probation/ parole in appropriate cases.
- Use of scientific method for speedy trial like trial by video conferencing.
- Increase the number of fast track courts and prosecutors.
- Delegation of powers to police and other law enforcing agencies to compound petty offences.
- Introduction of some alternative methods for imprisonment like community service scheme, where a person who has committed a petty offence will be asked to work in the community for specified period in lieu of his crime.
- Increase the number of offences for summary trial cases.

Thirdly, Classification of offenders in utmost necessity. Individualization of treatment of offenders means that the personality of each offender is to be assessed and prison programmes designed to meet the individual requirements as far as possible. In the State of Jammu and Kashmir the classification of prisoners is made by a committee which consists of senior jail officials and takes certain criteria such as age, physical and mental health, length of sentence, nature of crimes and character into consideration before classification is made. The rules provide that the classification report can be reviewed after some time if the jail authorities feel that it is necessary.¹¹

6. Duties of Prisoner

It shall be the duty of each prisoner:-¹²

- To obey all laws and instructions issued by the competent prison authorities;
- To abide by all prison rules regulations and perform obligations imposed by these rules and regulations;
- To maintain the prescribed standards of cleanliness and hygiene;

¹⁰ Ahmad Siddique , Criminology & Penology, 6th ed., Eastern Book Company.

¹¹ Please see Manual for the Superintendent and Management of Jail in J&K State, Part E.

¹² <http://goaprison.gov.in/rightsandduties.aspx> last visited on Sept., 19, 2013.

- To respect the dignity and the right to live of every inmate, prison staff and functionary;
- To abstain from hurting religious feelings, belief and faiths of other persons;
- To use Government property with care and not to damage or destroy the same negligently or wilfully;
- To help prison officials in the performance of their duties at all times and maintain discipline and order;
- To preserve and promote congenial correctional environment in the prison.

7. Personal Analysis and Conclusion

To my understanding of the present prisoner system in Indian as well as worldwide, the complete system needs a reincarnation. There are a whole lot of objectives, goals and methodologies that has been thought of by penologist, social activists and other public figure etc. But the main problem or lacuna lies in the implementation of all these methods and thoughts. Even though prison system in today's world portrays that it functions with the ideology of reformation but there is barely any aspect that can actually facilitate reformation. How can reformation be expected of a person who does not get the basic human treatment? Is it not a very unfair and idealistic demand on behalf of the society and the law makers to change a man to become a better person with no betterment in his life. If this is the scenario then we have to formidably accept that we have shown no improvement in the actual sense but is still stuck with the retributive theory and may be have moved a little towards deterrence but no way have we got even close to reformation. At this state reformation is a farfetched thought. Firstly, what is of utmost need is the treat prisoners as human being and not animals. To recognize their right to life with dignity. Make the implementation and execution of prisoner's right easily accessible to the affected prisoners. To give effect to the recommendation of the Jail Reform Committee as soon as possible.

Reformation which is the main objective of prison in today's world is only possible in a healthy environment where a person has the opportunity to have positive growth and development. Reformation can't be enforced in an individual. It has to come from within, without any intimidation, threat or abuse. To do or not to do something out of fear doesn't last long to inhibit someone from committing something. Because as soon as he/she gets over his or her inhibitions he/she will be back to their former position. So what is required is proper surveillance, education, training, counseling, a healthy life style for effective development, after care to the prisoners so that they can easily disseminate in the society without much hindrance. Acceptance in the society becomes a major factor. So the environment in prison should be such that it doesn't curtain the prisoner from the outer world completely. They should have access to news paper and other basic item that helps them to maintain sync. Many a times, it happens that people eligible to apply for parole doesn't apply for it. That is because they fear the unknown. They fear of not being accepted outside. For so many years that they had spent in prison, it had turned it into their home. He has modified himself to suit the life style of prison and now he feels himself at threat when he is suddenly set free in a world from where he was removed years back. There is again a fear of unknown that creeps into him. Therefore as the main intention of prison administration is to reform the prisoner and bring him back to normal life, it's necessary to maintain a balance between the two lives i.e. the one inside the prison and the other outside. If the prison system fail to inculcate these very basic factors in the system, then it's my personal view that continuing with prison system under the veil of reformation is nothing but misnomer which does no good to the offenders but undoubtedly has a lot of adverse effect on the society, on the individuals who are subjected to imprisonment and as well as on the economy of the country.

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