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RIGHTS OF PRISONERS IN INDIA

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Abstract

Rights of the prisoners are an issue of national as well as international concern. Even after the 75 years of the independence the police and jail administration system could not be changed much for prisoners and the accused persons in India. These administrations have almost similar attitude as that of British rule in India. Hence, it seems important to study the prisoners and prisons in our country. The attitude of society towards prisoners may vary according to the object of punishment and social reaction to crime. Though, the conditions of imprisonment in civilized countries have undergone radical changes in recent decade in comparison to India. The objective of this paper is to study the condition of prisoners and their rights at the national level and to know about the awareness related with the rights of prisoners in India.

The report of NCAT (National Campaign against Torture) revealed that as many as 1,350 custodial deaths in India in year 2020. The victims were mainly from vulnerable communities Dalits, Muslims and Adivasis. Though the prisoners are entitled for their fundamental while in prison, but they should not be treated as free man with all absolute rights and luxuries also. The freedom is subjected to certain limitations and reasonable legal restrictions. The supreme court of India has been emphasizing since long time to states and central governments to improve the deteriorating conditions of the prisons like overcrowdings, lack of training facilities, infrastructure etc. it is almost mandatory to implement the rights and constitutional safeguards to the prisoners. The things have improved significantly following independence, which were highly atrocious during British rule in India. However, despite several rules and laws, the incidences of custodial deaths, brutality, physical and verbal abuse and inhuman treatment to the prisoners are still reported from different parts of India. Surprisingly India still suffers with discrimination based on cast and religion on the prisoner's front.

Key words; society, rights, prison, Rehabilitation, administration, humanity

Introduction

Rights of the prisoners have been the topic of the international as well as national concern. In India, even after the 75 years of the independence, what we could find that, the police and jail administration system in India could not change their attitude towards the prisoners and the accused persons. The police and the jail administration in India still have the similar attitude as that of British rule in India. Therefore, it is necessary to deal in detail with this particular topic. Man is not an individual but a unit of society having mind, emotions and feelings. The glory of a human being lies in being a member of a big family. On the one hand, man is bound by blood kinship, parents, his wife, and his children and on the other he is linked with every individual of society whether near or far. It is given to man to link himself with those who constitute his ancestry and also think of those who would be his posterity. Man possessed of certain inalienable rights, thus lives, works and dies for society. Man is expected to develop his craft, science and technology and lead society from poverty to prosperity with a happy today and a happier tomorrow. Crime is inevitable in human society. No doubt, we have progressed a lot in every sphere of life and struggling to achieve immortality also, yet we are haunted by the thoughts of animal instincts. Everywhere some human beings have fallen outside the pattern of permitted conduct. It is best to fact that crime cannot be abolished except in a non-existence utopia. Commenting on this aspect Durkheim in his treatise a crime as a normal phenomenon says, "A society composed of persons with angelic qualities would not be free from violation of the norms of that society". In fact, crime is a constant phenomenon changing with the social change. At the same time all civilized societies want a peaceful life away from all clutches and wrathful response of non-socialized aggressive lot and it is the paramount duty of the state to provide a sigh of relief to the society. Punishing the offender is a primary function of all civil states for reducing the incidence of criminal behavior either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them in to law abiding citizens. With new criminological development particularly in the field of penology, it was generally realized that punishment must be in proportion to the gravity of the offence. It was further suggested that reformation of a criminal should be goal rather than his expulsion from society in view of his rehabilitation. Today old barbarous methods of punishment are completely abandoned. The modern notions of crime causation, that crime is a result of pathological aberrations and other social factors, are reflected in the criminal justice administration of which sentencing plays a major role. The attitudes towards criminals at a given time in a society represent the basic values of the society today. Imprisonment presents a most simple penal and common form of sentencing for incapacitating the criminal. It proved to be efficient method of temporary elimination of criminals apart from being a general deterrent and an individual deterrent. The origin of prison is inter-linked with the system of imprisonment, which originated in the first quarter of nineteenth century. Initially, prisons were used as detention houses for under trials. Person who were guilty of some political offence or war crime or who failed to pay their debts were lodged in prison cells with a view of extracting confession from them or securing the payment of debts. Subsequently, with the march of time and advancement of knowledge and civilization, the

conditions of prisons also improved considerably. The present-day penology centers along with imprisonment are looked as a measure of rehabilitation of offenders. The prisons are no longer mere detention houses for the offenders but they seek to reform inmates for their future life. Thus, the institutions of prison serve a dual purpose of eliminating criminals from society and reformation and rehabilitation of offenders under institutional treatment. The attitude of society towards prisoners may vary according to the object of punishment and social reaction to crime. Conditions of imprisonment in civilized countries have undergone radical changes in recent decade. In recent times, prisoners have attracted the attention of jurists, sociologists and protagonists of human rights all over the world. The truth is that the philosophy of prisoner's rights appears to have stemmed directly from consideration of human dignity and citizenship. The basic rights of a human can't be abrogated by the mere fact of imprisonment. There was a time when prisoners were considered to be persons devoid of any rights and even their basic rights were deemed to be confiscated, the moment they were arrested and imprisoned. However, prisoner's rights gained importance with the passage of time. It is not uncommon that every problem of the day has been infested with some human rights dimensions in one way or others, and prison administrations are no exception to this general rule. Human rights jurisprudence demands that while administration of justice balancing society interest with that of the individual's interest, individual's human rights should not be affected. Ignoring accused or prisoners and not making any attempt to provide them solace or restitution would be a challenge to protection of his human rights. Every human being is entitled to his human rights. Human right means individual rights of freedom of thought to be fundamental for a civilized society. They include freedom of expression, movement and association, implementation of due process of law, equality before the law and the right not to be subjected to cruel or degrading punishment. According to Hon'ble Justice Krishna Iyer, the central concern of law and justice must be humanity. Humanity will be meaningful if it is supported by humanism dignity of a human, as an individual can be respected and maintained by others if they follow human values. But there is no agreement about the fundamental rights of criminal or prisoner. However, now the Supreme Court has made it clear that with a degree of difference in application, even criminals are entitled to fundamental or human rights. Therefore, all police and jail authorities should now treat the accused and prisoners with human grace and dignity. Article 10 of the International Covenant on Civil and Political Rights, 1966 enthusiastically proclaims that the persons deprived of their liberty shall be treated with human dignity and with respect for the inherent dignity of human person. Prisoners and the all rights of the prisoners in India were kept in abeyance till the realization of the new dimension of personal liberty (from Gopalan to Maneka Gandhi case) that covers even prisoners and their rights under our Constitution. These aspects were realized very late in our country as compared to the western countries. The Constitution of India does not enumerate any short of fundamental rights to the prisoners specifically, but at the same time it also can't be said that it is not available to the prisoners.

Evolution of Prison Administration

The legal system in the mediaeval India is similar to Ancient India and existing Muslim rulers seldom. During the Mughal period source of law is the Quran. Crimes were divided into three groups that is crime against god, crime against state, crime against private person. The punishments for these crimes were divided into four categories that is Hadd, tazir, quisas and tasir. Imprisonment was not considered as a punishment in the case of ordinary criminals.

It was mostly used as a means of detention only. There were fortresses which were situated in different parts of the country in which criminals whose trial and judgment was pending, were detained. There were three Noble prisons or Castles in Mughal India. One was at Gwalior, second was at Ranathambore and the last one was at Rohtas.

The present prison system of our country is a gift of the British rule. It was a creative creation of the colonial rulers our local penal system with the motive of making imprisonment a terror to wrong doers. There was a great leap in the history our penal reforms as it makes possible the abolition of our old system of barbarous punishment and substitution of imprisonment as the chief form of punishment for crimes.

In 1784 the British Parliament gave power to the East India Company to rule over the India. There were some attempts also made to introduce improvement in the administration of the law and justice. There were 143 civil jails, 75 criminal jails and 68 mixed jail presented at that time. These jails were the extension of Mughal rule which were managed by the members of the East India Company.

Meaning and Concept of Prisoner

All human beings are born equal and endowed by their creator with some basic rights. These basic rights are mainly right to life, and liberty, but if any person doesn't comply with ethics of the society then that person is deprived of these rights with punishment. Many experts believe that the main objective of prison is to bring the offenders back to the mainstream of the society. Then there is question that whom we may call a prisoner. In its general sense, the prisoner means any person who has been put behind the bars of the prison, for any offence or charge of commission of any offence, who is under trial, the PRISONS ACT, 1894, the term prisoner classified into three categories, namely, criminal prisoner, convicted criminal prisoner, and civil prisoner.

In short prisoners are persons who are in jail for any criminal act committed by him or who are charged with an offence under criminal law of country. It may also indicates that, a prisoner may be a civil prisoner, But there question arises who are the civil prisoners? The answer to this question is not so easy, because there is no definite meaning of the word civil prisoners. But in simple words we can define the term civil prisoners as persons who are in jail for the commission of the civil wrong.

Definition of Prison

A prison is a building where people are kept as punishment for a crime they have committed or while they are waiting for the trial.¹

A prison is a place where persons are confined or restrained of personal liberty hence it is a place for confinement restraint, or safe custody.

According to the Karnataka Prisons Act 1963 Prisons means any jail place used permanently or temporarily under the general or special orders of the State Government for the detention of prisoners and includes all lands and building appurtenant thereto but does not include-

1. Any place for the confinement of prisoners who are exclusively in the custody of the police.
2. Any place specially appointed by the State Government under section 541 of the Code of Criminal Procedure, 1898.
3. Any place which has been declared by the State Government by the general or special order to be subsidiary jail.²

Types of Prisoner

In general criminal matters there are following kind of prisoners:

1. Convicted

Convicted prisoner is a person who has been tried and convicted for the offence committed by him by the competent court and sentenced to undergo imprisonment for a stipulated period is called as convicted prisoners.

2. Under-trial Prisoner

A person who has charged for certain offences and who is being tried by the court of competent jurisdiction. Who is charged for the offence but such charge against who is yet not proved and who has not been released on bail and who is either in police custody or in magisterial custody?

Aims & Objectives

The objective of the study to reforms the condition of the prisoners and their rights at the national level. To brings awareness about rights of prisoners in India.

Problems of the Prisoners

In case of state of *Maharashtra v. Prabhakar Pandurang Sanghir*,³ the Supreme Court said that the mere fact that someone is detained cannot deprive one of his fundamental rights. The court said ruled that every prisoner retains all such rights that are enjoyed by free citizen except the one that is lost necessarily as an

¹ Oxford Advanced Learners Dictionary, 7thEdi.OUT.

² Sec 2(J) Karnataka Prisons Act 1963.

³ 1966 AIR 424, 1966 SCR (1) 702.

incidence of confinement. Similarly in case of *Charles Sobhraj v. Supritendence of central jail Tihar*,⁴ it was ruled that all rights available to prisoner under article such as 14, 19, and 21 are though limited but cannot be said to be static. There are other similar cases like *Francis Corahe Mullin v. The administrator, UT Delhi*, justice Bhagwati observed the rules lay down by Justice Douglas and Justice Marshal asserting the rights of prisnors.

As for as the law is concerned, several authors wrote about the rights of prisoners. J.P.S. Sirohi, 1995, in his book on Criminology and Criminal Administration discussed about crime, causes of crime, multiple causative theory of crime, crime control, theory of punishment, prison system in Foreign and National, probation and parole, juvenile delinquency and Juvenile Justice Etc. The book contains important decisions of the High Courts and Supreme Court connected with the subject matter wherever necessary. Dr. Hyder Vali, authored a book (2003) 'Rights of accused in Criminal Trial' to discuss the right against self - incrimination, interrogation, identification of suspects and seizure. M. Abdul Hannan, (2003) in his book on 'Human Rights of the Accused in the Criminal' discussed about the human rights and Constitutional guarantees of the accused, rights of the arrested and detained person, right to reasonable investigation, questioning, search and seizure, right to a fair trial and the right of prisoners in Bangladesh with a comparison made basically with the provision in the Universal Declaration of Human Rights (UDHR) and International Covenants on Civil and Political Rights.

Rights under Indian Constitution

Constitution of India is like human body. The preamble is heart of all citizens. It is covered with all rights and duties of citizen. Prisoners have fundamental rights-, rights to equality, right to freedom, protection of life and personal liberty, rights to freedom of religion, culture and education rights. Prisoner must get all rights within the limitation by court.

The Constitution of India confers a number of fundamental rights upon citizens. The prisoners also being the citizens of India continued to enjoy the fundamental rights except those, which are necessarily taken away due to imprisonment by due process of law. The state is obliged to uphold and ensure observances of basic human rights. The prisoners' rights are those rights which are conferred upon them by way of statute and the same are necessary for their existence as a human being. The rights although not provided by way of statute by in fact the same have been conferred upon the prisoners by way of liberal interpretation of the statutory and Constitutional provisions.

Rights of Prisoners under Prison Act

The supreme court of India has decided to grant some rights and duties of prisoner. In the respect of all India committee on jail reforms during 1980-1983 as given under;

- ❖ Right to human dignity
- ❖ Right to basic minimum needs

⁴ 1978 AIR 1514, 1979 SCR (1) 512.

Prison Reform

There were many committees for the Prison reform one of the following:

Justice Malimath committee March 2003⁵

Malimath committee has given suggestions with regard to handcuffing of the accused as follows:

1. As a rule handcuffs or other fetters shall not be forced on prisoners convicted or under-trial- while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court or back. The police and the jail authorities on their own shall have no authority to direct the handcuffing of any inmate of the jail in the country or during transport from one jail to another or from jail to court or back.
2. Where the police or the jail authorities have well grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then they said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate in rare cases of concrete proof regarding proneness of the prisoner to violence his tendency to escape he being too dangerous/ desperate and finding no other practical way of forbidding escape is available the Magistrate grant permission to handcuff the prisoner.

Conclusion

Prisoners in India, in eyes of law should be offered the basic and fundamental human rights as available to any other citizen; the conviction of a human does not render him/her nonhuman. However the prisoner should not be treated as free man with all absolute rights and luxuries also. The freedom is subjected to certain limitations and reasonable legal restrictions. The supreme court of has been emphasizing since long time to states and central governments to improve the deteriorating conditions of the prisons like overcrowdings, lack of training facilities, infrastructure etc. it is almost mandatory to implement the rights and constitutional safeguards to the prisoners. The things have improved significantly following independence, which were highly atrocious during British rule in India. However, despite several rules and laws, the incidences of custodial deaths, brutality, physical and verbal abuse and inhuman treatment to the prisoners are still reported from different parts of India. Surprisingly India still suffers with discrimination based on cast and religion on the prisoner's front.

The days are gone when prisons were dungeons where prisoners were lodged to pass their days in dark cells. The prisons are no more the institutions designed to achieve only the retributive and deterrent aspects of punishment. Prisons are now the places, where the inmates are lodged not as a forgotten or forsaking members

⁵ http://mha.nic.in/pdfs/criminal_justice_system.pdf (Accessed on 05/03/2017).

of the society but as human beings who have to go out in to their surroundings as well behaving as reformed persons. For a prisoner, the imprisonment itself is a punishment and thus, prisons are expected to be places of rehabilitation, not places where extra punishment is added resulting into the violation of their human rights.

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