

PRISONER RIGHTS IN INDIA

Dr. Varsha, Principal
Biyani Law College, Jaipur

INTRODUCTION

The degree of civilization in a society can be judged by entering its prisons. A society cannot be recognized as a civilized society unless it treats the prisoners with sympathy and affection. This treatment is not possible till the society recognizes and accepts their basic human rights and the fundamental rights. A prisoner, be he a convict or under trial or a detiune, does not cease to be a human being. Even when lodged in jail, he continues to enjoy all his basic human rights and fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners shall retain the residue of the Constitutional rights. The Universal Declaration of Human Rights, 1948 stipulates that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Article 21 of the Constitution of India recognizes that the right to life includes a right to live with human dignity and not mere animal existence, strengthens this mandate. Thus, a prison atmosphere can be accepted as civilized only if it recognizes the basic human rights and the constitutional rights of the prisoners and makes efforts for the effective and meaningful enjoyment of the same by means of prison reforms. This chapter focuses on an introduction to prisoner's rights, prisoner's problems, prison reforms, importance of study, objective of the study, survey of literature, research methods and materials.

I. PRISONERS' RIGHTS:

The prisoners have the following rights while serving their sentence:

- (1) In *State of Maharashtra v. Prabhakar*¹, aid of Article 21 was made available perhaps for the first time to a prisoner while dealing with the question of his right of reading and writing books while in jail.
- (2) In *Suresh Chandra v. State of Gujarat*², the court stating about penological innovation in the shape of parole to check recidivism because of which liberal use of the same was recommended.

¹ AIR 1966 SC 424

² 1976 (1) SCC 654

- (3) A challenge was made to the segregation of prisoners in ***Bhutan Mohan Pattnaik v. State of Andhra Pradesh***³, and a three Judge bench stated that resort to oppressive measures to curb political beliefs (the prisoner was a Naxalite because of which he was put in a 'quarantine' and subjected to inhuman treatment) could not be permitted. The Court, however, opined that a prisoner could not complain of installation of high-volt live wire mechanism on the jail walls to prevent escape from prisons, as no prisoner had fundamental right to escape from lawful custody.
- (4) In ***Charles Sobraj's case***,⁴ it was stated that this Court would intervene even in prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of a prisoner. In that case the complaint was against incarcerator torture.
- (5) In ***Sunil Batra(I)***,⁵ the Court dealt with the question whether prisoners are entitled to all constitutional rights, apart from fundamental rights. In that case this Court was called upon to decide as to when solitary confinement could be imposed on a prisoner.
- (6) In ***Prem Shankar v. Delhi Administration***⁶ the Court prohibited putting off under trial prisoners in leg-irons.
- (7) In ***Sunil Batra (II)***,⁷ the Court was called upon to deal with prison vices and the judgment protected the prisoners from these vices with the shield of Article 21, Krishna Iyer. J. stated, "Prisons are built with the stones of law".
- (8) A challenge was made to a prison rule which permitted only one interview in a month with the members of the family or legal advisor in ***Francis Coralie v. Union Territory of Delhi & Others***,⁸ and the rule was held violative, *inter alia*, of Article 21.
- (9) In ***Sheela Barse v. Union Territory***⁹, it was held that jailing of non-criminal mentally ill persons is unconstitutional and directions were given to stop confinement of such persons.
- (10) The judicial work done by this Court on the subject at hand would not be complete without ***Mohd. Giasuddin v State of Andhra Pradesh***¹⁰ because in that case reformatory aspect was emphasized by stating that the State has to rehabilitate rather than to avenge. Krishna

³ AIR 1974 SC 2092

⁴ *Charles Sobraj v. State*, 1996 Cr.LJ 3354.

⁵ *Sunil Batra (I) v. Delhi Administration*, (1978) 4 SCC 494.

⁶ AIR 1980 SC 1535

⁷ *Sunil Batra (II) v. Delhi Administration*, AIR 1980 SC 1579

⁸ AIR 1981 SC 746

⁹ 1993 (4) SCC 204

¹⁰ 3 SCC 287 (1977)

Iyer, J, pointed out that the sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturalisation.

- (11) On top of all, there is the undoubted right of speedy trial of under trial prisoners. These consist of ordering for release on bail where trial is protracted. In ***Supreme Court Legal Aid Committee representing undertrial Prisoners v. Union of India***¹¹, the court directed for the release of those under-trial prisoners who were languishing in jail for a period exceeding half of the punishment provided in the NDPS Act, 1985.

II. PRISONER'S PROBLEMS

The literature on prison justice and prison reform¹² shows that there are nine major problems which afflict the system and which need immediate attention. These are: (1) overcrowding; (2) delay in trial; (3) torture and ill- treatment; (4) neglect of health and hygiene; (5) insubstantial food and inadequate clothing; (6) prison vices; (7) deficiency in communication; and (8) streamlining of jail visits.

1. Overcrowding

That jails are overcrowded is a known fact. To illustrate, in Tihar Jail as against the housing capacity of 2,500 persons in 1994-95, there were 8,500 prisoners. Overcrowding contributes to a greater risk of disease, higher noise levels, surveillance difficulties, which increase the danger level. This apart, life is more difficult for inmates and works more onerous for staff when prisoners are in over capacity.

Overcrowding affects the health of prisoners. The same also very adversely affects hygienic condition. It is, therefore, to be taken care of. The release on bail of certain categories of under-trial prisoners, who constitute the bulk of prison population, has to result in lessening the over capacity. It would be useful to refer here to the Seventy-Eighth Report of the Law commission of Indian on 'Congestion of Under-trial Prisoners in Jails'. The Commission has in Chapter 9 of the Report made some recommendations acceptance of which would relieve congestion in jails. These suggestions include liberalisation of conditions of release on bail. Overcrowding may also be taken care of by taking recourse to alternatives to incarceration. These being: (1) fine; (2) civil commitment; and (3) probation.

As to release on probation, it may be stated that it really results in suspension of required to execute bond under the provisions of the Probation of Offenders Act, 1958, requiring maintenance of good conduct during the probationary period, the failure to do which finds the

¹¹ 1994 (6) SCC 731

¹² Prisoner's Right's & Mental Health perspective by Dr. Suresh Bada Math, National Law School of India University Journal, 2008-2009.

concerned person in prison again. That Act has provision of varying conditions of probation and has also set down the procedure to be followed in case of the offenders failing to observe conditions. Overcrowding is reduced by releases on parole as well, which is a conditional release of an individual from prison after he has served part of the sentence imposed upon him.

Chapter 20 of the Report of All India Committee on Jail Reforms (1980-83) deals with the system of remission, leave and premature release. The Committee has mentioned about various types of remission and has made some recommendations to streamline the remission system. As to premature release, which is the effect of parole, the Committee has stated that this is an accepted mode of incentive to a prisoner, as it saves him from the extra period of incarceration; it also helps in reformation and rehabilitation. The Committee has made certain suggestions in this regard too.

There is yet another baneful effect of overcrowding. The same is that it does not permit segregation among convicts, those punished for serious offences and for minor. The result may be that hardened criminals spread their influence over others. Then, juvenile offenders kept in jails (because of inadequacy of alternative places where they are required to be confined) get mixed up with others and they are likely to get spoiled further. So, problem of overcrowding is required to be tackled in right earnest for a better future.

2. Delay in Trial

It is apparent that delay in trial finds an under-trial prisoner (UTP) in jail for a longer period while awaiting the decision of the case. The release of UTP on bail where the trial gets protracted would hopefully take care to a great extent the hardship caused in this regard.

It has to be remembered that production before the court on remand dates is a statutory obligation and the same has a meaning also in as much as that the production gives an opportunity to the prisoner to bring to the notice of the Court, who had ordered for his custody, if he has faced any ill-treatment or difficulty during the period of remand. It is for this reason that actual production of the prisoner is required to be insured by the trial court before ordering for further remand. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Art.21. Speedy trial would encompass within its sweep all the stages including investigation, inquiry, trial, appeal, revision and retrial. In short everything commencing with an accusation and expiring with the final verdict, the two being respectively the “*terminus a quo and terminus ad quem*” of the journey which an accused must necessarily undertake once faced with an implication.

In *P. Ramachandra Rao v. State of Karnataka*,¹³ the court observed that it must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Art.21 and if so, then to terminate the particular proceedings and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted. The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Criminal Procedure Code to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be a better protector of such right than any guidelines. In appropriate cases, inherent power of High Court under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under Cr.P.C or to prevent abuse of the process of any Court or otherwise, to secure the ends of justice. The power is wide and if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases the High Courts have exercised their jurisdiction under Section 482 Cr.P.C. for quashing of first information report, investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of Fundamental Right conferred by Art.21 of the Constitution.

3. Torture and ill-treatment

Apart from torture, various other physical ill treatments like putting of fetters, iron bars are generally taken recourse to in jails. Some of these are under the colour of provisions in Jail Manuals.

4. Neglect of health and hygiene

The Mulla Committee has dealt with this aspect in Chapter 6 and 7 of its Report, a perusal of which shows the pathetic position in which most of the jails are placed in so far as hygienic conditions are concerned. Most of them also lack proper facilities for treatment of prisoners. The recommendations of the Committee in this regard are to be found in Chapter 29. The society has an obligation towards prisoners' health for two reasons. *Firstly*, the prisoners do not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access; no physician of choice, no second opinions, and few if any specialists. *Secondly*, because of the conditions of their incarceration, inmates are exposed to more health hazards than free citizens. Prisoners therefore, suffer from a double handicap.

¹³ (2002) 4 SCC 578

5. Insubstantial food and inadequate clothing

There is not much to doubt that the rules contained in concerned Jail Manual dealing with food and clothing etc. to be given to prisoners are not fully complied with always. All that can usefully be said on this aspect is the persons who are entitled to inspect jails should do so after giving shortest notice so that the reality becomes known on inspection. The system of complaint box introduced in Tihar Jail during some period needs to be adopted in other jails also. The complaint received must be fairly inquired and appropriate actions against the delinquent must be taken. On top of all, prisoners must receive full assurance that whoever would lodge a complaint would not suffer any evil consequence for lodging the same.

6. Prison vices

Many of the vices are related to sexual urge, which remains unsatisfied because of snapping of marital life of the prisoner. If something could be done to keep the thread of family life unbroken some vices many take care of themselves, as sexual frustration may become tolerable. The aforesaid seems to be a more rational way to deal with prison vices rather than awarding hard punishment to them. In the situation in which they are placed, a sympathetic approach is also required.

7. Deficiency in communication

While in jail, communication with outside world gets snapped with a result that the inmate does not know what is happening even to his near and dear ones. This causes additional trauma. A liberalized view relating to communication with kith and kin specially is desirable. It may be pointed out that though there may be some rationale for restricting visits, but in so far as communication by post is concerned, there does not seem to be any plausible reason to deny easy facility to an inmate.

8. Streamlining of jail visits

Prison visits fall into three categories: (1) relatives and friends; (2) professionals; and (3) lay persons. In the first category comes the spouse. Visit by him/her has special significance because a research undertaken on Indian prisoners sometime back showed that majority of them were in the age group of 18 to 34, which shows that most of them were young and were perhaps having a married life before their imprisonment. For such persons, denial of conjugal life during the entire period of incarceration creates emotional problems also. This apart, in many jails facilities available to the visitors are degrading. At many places even privacy is not maintained. If the offenders and visitors are screened, the same emphasizes their separation rather than retaining common bonds and interests. There is then urgent need to streamline these visits.



The frequent jail visits by family members go a long way in acceptance of the prisoner by his family and small friendly group after his release from jail finally, as the visits continue the personal relationship during the term of imprisonment, which brings about a psychological communion between him and other members of the family.

As to visits by professionals, i.e. the lawyer, the same has to be guaranteed to the required extent, if the prisoner be a pre-trial detainee, in view of the right conferred by Article 22(1) of the Constitution.