



The need for prison reforms has come into focus during the last three to four decades. Prisoners' rights are an important agenda for prison reforms. The underlying principles of prison reforms is that the prisoner is no longer regarded as an object, a ward or a slave of the state whom the law would leave at the prison entrance and who would be condemned to civil death. It is now recognized that a citizen does not cease to be a citizen just because he has become a prisoner. The Supreme Court has made it very clear in many cases that except for the fact that the compulsion to live in prison entails by its own force the deprivation of certain rights, like the right to move freely or to practice a profession of one's own choice, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution. Secondly, the convicted persons go to prison as punishment and not for punishment. Prison sentence has to be carried out as per court's orders and no additional punishment can be inflicted by the prison authorities without sanction.

### **APPALLING CONDITIONS OF PRISONS IN INDIA**

Overcrowding in prisons is the most visible problem which is seen as resulting in other problems relating to health care, food, clothing and poor living conditions. Prisoners in places like A.P., Gujrat, Haryana, M.P. and Maharashtra have prisoners far in excess of their capacity. Overcrowding has aggravated the problem of hygiene. Delay in trials has assumed a very serious proportion. Mulla committee, National Police Commission and many public interest litigations have highlighted this problem. In 2003, the Malimath committee looked at ways to reform the Criminal Justice System in India. The Supreme Court in several decisions held that the expression 'procedure established by law' in Article 21 envisages an expeditious procedure. Therefore, a procedure in which the trial was unduly delayed for no fault of the petitioner was held to be an anti-thesis of an expeditious procedure, termed as a blatant dilatory procedure, shocks judicial conscience and casts a very sad reflection on the judicial system. (1998 Cr.L.J. 3755). The recognition of these human rights of a prisoner has its root in the Constitution.

### **PRISONER'S RIGHTS AS HUMAN RIGHTS**

The Constitution of India confers a number of fundamental rights upon Indian citizens. India is also a signatory to various international instruments of human rights such as the 'Universal Declaration of Human Rights' which states that "No one shall be subjected to torture or cruel, inhuman or degrading treatment of punishment." The 'United Nations Covenant on Civil and Political Rights' states that "All persons deprived of their liberty shall be treated with respect for the inherent dignity of human person." Thus, both under national as well as international human rights law, the state is obliged to uphold and ensure observances of basic human rights of the prisoners.

One of the basic tenets of human rights law is that human rights are inalienable and under no circumstances can any authority take away a person's basic human rights. The fact that this tenet is not sometimes made applicable to prisoners is well documented. There are innumerable judgments of the Supreme Court and High Courts, showing how prisoner's rights are violated. The judgments highlighted highly unsatisfactory conditions prevailing inside the prisons and the failure of the prison authorities to provide an environment which is conducive to the maintenance of prisoner's rights. The situation is partly rooted in the belief that the prisoners do not deserve all the rights and protections that the Constitution provides to all the citizens. Besides being morally wrong and legally invalid, this belief does not show adequate recognition of some basic facts about the prison population.

A large number of convicts are first time offenders involved in technical or minor violations of law. Very few are recidivists or hardened criminals. Also as was observed by the Mulla Committee, a majority of the inmates come from the 'underprivileged section of the society as persons with the means and influence generally manage to remain beyond the reach of law even if they are involved in violation of law'. Under the Indian Constitution there is no such provision in part III which can safeguard the discretionary and sometimes brutal treatment given to the prisoners. Hence the Supreme Court of India, by interpreting Article 21 of the Constitution has developed human rights jurisprudence for the preservation and protection of prisoner's right to human dignity. In the case of Charles Shobraj

V/s Superintendent Central Jail, Tihar Delhi, Supreme Court recognized that the right to life is more than mere animal existence or vegetable existence. Even in prison, a person is required to be treated with dignity and one enjoys all the rights specified in Article 21. In Sunil Batra V/s Delhi Administration, the court held that 'the prisoners are not wholly denuded of their fundamental rights. They are also entitled to all the constitutional rights unless their liberty has been constitutionally curtailed. Though the prisoner's liberty is circumscribed by the very fact of his confinement, his interest in the limited liberty left to him is then all the more important.'

The right to silence is another fundamental right guaranteed to the citizen under Article 20 (3) of the Constitution which says that no person accused of any offence shall be compelled to be a witness against himself. However, as the accused is in most cases the best source of information, the Malimath Committee suggested that while respecting the right of the accused a way must be found to tap this critical source of information. The Committee feels that without subjecting the accused to any duress, the court should have the freedom to question the accused to elicit the relevant information and if he refuses to answer, to draw adverse inference against the accused.

### LAW AS TO PRISONER'S RIGHTS IN INDIA

Certain enactments dealing with prisoners and their rights in India are The Prisoners Act 1900, The Prisons Act 1894, The Prisoners (Attendance in Courts) Act 1955, The transfer of Prisoners Act 1950, The Repatriation of Prisoners Act, 2003, The Repatriation of Prisoners Rules 2004 etc. Apart from these, rights of the prisoners have been expressed under the Indian Constitution as well as the Indian laws governing prisons. The Supreme Court and high court's rulings have played a crucial role in enumerating the rights of prisoners. The courts have acknowledged and recognized a wide array of fundamental and other rights of prisoners. The following rights are just the broad categories of rights which are not exhaustive as this field is still developing and slowly evolving. These rights have been drawn from various case laws and may be listed as under.

1. Right to be lodged appropriately based on proper classification.
2. Special right of young prisoners to be segregated from adult prisoners.
3. Rights of women prisoners.
4. Right to a healthy environment.
5. Right to bail.
6. Right to speedy trial.
7. Right to free legal services.
8. Right to basic needs such as food, water and shelter.
9. Right to have interviews with lawyers.
10. Right against being detained for more than the period of sentence imposed by the court.
11. Right to protection against being forced into sexual activities.
12. Right against arbitrary use of handcuffs and fetters.
13. Right against torture, cruel and degrading punishment.
14. Right not to be punished with solitary confinement for a prison offence.
15. Right against arbitrary prison punishment.
16. Right to air grievances and to effective remedy.
17. Right to be compensated for violation of human rights.
18. Right to visits and access by family members of prisoners.
19. Right to write letters to family and friends and to receive letters, magazines etc.
20. Right to rehabilitate and reformative programmes.
21. Right in context of employment of prisoners and prison wages.
22. Right to information about prison rules.
23. Right to emergency and reasonable health care.

The Malimath Committee has suggested that all the rights of the accused flowing from the laws and judicial decisions should be collected and put in a Schedule to the Code of Criminal Procedure. The

Committee also felt that they should be translated by each State in the respective regional language and published in a form of a pamphlet for free distribution to the accused and the general public.

### **GENESIS OF PROACTIVE ROLE OF THE JUDICIARY**

As per National Human Rights Commission Report in 1993, disturbing conditions of the prison and violation of the basic human rights arise in the form of custodial deaths, physical violence/ torture, police excess, degrading treatment, custodial rape, poor quality food, lack of water supply, poor health system support, unjustified prolonged incarceration, forced labour etc. The prisoners depend on the prison authorities for almost all their daily needs and the state possesses control over their life and liberty. The prison authorities have to be therefore accountable for the manner in which they exercise their wide discretionary powers. Imprisonment as a punishment is now thought as rehabilitation. The prisoners should have an opportunity to learn alternative behaviour to curb their deviant lifestyle. The rehabilitation is to be brought about through educational, training and counseling programmes.

The courts have taken a note of the deplorable conditions prevailing inside the prison, resulting in the violation of prisoners' rights. They have reiterated that if a person commits a crime, it does not mean that by doing so he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity. They have been active in responding to human right violations in Indian jails and have in the process, recognized a number of rights of the prisoners by interpreting Articles 21, 19, 22, 32,37 and 39A of the Constitution in a positive and humane way. These newly recognized rights are binding on the State under Article 141 of the Constitution which provides that the Law declared by the Supreme Court shall be binding on all courts in the territory of India.

The Supreme Court has appointed the Committee in 2018 known as Justice Amitava Roy (retd.) to examine the various problems like overcrowding, lack of legal advice to convicts, issues of remission and parole etc.. It's recommendations talk about speedy trials & lawyer to prisoner ratio (at least one lawyer per thirty prisoners). The committee suggests establishment of special courts (fast track courts) to deal exclusively with petty offences which have been pending for more than five years. Further, accused persons who are charged with petty offences and those granted bail, but who are unable to arrange surety should be released on a Personal Recognizance (PR) Bond. Every new prisoner should be allowed a free phone call a day to his family members to see him through his first week in jail. Use of video-conferencing for trial is also recommended. The courts may be asked to use their discretionary powers and award sentences like fine and admonition if possible instead of sending the offenders to jails.

### **CONCLUSIONS**

'Public Interest Litigation' jurisdiction began haltingly with little idea of its potential when the Supreme Court, in 1979, entertained complaints by social activists drawing the attention of the Court to the conditions of certain sections of society or institutions which were deprived of their basic rights. Presently this judicial activism has played a key role in developing the human rights for prisoners and the underprivileged sections.

In light of the aforesaid discussion associated with prisoners' human rights enforcement in India, it can be concluded that, provisions in the statutes (in terms of parole, bail, furlough, short leave etc.) should be exercised liberally by the concerned officers in each of the jails to reduce overcrowding. The model of skill training and campus placement of inmates, initiated by Tihar Jail Administration recently, may be replicated in other jails. It is necessary to review the strength of doctors sanctioned for prisons and ensure the availability of adequate medical facilities for prisoners and prison staff. Programmes should be implemented to sensitize the prison administration on gender issues and special needs of women prisoners. Prisons should be opened to civil society organizations as this would help in ensuring transparency and accountability in the prison administration. The initiatives suggested by various committees & the National Policy on Prison reform should be given effect on a wider scale.

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