

ABSTRACT

PRISONERS RIGHTS: THE INDIAN SCENARIO

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“Imprisonment doesn’t deprive prisoner of all or every basic right which the ordinary citizen enjoys”

The mystic realm of human rights has been from a long time, a subject of ceaseless discourse and stark controversies, be it in relation to its theoretical understandings or scope or even on its applicability as a universal set of principles in all cultures. But, one aspect of this subject of discussion has never been debated and that being its acceptance as the foundation of human beings’ existence in this world. We all have gladly accepted this fact that human rights are attached to the very soul of a human being and that these cannot be alienated from us. So where does the problem lie? Why do we still hear about human rights violations taking place all across the world with all pump and show? Why is it that the State itself has become a personification of whimsical government which can do whatever it wants and whenever it wants? With lot of state modalities present in the hierarchical fashion in different jurisdictions including India, it is obvious that compliance with laws and their implementation would also be different and with

different results too. But that does not mean that such a practice ‘has’ to be accepted for the sake of the arguments that we are dealing here with human institutions with human beings carrying lot of social and mental baggage while performing their so-called services.

INTRODUCTION

Prisons have been in existence in many societies since time immemorial. It was looked at as one of the most “efficient” ways to punish as well as reform a deviant. Even before the concept of ‘prisons’ took a concrete shape, there were places where offenders were detained until they underwent a proper legal procedure. Such a detention was made keeping in mind the threat they may pose to the society in general or anyone in particular. Using imprisonment as a form of direct punishment began in the 18th century in some parts of The Western Europe and North America. The same spread around the globe by virtue of colonial oppression. The entire purpose of such a detention is to curtail the rights of the offender as a measure of punishment for his wrongdoing, but even so, the fact remains that prisoners are humans first and by the virtue of the same they possess certain rights which cannot be alienated under any circumstances. These rights are universal in nature i.e. every human possesses these rights which are not subject to his caste, creed, race, sex etc. Thus, even under the most drastic circumstances these rights cannot be taken away from him.

The sudden boom in the number of incarcerations of late is no less than the effect an epidemic has. As of 2014, adult correctional systems supervised an estimated 6,851,000 persons in the US¹ and 2.1 million persons in Europe.² The statistics from either side of the Atlantic are not only astonishing but also a matter of concern. The data not only reflects the diminishing status of law in the society but also calls for a check on the status of prisoners and their rights. Whatever the case may be, the State and individuals need to understand that “Fundamental freedoms do not bid

¹Danielle Kaebler, Lauren E. Glaze, Anastasios Tsoutis, Todd D. Minton, *Bureau of Justice Statistics*, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5519>, last accessed on 5 September, 2016 at 11:53 pm.

²*World Prison Brief*, Institute for Criminal Policy Research, available at http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=14, last accessed on 5 September, 2016 at 12:15am

farewell to prisoners in incarceration”. And that is the most important brick in the entire edifice of the human rights for prisoners.

HISTORY AND EVOLUTION OF PRISONER’S RIGHTS

Imprisonment as the main punishment for crime spread widely in the 19th century. Before that the few prisons that existed were used mainly to hold those destined for some other punishment such as execution or to contain people unable to pay their debts. The process of replacing physical forms of punishment for offences with imprisonment continues even today as countries are embracing a more rights oriented approach and trying to do away with death penalty from their statutes and substitute the same with life imprisonment. Globally, there were three major events that led to the evolution of concept of prisoner rights as it exists today.

Hitler’s Regime

The story dates back to the era of cruelty and Nazism, when under the regime of Hitler prisoners of war of the Soviet Russia and the Jews were subject to the most brutal behavior the world will ever witness. The treatment met with them in concentration camps is the worst humanity has ever seen. Under such circumstances, for the first time, the idea of recognizing human rights for prisoners took shape. Despite the Geneva Conventions, 1907 being in existence back then, the prisoners were denied the status of POW due to the fact that Soviet Russia was not a party to the same convention and the detainees were thus met with inhuman and violent behavior.

The underpinnings and impacts of the two World Wars

The second major contribution to the realm of prisoner's rights can be attributed to the consequences and the impact of World War I and II. The sequence of events of World War I and II affected the international law drastically due to the widespread denial of civil rights and liberties on the basis of racial, religious, and political discrimination. Rampantly resorted violent activities including murder and ultimately genocide, the use of slave labor, abuse and murder of prisoners of war, deportations, and confiscation of property forced changes to the status quo. Eventually with time passing by, a number of changes were witnessed in the arena of international law including prisoners' rights. Now, there are numerous international instruments which lay down codes by which prisoners should be dealt with. Foremost amongst them are the Geneva Conventions, the International Covenant on Civil and Political Rights, the UN Standard Minimum Rules for the Treatment of Prisoners, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of Persons with Disabilities.

PRISONER'S RIGHTS: LAW AND POLICY IN INDIA

“What is this hate? What is this quaking fear?

Does one see another or view in a mirror?

Walls of deception surround every head,

Are we still alive or already dead?”³

Above lines written by a prisoner himself depict the situation of Prisoners in India very aptly. The need for prison reforms has come into focus during the last few decades. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. The problem of prison administration has been examined by numerous expert bodies set up by the Government of India. The most

³ These lines have been taken from the poetry of a Prisoner from California. The poetry is titled 'The prison of the lost' September 2006; available at <https://www.prisoncensorship.info/archive/etext/agitation/prisons/poetry/index.html>

comprehensive examination was done by the All India Jail reforms Committee of 1980-83, popularly known as the Mulla Committee. The National and the State Human Rights Commission have also, in their annual reports, drawn attention to the appalling conditions in the prisons and urged governments to introduce reforms.

International law, prisoner's rights and India

In the Indian context, international treaties do not automatically become part of the Indian law but have to be incorporated in the same by an express act of the legislature.⁴ While in some select cases, certain pertinent sections or parts of some international treaties have been treated as self-executing⁵, the norm still remains that there should be promulgation of a domestic law or incorporation of sections in an existing statute in order to ratify a particular international treaty. In this regard, the Parliament has been provided with the exclusive power to legislate on this matter by the Constitution.⁶ Entry 14 of List 1 mentions that the Parliament has the exclusive power to legislation on 'entering into treaties and agreement and implementing of treaties and agreement with foreign countries and implementing of treaties, agreements and conventions with foreign countries'.⁷ The only deviation, as mentioned above, is with respect to customary international law and its rules which are binding in India as long as they are not in conflict with the existing domestic law.⁸ To this end, even the apex court of the country has been consistent in its judgments by upholding international law in such matters and going on record to state that, '(it is) now an accepted rule of judicial construction that regard must be had to international

⁴ State of Madras v G.G. Menon AIR 1954 SC 517 and People's Union for Civil Liberties v Union of India (1997) 3 SCC 433

⁵ Maganbhai Ishwarbhai v Union of India, AIR 1969 SC 783, at 807; Verma, S.K. & Kusum, International Law, Fifty Years of the Supreme Court of India, Its Grasp and Reach, Oxford University Press, Indian Law Institute, 2000, 621-649, at 632

⁶ Article 253 of the Constitution of India.

⁷ Entry 14, List I, Constitution of India.

⁸ Gramophone Co. of India Ltd v Birendra Bahadur Pandey AIR 1984 SC 667, at 671

conventions and norms of construing domestic law when there is no inconsistency between them and there is a void in domestic law'.⁹

Law governing the prisons in India

Prisons in the country are governed by the colonial Prison Act of 1894. States that have enacted their own Prison Acts have closely modelled these on the Prison Act 1894¹⁰. This law was introduced in India amidst a climate of fear, repression, security concern and terror, regulating the incapacitation of swathes of indigenous population. It contained no provisions on their rights, or for their rehabilitation or reformation, or for their reintroduction into society on completion of sentence. The 1894 Act clearly codified a colonial policy suspicious of the indigenous population; providing for restricted access and little supervision, and for the imposition of disciplinary punishments at the discretion of prison superintendents including solitary confinement, imposition of chains and whipping and transportation in irons.

Apart from the various state governments, the Government of India has set up several committees to suggest ways to reform the correctional system. However, most of the recommendations of these committees lie gathering dust and there is no political will to implement these. The higher judiciary and the Supreme Court, in particular, have played an important role in changing the broad philosophy governing the correctional system. In Sunil Batra case¹¹, the Supreme Court observed that the “*court has a distinctive duty to reform prison practices and to inject constitutional consciousness into the system.*” It further noted that it must not adopt a ‘hands off’ attitude with regard to the problem of prison administration because a convict is in prison under the order and direction of the Court. Nevertheless, translating the writ of the courts into reality for the lakhs of people in prisons across the country remains a challenge.

Most blatant forms of Prisoner’s rights violation in India and the statutory framework

⁹ SC. Vosjala & Others v. State of Rajasthan & Others 1997 (6) SCC 241; Apparel Export Promotion vs. A.K. Chopra 1999 (1) SCC 759

¹⁰ A notable exception is the state of West Bengal that has enacted the West Bengal Correctional Services Act, 1992 (which came into force in 1997). This law contains provisions on prisoners’ rights and their rehabilitation.

¹¹ Sunil Batra v Delhi Administration and Ors (AIR 1978 SC 1675)

The most blatant violations of prisoner's rights take place in the form of the crime of 'torture'. The main perpetrators of torture in the Indian context have been the law enforcement officials who have the statutory power to detain and interrogate persons.¹² Torture is predominantly employed as a means to extract confessions or information with respect to sensitive matters but is also misused for extortion of the prisoners and for breaking political opposition.¹³ In this context, several proposals for reform and checking the unhinged powers of the law enforcement officials have faced lack of a unified political will necessary to bring the proposals to reality. The most telling examples are insertion of Section 113B in the Evidence Act, the passing of State Liability in Tort Act, compensation for custodial crimes (Select Committee has recently included this in its version of the Prevention of Torture Bill¹⁴ but nothing consequential has happened on this front so far) and for victims of rape and sexual assault.

Deaths in Judicial custody in India are not only natural deaths. The total number of deaths include deaths naturally, un-natural deaths, deaths due to suicide, negligence of the jail personnels, etc. And the same has been recorded by the National Crime Records bureau.¹⁵ But there is no clear explanation of the un-natural deaths, deaths due to negligence of the jail personnels etc. However, some of them can be attributed to the crime of torture within the prisons to certain extent

Contribution of Indian Judiciary

The Indian judiciary, particularly the Supreme Court of India, has done a commendable job in laying down the jurisprudence for the human rights of prisoners. Due to the lack of any specific legislation governing the same, the fact that prisoners are entitled to human rights has been mostly derived from various laws that have already been discussed in this project and especially from the Constitution of India. It is mostly the work of the Supreme Court due to which we have

¹² G.P. Joshi, Police Brutality in India, Commonwealth Human Rights Initiative, November 2000; Amnesty International, India: Time to act to stop torture and impunity in West Bengal, AI-Index: ASA 20/033/2001, 10/08/2001, pp.22

¹³ The Report of Padmanabhaiah Committee on Police Reforms (2000); Critical Analysis of HRI available on http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/analysis_padmanabhaiah.pdf

¹⁴ The Select Committee Report on the Prevention of Torture Bill, 2010 is available on <http://www.prsindia.org/uploads/media/Torture/Select%20Committee%20Report%20Prevention%20of%20Torture%20Bill%202010.pdf>

¹⁵ The website of the National Crime Records Bureau provides for various reports which itself records for these categories of deaths happening in Indian Prisons.

recognized the concept that prisoners are also entitled to fundamental rights under part III of the Constitution and human rights as well. This has been time and again reaffirmed in various decisions. The Courts have also become increasingly vigilant against encroachment upon human rights of prisoners discussing various issues like detention of prisoners, conditions prevailing in prisons, torture in prisons, custodial deaths, etc. So far, it has only been judge made law which has made attempts at civilizing our prisons and for preserving and protecting the rights of prisoners.

The most important case that led Indian Courts to intervene into the matters of the Prison administration in India was the Case of *Sunil Batra v. Delhi Administration (I)*¹⁶, wherein the Supreme Court has clearly rejected the “Hands-off”¹⁷ doctrine and held that incarceration does not imply farewell to the fundamental rights of the prisoners and just because a person has been imprisoned, he does not automatically become a ‘non-person’ devoid of any rights. The same principle was applied by the Supreme Court in *Charles Sobraj vs. Supdt. Central Jail, Tihar, New Delhi*¹⁸ and the court also expresses that even though the court should not intervene in the Penal System maintained by the State, but if there is undue harshness or injustice perpetrated its roots within the prison administration, it gives no sort of immunity to that system. The same principles were reaffirmed by the Supreme Court in the case of *Sunil Batra v. Delhi administration (II)*¹⁹, and the court in this case unprecedentedly extended the ambit of the Writ of Habeas Corpus by saying that the writ is not only meant for securing the right of a person who has been subject to illegal detention but also is available against the bad conditions and detention of an imprisoned person who is going through a lawful detention. In the case of *Francis Coralie Mullin vs. The Administrator*²⁰, the court held that a prisoner had a right to consult an advocate of his own choice and that this right stemmed from Article 21 of the constitution of India.

The Supreme Court apart from addressing the issue that prisoners are entitled to human rights and fundamental rights has also dealt with cases of torture in prisons and has condemned it

¹⁶ AIR 1978 SC 1675

¹⁷ The hands-off doctrine is the doctrine that owes its origin to the law and policy in the US, where initially the courts abstained themselves from interfering in the matters of prison administration. As will be seen in later chapters of this research report, the doctrine was rejected in US as well later on.

¹⁸ AIR 1978 SC 1514

¹⁹ AIR 1980 SC 1579

²⁰ AIR 1981 SC 746

strongly. The fact that various methods and degrees of torture as used by prison authorities to extract confessions and punish prisoners is not new. The torture has resulted in deaths in many cases as well. Though the Supreme Court has held such practices to be violative of human rights, they still continue to take place. The Supreme Court has expressed its concern regarding torture within the jails in many cases like *Raghubir Singh vs. State of Haryana*²¹, *State of U.P v. Ram Sagar Yadav*²², *Smt. Nilabati Behera vs. State Of Orissa And Ors*²³, *Haricharan & Anr vs. State Of M.P. & Ors*,²⁴ etc. In fact, the Nilabati Behera case became very remarkable and came to limelight in the context of prisoner's rights because in that case, the court awarded compensation for the first time in the history of prisoner's rights' litigation on the basis of the principle of strict liability.

Another watershed ruling by the Supreme Court of India was the case of *D.K. Basu v. State of West Bengal*²⁵, where the court clearly held that custodial torture and custodial violence is a blatant violation of the rule of law. In the same case it had penned down various standards for the police and jail administrations to follow before and after arrest.

In a very recent judgement in '*In Re: Inhuman conditions in 1382 Prisons*²⁶', the Supreme court of India laid down various recommendations in the nature of Prison reforms so that violation of fundamental rights taking place inside the prisons might get reduced. One of the most important recommendations that the court gave was that it said that the Prison manual must not be reduced to a mere book of rules but also be implemented with fullest spirit. And to keep a check on its implementation, the court gave a clear authority to the Ministry of Home Affairs for conducting an annual review and see if the state prison manuals comply with the Model prison manual prescribed by the central government.

In this way, we see that prisoner's rights have been restored to their required place in India by the Indian judiciary. However, the implementation of the entire judge made laws and principles depends largely on the states actors and hence there the violation of rights still continues.

²¹ AIR 1980 SC 1087

²² 1985 (1) SCC 552

²³ AIR 1993 SC 1960

²⁴ (2011) 4 SCC 159

²⁵ AIR 1997 SC 610

²⁶ W.P. (C) No. 406 of 2013.

INTERNATIONAL STANDARDS RELATING TO THE PRISONER'S RIGHTS

The international law relating to the protection of the rights of the prisoners is in the form of treaties and rules and hence how a particular treaty becomes part of the domestic law of a country largely determines the effectiveness of that treaty or international norm. For example, in India treaties directly do not become part of the domestic law as explained in earlier chapter. So the implementation of treaties in India is subject to parliamentary approval and legislation to that effect.

The most important instruments in international sphere protect the rights of the prisoners are The International Covenant on Civil and Political Rights (ICCPR), 1976 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.²⁷ The other instruments protecting prisoner's rights are UN Standard Minimum Rules for the Treatment of Prisoners, 1955.²⁸ These rules have set the standards for the purposes of management of custodial system which if done properly indirectly ensures the protection of the prisoner's rights. The only rider attached here is that these rules are not binding but are only a guide for the countries. But if some of the principles mentioned in these rules achieve the status of customary international law, they become much more efficient in terms of application and implementation depending upon the nature of constitutional system of a country concerned. For example in India, customary rules of international law are a part of domestic law unless and until they don't conflict with the existing domestic law.

Other instruments important for regulating the conditions inside the prisons include the 'Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment', 1988; the 'Basic Principles for the Treatment of Prisoners, 1990', and, in relation to juvenile prisoners, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985²⁹.

There are some legal instruments which point out exclusively to staff of prisons or law officials, such as the Code of Conduct for Law Enforcement Officials (1979), the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of

²⁷ Article 2 of the Torture Convention and Article 10 of ICCPR both prohibit torture inside prisons.

²⁸ These are also known as Nelson Mandela Rules.

²⁹ These are also known as Beijing Rules.

Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982) and the Basic Principles on the Use of Force and Firearms (1990).

Although all these standards are very much self-sufficient in them, it is pertinent to note that some of these are in the form of treaties, so only party to those treaties are bound by such rules. Secondly, some of these rules are only in the nature of a guide and hence are not binding. So a large discretion is left for the countries to follow them or not follow them. Thirdly, only those norms which attain the status of customary international law become binding on the states and when those norms are not in conflict with their domestic laws. This is a case like that of India. Hence, the norms prescribed under international law are largely in nature of 'soft laws' as they are not directly enforceable.

Conclusion

Despite the variation and differences the approach of US, Europe and India has been 'rights oriented'. It is only the implementation aspect that remains different. The inception and the idea of bringing forth this approach was through a rocky way but with the advent of time each conceived and implemented the same in their statutory framework. The understanding at the grass root level makes it amply clear that countries are giving due respect to human dignity and ensuring that merely because of their status as a prisoner, they are not subjected to any inhuman conditions or deprived of their basic rights. A lot of advancement has been witnessed in this arena over the years and a lot will be seen in the years to come, compelling the judiciary and the legislature to extend greater protection.