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The Indian Jurisprudence on Prison Admistration and the Legislative Concerns

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I. Introduction

Prison is a place where the criminal justice system put its entire hopes. The correctional mechanism, if fails will make the whole criminal procedure in vain. The doctrine behind punishment for a crime has been changed a lot by the evolution of new human rights jurisprudence. The concept of reformation has become the watchword for prison administration. Human rights jurisprudence advocates that no crime should be punished in a cruel, degrading or in an inhuman manner.[1] On the contrary, it is held that any punishment that amounts to cruel, degrading or inhuman should be treated as an offence by itself.[2] The transition caused to the criminal justice system and its correctional mechanism has been adopted worldwide. Here the inquiry is made to know the extent of inclusion of these human rights of prisoners into Indian legislations.

Internationally, it becomes a well accepted rule that the correctional mechanism in criminal justice administration should comply with reformative policies.[3] It is also declared that all prisoners shall be treated with respect due to their inherent dignity and value as human beings.[4] There are a set of rights identified by the international legal system so as to save the human dignity and value of prisoners and there by the reformative theme of correction. It is also strongly argued that the community can never tolerate a scheme of correction that does not maintain a connection with the evilness of the crime done.[5] Thus punishment always maintains a subjective perspective. The rights of the imprisoned person have to be read despite of this perception. It is truly meant that there can be varied punishments for same offence; but one should not be treated bad while the sentence once declared by the court goes on. In this purview, the rights guaranteed under the international legal system is to be looked into and legislative concern for the same in India.

Definition of prison

The term prison has been defined by the Prisons Act, 1894 in an exhaustive manner.[6] Prison can be any place by virtue of a government order being used for the detention of prisoners. Thus even a jail will come under the definition of prison according to this definition. Similar definition has been given to prison by Prisoners Act, 1900.[7] These two enactments still remains the basic premises by which the administration of prison has been regulated. The Prisons Act excludes police custody and subsidiary jails from the meaning of the word prison. International human rights law also developed its own conception for the term prison. According to them prison can be only a place for the treatment of convicted persons. According to the human rights law for the protection of imprisoned person, imprisoned person means a person deprived of personal liberty as a result of his conviction on any offence and imprisonment means such condition of an imprisoned person.[8] This will help to give clearer picture with regard to the issues faced by a prisoner in general, an under trial prisoner and a detained person.

The modern idea about prison has been envisaged by judges through the decision making process. Even the concept of open jails has been evolved by time. No longer can prisons be called as an institution delivering bad experiences. Krishna Iyer, J opined prison as:

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[1] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

[2] *Id.*, Art. 4.

[3] International Covenant on Civil and Political Rights, 1966, Art. 10 (3) mandates that the essential feature of correctional system should be reformation and rehabilitation of prisoners.

[4] Basic Principles for the Treatment of Prisoners, 1990. Principle 1.

[5] Frank Pakenham, Lord Longford, *The Idea of Punishment* (1961),Geoffrey Chapman, London, p. 55.

[6] The Prisons Act, 1894, s. 3 (1).

[7] *See* s. 2 (b).

[8] *See* Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988.

> A reformative philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner's personality through a technology of fostering the fullness of being such a creative art of social defense and correctional process activating fundamental guarantees of prisoner's rights is the hopeful note of national prison policy struck by the constitution and the court.

Thus now all the dignity that human holds can also be availed inside the four walls of prison. The traditional definition and concept about the prison is unfit for the time. Prison life takes away many freedoms from an inmate like; liberty, heterosexual relations, security autonomy and so on.[9] The human rights jurisprudence contributed much for the penal reforms and the same had its impact in India. The penal reforms made all over the world have its impact in India too. The concept of penal reform had its birth from the reformative theory of punishment.[10] Prison of the time should have a meaning that incorporates the reformative values into it. The reformative aspect thinks of incorporating humane values into the prison system and the prison officials have to work for the achievement of the same.[11] The extent of protection assured by the legal system for the reformative treatment of prisoners should be made under a national legal frame work and India lacks the same.

Legal framework on prisoner's rights

Indian constitution intimates prison administration as a portfolio of state to legislate on.[12] The fundamental responsibility of prison management is to secure custody and control of prisoners.[13] Legislations if made by the states will always lack the unique standards for the protection of prisoner's rights. There should be a national policy frame work that substitutes the varying state legislations. It is true that the system normally demands for reformative framework that too one in tune with the international human rights law. This objective can be easily achieved by a national legislation rather through varying state laws.

India still runs with century old legislation for prison administration.[14] Prisons Act is only concerned about the classification and segregation of prisoners by their nature and status of imprisonment. It failed to incorporate many of the principles laid down by the judiciary into its premises as well as recommended by the human rights law. Prisons Act also attempt to cast the responsibility of prison administration over the state.[15] Even the solitary confinement is still retained in the Act against which the judiciary had made their vehement dissent.[16] The liberty to move, mix, mingle, talk, share company with co-prisoners if substantially curtailed would be volatile of Art. 21, unless the curtailment has the backing of law and this law should lay down a fair, just and reasonable procedure.[17]

Prisons Act is also concerned about the prisoner's right to and meet visitors but that too is confined to under trial prisoners and civil prisoners.[18] The concept of prison labour and earning are very vague from the Act.[19] State on the other side, follows different practices in prison administration. Moreover the prison environment is an unseen one and that makes things more complicated. To conclude over the approach of the Act, it is important to point out that it still maintains separate confinement as a punishment for the offences done inside the prison.[20] This indicates that the strategy of rehabilitation and reformation still have to be made into the Act.

Judicial initiatives in prison justice

The Indian system of prison administration was restructured and modified by the judiciary. Many of the rights assured to prisoners were incorporated into Indian legal system by the judiciary. Case to case analysis will help us to pin down the judicial initiatives in enhancing the rights of prisoners.

Reformation as the objective of punishment: Krishna Iyer, J. was the person who advocated strongly for orienting reformative treatment of prisoners. In all his judgments he tried to incorporate reformative values into

[9] Gresham Sykes, "The Pains of Imprisonment" in Norman Johnston, Leonard Savitz *et al.* (edi.), *The Sociology of Punishment and Correction* (1962), John Wiely & Sons, Inc, New York, p.131.
[10] Rupert Cross, *Punishment Prison and The Public* (1971), Stevens and Sons, London, p. 43.
[11] M.J. Sethna, *Society and the Criminal* (3rd edi.,1971), N.M. Tripathi Pvt. Ltd., Bombay, p.352.
[12] The Constitution of India, 1949, Schedule 7 List II, Entry 4.
[13] Paul F. Cromwell, Jr., *Jails and Justice* (1975), Charles Thomas Publisher, Springfield, p. 95.
[14] The Prisons Act, 1894.
[15] *Id*, s. 4.
[16] *Id*, s. 29.
[17] *Sunil Batra* v. *Delhi Administration* A.I.R. 1978 S.C.1675
[18] The Prisons Act, 1894, s. 40.
[19] *Ibid.*
[20] *Id.*, s. 46 (8).

the prison administration. The concept of crime was also redefined by the judges of his time. It was observed that:[21]

> Crime is a pathological aberration that the criminal can ordinarily be redeemed that the state has to rehabilitates rather than avenge. The sub-culture that leads to anti-social behavior has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times.

The above judgment conveys the right influence of international human rights doctrine over the Indian judiciary. The Court in the *Giasuddin* emphasized on the Gandhian approach of treating offenders as patients and therapeutic role of punishment. The Supreme Court after considering all the circumstances of the appellant directed that the sentence should be reduced to 18 months. The court also directed, guarded parole release every 3 months for at least a week punctuating the total prison term and assignment of suitable mental cum-manual work and payment of wages in jail. The appellant was ordered to pay fine of Rs. 1200/- to be made over to the victim of deception under Section 357 of the Cr.P.C. Krishna Iyer, J. delivering the judgment also pointed out that the judge must use wide range of powers in reformatting the criminal before him.[22] Thus the concept of reformation was planted even out of the four walls of prison by this judgment.

Free from torture and cruel treatment: Supreme Court in many instances made it clear that the prison treatment should not cause any kind of torturous effect over the inmates. Even the practice of separate confinement and solitary confinement was deeply discouraged by courts at many instances. The court clearly pointed out that the prison authorities cannot make prisoners to solitary confinement and hard labour.[23] As to ensure the prison practices the Supreme Court in this judgment also directed the district magistrates and sessions judges to visit prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances. They were to make expeditious enquiries and take suitable remedial action. Thus the concept of judicial policing was recognized by the Supreme Court through this judgment.

Discussing on the same premise the court vehemently criticized the practice of using bar fetters unwarrantedly.[24] The court held the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast, would certainly be arbitrary and questionable under Art. 14. Thus putting bar fetters for a usually long period, day and night, and that too when the prisoner is confined in secure cells from where escape is somewhat inconceivable without any due regard for the safety of the prisoner and the security of the prison is not justified. Judicial interferences of this kind coined many rights for the prisoners which will not be unless ever possible. It will be nice to quote Krishna Iyer, J. at this instance. He remarked:[25]

> Society must strongly condemn crime through punishment, but brutal deterrence is fiendish folly and is a kind of crime by punishment. It frightens, never refines; it wounds never heals.

The message of reformation through prison treatment has to be there in every measures adopted by the authorities. The human right to be safe in prisons as mandated by the international human rights law is being incorporated into Indian law by judicial initiatives. International law gives widest possible protection[26] to the prisoners from torture and that kind of a protection can only be accommodated by legislature.

Maladministration in prison: Every prisoner has the right to enjoy all the rights entrusted to a normal human being subjected to reasonable restrictions by the international human rights law.[27] The prison authorities are bound to look after the management of prisons with this outlook. So it can be powerfully argued that any lapses in the management of prison will also cause infraction over the human rights of prisoners. The view of Indian judiciary also accompanies this view to a greater extent. Talking about the mismanagement in prison, apart from the official lapses the maintenance of discipline between the prisoners will also be of high concern. The Indian

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[21] *Mohammed Giasuddin* v. *State of Andhra Pradesh,* A.I.R. 1977 S.C.1926

[22] The judgment observes that the judge have to use their power to provide actual hospital treatment for the prisoners and liberal parole in advancing the reformation of prisoners.

[23] *Sunil Batra* v. *Delhi Administration*, A.I.R. 1980 S.C.1579

[24] *Sunil Batra* v.. *Delhi Administration*, A.I.R. 1978 S.C.1675

[25] V.R. Krishna iyer, "Justice in Prison: Remedial Jurisprudence and Versatile Criminology" in Rani Dhavan Shankardass (edi), *Punishment and the Prison: Indian and International Perspectives* (2000), Sage Publications, New Delhi, p.58.

[26] Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988, *See* Principle 6 and its explanation.

[27] *See* Basic principles for the Treatment of Prisoners, 1990, Principle 5.

prison experiences even made the Supreme Court to ask whether the prison term in Tihar jail is a post graduate course in crime.[28] Serious allegations were made against the unhealthy relations between jail authorities and criminals and thereby causing certain kind of misappropriations of jail funds. The same have been going on in the present days and only few years back, the Supreme Court ordered to launch a prosecution against certain Superintendents and other jail officials for offences punishable under Ss. 120B, 217 & 218 of the Indian Penal Code.[29] Concluding the judgment in *Asha Arun Gawali*, court shockingly observed that:

> …norms relating to entry of persons to the jail, maintenance of proper records of persons who entered the jail have been observed more in breach than in observance and the rules and regulations have been found thrown to the winds … What is still more shocking is that persons have entered the jail, met the inmates and hatched conspiracies for committing murder. The High Court appears to have justifiably felt aghast at such acts of omissions and commissions of jail officials which per –s e constituted offences punishable under various provisions of the IPC and has therefore, necessarily directed the launching of criminal prosecution against them, besides mulcting them with exemplary costs.

The message of reformation is indefensibly spoiled at the consent and convenience of jail authorities and the same went against the basic aspirations of human rights law. The court in many instances stressed on the need to provide proper atmosphere, leadership, environment situations and circumstances for re-generation and a reformatory approach.[30] Illegal accomplice between criminals and prison officials make all these aims in vein.

Freedom of speech and expression: Prisoners alike others can access many human rights made in Universal Declaration of Human Rights and international covenants.[31] Indian judiciary had also recognized the right of a prisoner to enjoy the right to freedom of speech and expression.[32] It is interesting to note that the judiciary took such a view before the *Kesavanada Bharathi* judgment came and evolution of the concept of justice as fairness. Alongside with this, it is worthwhile in discussing the judicial declaration of the right of press to interview prisoners. This judgment has certain implications over the right of prisoners in exercising their right to freedom of speech and expression.

A Writ Petition filed under Art. 32 by the Chief reporter of Hindustan Times Smt. Prabha Dutt seeking a writ of mandamus or order directing the respondents Delhi Administration and Superintendent, Tihar jail to allow her to interview two convicts Bill and Ranga who were under a sentence of death, whose commutation petition to the President were rejected.[33] The Court held the restricted right to interview the prisoners subject to their willingness to attend the same. The freedom of press person to interview an under trial prisoner will not be alike that of the prisoner sentenced to death. Supreme Court remarked that the right to interview a prisoner will not become an exclusive right as in the case of life convict and it should be decided on merits depending on each case.[34]

Right to have healthy atmosphere in prison: The Supreme Court identified nine major problems afflicted upon the prison system, namely, overcrowding, delay in trial, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication, streamlining of jail visits and management of open-air prisons. Among this, an unhealthy living premise inside the jail was identified by the Court as a severe problem.[35] The court herein also pointed out the need for providing adequate amenities by the state for the prisoners in advancement of their living conditions inside the prison. A decade after this judgment situation remained the same and the same was revealed before the court by another judgment.[36]

The bitter experiences of the prisoners were made through a letter by one of the prisoners P. Bharathi of central Prison, Puducherry to one of the Honorable Judges of Supreme Court. The letter was ordered to be treated as a writ petition. It talked about the poor hygienic condition and maintenance inside the prison and also restrictions on the visit by relatives of the prisoner. There was no toilet facility inside the cell to answer the call nature during night time. Two plastic buckets with lid was provided for this purpose during night time and in the next day morning, the buckets containing excreta are made to be cleaned by the inmates of the cell on turn basis. This was made as per the existing prison rules and the authorities accepted that the rules require a radical change

[28] *Rakesh Kaushik* v. *B.L. Vig, Supdt. Central Jail, New Delhi,* A.I.R. 1981 S. C. 1767.
[29] *State of Maharastra* v. *Asha Arun Gawali,* A.I.R. 2004 S.C. 2223.
[30] *Sanjay Suri* v. *Delhi Administration,* A.I.R. 1988 S.C. 414.
[31] *Supra* n.27.
[32] *The State of Maharashtra* v. *Prabhakar Prandurang Sanzgiuri and another,* A.I.R. 1966 S.C. 424.
[33] *Prabha Dutt* v. Union of India, A.I.R. 1982 S.C.6.
[34] *State, through Supdt. Central Jail New Delhi* v. *Charulatha Joshi and another,* A.I.R. 1999 S.C. 1379
[35] *Ramamurthy* v. *State of Karnataka,* (1997) S.C.C. (Cri) 386.
[36] *P. Bharathi* v. *Union Territory of Pondicherry and Others,* 2007 Cri. L. J. 1413

to fall in line with present day requirements. This judgment will help to realize the disparities in state legislations as well as the need for a centralized legal framework in regulating the prison affairs.

On prison labour: Prison labour also involves certain human right issues. The extent of labour given for a prisoner will vary depending upon the punishment and nature of imprisonment. Anyhow prison labour must be understood as a tool for reformation instead of taking it as a form of punishment. Indian legal system always measures it as method to implement rigorous imprisonment made by the court. The issue in relation to improper remuneration was raced before Indian judiciary. Accommodating the prisoners for the most suited job was well identified in the early periods itself. Following this doctrine Krishna Iyer, J. in a leading case law directed the prison authorities to engage a convict in agriculture as he traditionally belongs to that sector of the society.[37] The Court further concluded the objective of prison labour as:[38]

> When prisoners are made to work, a small amount by way of wages could be and should be paid so that the healing effect on their minds is fully felt. Moreover proper utilization of services of prisoners in some meaningful employment, whether as cultivators or as craftsman or even in creative labour will be good from the society's angle as it reduces the burden on the public exchequer and the tension within.

The above approach of the court has to be little bit criticized as the argument supports the use of income of a prisoner against his expenses inside the prison. On the other side the state should not take anything from the income of a prisoner as it can be used for the well being of his family or according to his lawful aspirations. The old position was based on the conviction that the man who broken the law has placed himself in debt of society for which he have to compensate.[39] This will also work in creating earning habits and making a prisoner self confident. Need for adequate wages by prisoners were again raised before the Supreme Court and where the court held the application of Minimum Wages Act, will be of great use.[40] The real message to be conveyed by prison labour was made herein as:

> Reformation should be dominant objective of a punishment and during incarceration every effort should be made to re-create the good man out of convicted prisoner. An assurance to him that his hard labour would eventually snowball into handsome saving for his own rehabilitation would help him to get stripped of the moroseness and desperation in his mind while toiling with the rigorous of hard labour during the period of his jail life. Thus reformation and rehabilitation of a prisoner are of great public policy. Hence they serve a public purpose.

In this judgment, the court recommended to the State concerned to make law for setting apart a portion of wages earned by the prisoners to be paid as compensation to the deserving victims, of the offence, the commission of which entailed the sentence of imprisonment to the prisoner either directly to through a common fund to be created for this purpose or in any other feasible mode.

In addition to the above rights, judiciary had glorified more rights which constitute certain new rights for prisoners. Under para 873 of the Punjab Jail Manual, body of the condemned convict, after it falls from the scaffolds is required to remain suspended for a period of half an hour. This practice was contested to be violative of right to dignity and fair treatment continues in respect of the dead body of the condemned man.[41] Glorifying the extent of right to dignity the Court observed that:[42]

> The right to dignity and fair treatment under Art. 21 of the Constitution of India is not only available to a living man but also to his body after his death. The jail authorities in the country shall not keep the body of any condemned prisoner suspended after the medical officer has declared the person to be dead. The limitation of half an hour mentioned in para 873 of the manual is directory and is only a guideline. The only mandatory part of the above quoted para is that the condemned person has to be declared dead by the medical officer and as soon as it is done the body has to be released from the rope.

The inherent quality of every human life is there with the prisoners. Judiciary cannot give any ultimate protection to the prisoners as it can only look upon the matters made to them. Nation should develop a new legal

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[37] *Darambir & Another* v. *State of Uttar Pradesh*, (1979) 3 S.C.C. 645.
[38] *Ibid.*
[39] Frank Pakenham, Lord Longford, *The Idea of Punishment* (1961), Geoffrey Chapman Publication, London, p. 60.
[40] .*In the matter of Prison Reforms, Enhancement of Wages of Prisoners, etc,* A.I.R. 1983 Ker 261. *See also State of Gujarat and another v. Hon. High Court of Gujarat*, A.I.R. 1998 S.C. 3164.

[41] *Paramanand Katara* v. *Union of India and another*, (1995) 3 S.C.C.248
[42] *Ibid.*

framework within which the prison administrations enhance. The so developed national law should encompass all the above mentioned legal rights propounded by the judiciary along with the international human rights guarantee. National Human Rights Commission had made some unsuccessful attempts to this regard.

Lacunae in legislations

Normally the recommendations by the state secretaries were the premise from which the prison reforms were introduced. This was changed by the introduction of *Mulla Committee on Jail Reforms*.[43] The committee headed by Mulla made a National Policy on Prisons. It also advocated for the constitution of a national commission on prison.[44] It took more than a decade for the Indian legal system to draft some law on the Mulla recommendations.[45] The bill so prepared was well supported by the draft bill made by the National Human Rights Commission. The Commission made follow up over the 1996 bill and developed another model bill within a period of two years.[46] This bill made by Commission attempted to consolidate the entire developments made in India after Mulla recommendations. Stepping with NHRC; Government of India drafted a new bill in the same year.[47] This bill was identified as a consolidated version of Indian laws on prison.[48] But still it remains as a dream as it is keep away from parliament.

II. Conclusion

Despite the inadequacies in legislations, the judiciary on its own creative spirit had contributed much to prison administration thereby ensuring fundamental human rights of prisoners. Many of those rights were recognized by the international human rights law. Any change brought out in a penal system cannot be called as penal reform.[49] The concept penal reform had changed in way that there should always be a nexus between penal reform and the reformatory theory of punishment.[50] The era of hands-off doctrine in prison administration is left behind in the history all over the world[51] and now it is always a matter of judicial scrutiny. Indian prisons are equally corruptive; like any other public institutions.[52] The new law should be also careful to cure the menace of corruption from the prisons. It is true that the prisoner is far more likely to be reformed if he can recognize the justice of the penalty than if he cannot.[53] Law on prisons should always find a free space in itself for the treatment of prisoners based on their conviction.

[43] Jayasree Lakkaraju, *Women Prisoners in Custody* (2008), Kaveri Books, New Delhi, p. 138.
[44] *Id.*, p. 117.
[45] The Indian Prisons Bill, 1996
[46] The Prison Administration and Treatment of Prisoners Bill, 1998.
[47] The Prison Management Bill, 1998
[48] *Supra* n. 26.
[49] Rupert Cross, *Punishment, Prison and The Public* (1971), The Hamlyn Trust, London, p.43
[50] *Ibid.*
[51] Mike Place and David A. Sands, "The Evolution of Judicial Involvement" in Paul F. Cromwell, Jr., *Jails and Justice* (1975), Charles Thomas Publisher, Springfield, pp. 237-45.
[52] Indra J. Singh, *Indian Prison: A Sociological Enquiry* (1979), Concept Publishing Company, Delhi, pp. 160-1.
[53] *Supra* n. 39 at p.59.