



“PROBLEMS OF PRISONERS IN INDIA: AN ANALYSIS”

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ABSTRACT

Section 3 of Prisons Act, 1894 (Act IX of 1894) defines prisons as Prison means any jail or place used permanently or temporarily under general or special orders of the State government for the detention of prisoners and include all lands and buildings appurtenant thereto, but does not include any place for the confinement of prisoners who are exclusively in the custody of the police.

Criminal Law of India is a replica of colonial times. It is hostile to the poor and the weaker sections of society. The law still serves and protects the needs of the haves and ignores the have-nots. Such biasness has resulted in rich people escaping law and the jail is more often full of the unprivileged class of society. The hierarchy of courts and with appeals after appeal have led to a situation where the poor cannot reach the temple of justice due to heavy cost of its access. In other words one can state that granting justice at a higher cost indirectly means the denial of justice. Such circumstances lead to a clear violation of the Supreme Court judgement which held, legal aid to a poor is a constitutional mandate not only by virtue of Article 39A but also Articles 14, 19, 21 which cannot be denied by the government.

As understood by a layman an, 'undertrial' is a person who is currently on trial or who is imprisoned on remand whilst awaiting trial. As defined in the Oxford Dictionary, 'A person who is on a trial in a court of law'. The 78th Report of Law Commission also includes a person who is in judicial custody on remand during investigation in the definition of an 'under trial'.

INTRODUCTION

PROBLEMS OF PRISONERS

1. PROBLEMS FACED BY CONVICTED

I. Criminalizing effect of a prison –

With hardened criminals being around and in the absence of scientific classification methods to separate them from others, contamination of first time, circumstantial and young offenders into full-fledged criminals occurs very frequently. It is an often given quote, 'prisons are Universities of crime where people go in as under-graduates and come out with PhDs. in crime'.

II. Health problems -

Most of the prisons face problems of overcrowding and shortage of adequate space to lodge prisoners in safe and healthy conditions. Most of the prisoners found in prisons come from socio-economically disadvantaged sections of the society where disease, malnutrition and absence of medical services are prevalent. When such people are cramped in with each other in unhealthy conditions, infectious and communicable diseases spread easily

III. Mentally ill prisoners –

Though miniscule, mentally ill prisoners constitute another percentage of population, which is largely ignored and forgotten by both the outside world and those inside. But given the nature of the illness and prevailing social attitudes, they form the most hapless victims of human rights violations. Even for a normal person, prolonged incarceration might lead to a mental breakdown, the atmosphere being such. Many, on the verge of such collapse, do attempt suicide.

IV. Drug abuse –

After Murder, Attempt to murder and other serious anti-personal offences, people booked under anti-drug laws constitute a substantial percentage of the prison population. Being in prison and cut off from the free world, sees and increased desperation to get the banned substances to satisfy their addiction to drugs. This also increases the danger of fresh prisoners being inducted into drug abuse since 'prison is an environment where there is a captive, bored, largely depressed population eager for some release from the grim everyday reality.

V. Effect on the families of prisoners –

Those imprisoned are unable to look after their families. In the absence of the main bread winner, the family is many a time forced into destitution with children going astray. This combined with the social stigmatization that they face, leads to circumstances propelling

children towards delinquency and exploitation by others. It is an inexorable circle. The problems become acute when they belong to the socio-economically marginalized and exploited sections of the society. The dominant class does not fail and lose time in taking advantage of this situation to exploit the remaining family members to the fullest possible extent. This can take the form of rape or forced prostitution of the prisoner's wife and or his daughters.

2. PROBLEMS FACED BY UNDER-TRIAL PRISONERS

I. The Right to Speedy Trial

As recognised by the Supreme Court in *HussainaraKhatoon vs. Home Secretary, Bihar* is violated due to protracted delays. This delay is due to all kinds of reasons such as –

- a. Systemic delays.
- b. Grossly inadequate number of judges and prosecutors.
- c. Absence or belated service of summons on witnesses.
- d. Presiding judges proceeding on leave.
- e. Remands being extended mechanically due to lack of time and patience with the presiding judge.
- f. Inadequacy of police personnel and vehicles which prevents the production of all prisoners on their due date

II. Denial to right of bail in genuine case

Even in cases where the prisoner was charged with bailable offence, they are found to rot in prisons due to exorbitantly high bail amount. The spirit of the Supreme Court in *Moti Ram & others vs. State of Madhya Pradesh* is violated constantly. The Law Commission analysed this in detail in its 78th report on congestion on under trials. It is also important to point out that the system of giving bail which is mentioned in sections 436 to 450 in the Code of Criminal Procedure, 1973 is also unjust. This is because according to the provisions of the code a person released on bail is required to execute a personal bond and bond of security for a certain amount of money. As a result the poor who cannot afford to avail surety have to suffer in jail till the case is over.

III. Non following of guidelines

Some of the judges even at the High Court level are not following the guidelines laid down by the Supreme Court on bail and grant of the same is dependent upon the attitude of each

judge. Standards cannot become prisoners of the whims and fancies individuals. Authority is to be exercised with responsibility.

IV. Homosexual Abuse

Prisons are the places where same sex people are lodged. Being removed from their natural partners, forces the prisoners to look for alternative ways to satisfy their sexual urge. This often finds vent in homosexual abuses where the young and feeble are targeted. Resistance from the side of prisoners leads to aggravated violence on them. At times, prisoners are subjected to massive homosexual gang-rapes. Apart from causing severe physical injuries like the rupture of anus and spreading sexually transmitted diseases including HIV/ AIDS, it also induces severe trauma in prisoners forcing some of them to commit suicide. If they do not, they carry a lot of anger and frustration in themselves which they take out on the next innocent prisoner who gets admitted.

3. PROBLEMS FACED BY WOMEN PRISONERS

I. Physical and mental health care.

In addition to requiring basic health care, women offenders often have specific health needs related to their risky sexual and drug-using behaviour prior to imprisonment. Women in prison are also at risk for infectious diseases, including HIV, tuberculosis, sexually transmitted diseases, and hepatitis B and C infections. Pregnancy and reproductive health needs are another neglected area of health care. Problems of pregnant inmates include lack of prenatal and postnatal care, inadequate education regarding childbirth and parenting, and little or no preparation for the mother's separation from the infant after delivery. The right to health includes providing healthcare that is available, accessible, acceptable and of good quality. In many cases, female wards in hospitals and lady Medical Officers, especially gynecologists, are not available. Concerns of mental health are often not given adequate importance, and women suffering from mental illnesses are often housed in prisons due to lack of other appropriate facilities.

II. Prison Staff

There is a lack of female staff in prisons in the country. The lack of female staff in women prisons often leads to male staff becoming responsible for female inmates. This is highly undesirable since women inmates need gender-specific services that should be provided by female staff.

III. Sanitation and Hygiene

Most jails are lacking in basic facilities of sanitation and hygiene. There is a lack of sufficient water, which exacerbates the low levels of sanitation and hygiene.

IV. Accommodation

National and International Guidelines prescribe decent human living standards for prisoners. A specified size for cells and barracks in prison is prescribed in the National Prison Manual. Barracks are meant to ideally only house 20 prisoners and dormitories to house only four to six prisoners each. The Minimum Standards Rules further direct that dormitories should be carefully provided to people suitable to live with each other and windows where prisoners live or work shall be large enough to enable the prisoners to read or work by natural light. Over-crowding is one of the key problems plaguing the prisons in the country.

V. Violence

Incidents of violence, including sexual violence by inmates and authorities, have been reported from across the country. However, official reports underestimate the prevalence of violence, because prisoners fear retaliation, as they are forced to stay in the same place as their perpetrators.

JUDICIAL APPROACH ON PROBLEMS OF PRISONER

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility.

"Convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. Therefore, it is an obligation upon the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, while the citizen is in custody."

As a protector and guardian of fundamental rights, from the very beginning, the judiciary particularly the Supreme Court had adopted the stance that it acts as the 'sentinel on the qui vive vis-avis fundamental rights and has stressed this role in several cases. Commenting on the role entrusted to itself, the court in the case of Daryao v. State of Uttar Pradesh, observed

that: The fundamental rights are intended not only to protect individual's rights but they are based on high public policy. Liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life adopted by the Constitution and it is the privilege and duty of this court to uphold those rights. The court would naturally refuse to circumscribe them or to curtail them except as provided by the Constitution itself.

The entitlement of the convict to the precious right guaranteed by Article 21 of the Constitution of India was the main issue in *Sunil Batra v. Delhi Administration*. It was contended that a person in jail is already subject to enormous curtailment of his liberties. The protection of whatever liberties are left inside the jail demand that they cannot be taken away arbitrarily and without the procedure established by laws. The greater the restriction, stricter should be the security of the Court, so that the prisoner is not subjected to unnecessary and arbitrary loss of his remaining liberties. Only a court has the authority to inflict a punishment. The jail authorities do not have a right to inflict any punishment except as a matter of jail discipline. As Section 30 of the Prison Act empowers the jail authorities to impose an additional punishment of solitary confinement, it is submitted that it is violative of Art. 20(1) of the Constitution.

The Supreme Court while pointing out major problems which needs immediate attention in *Ram Murthy v. State of Karnataka* 16 remarked that the literature on prison justice and prison reform 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; (8) streamlining of Jail visits; and (9) management of open air prisons.

Before the Supreme Court in the case of *Veena Setahi v. State of Bihar* the records show that the prisoners were last examined Psychiatric Specialist in the Jail Hospital and were found to be of unsound mind. The Court observed that "they cannot in these circumstances order for their release, because having regard to the mental condition of these prisoners, it would not be in the interest of the society as also in their own interest to set them free. It does not appear from the record as to whether there is anyone prepared to take care of them and hence it would not be desirable to release them, because if released in the present condition, they would not be able to secure proper medical treatment and would not even be able to look

after themselves. The court in the instant case empathically observed that " it is indeed unfortunate that most of these prisoners have been in jail for over 25 years and it is a matter of shame for the society that these prisoners have had to be detained in jail because there are not adequate institutions for treatment of the mentally sick. We are told that there is only one institution in the State of Bihar for treatment of lunatics and persons of unsound mind and that is the MansikArogayashala, Kanke and it is already over-crowded and there is no room for admitting these prisoners. We have had occasions to see lunatic asylums in one or two States and we find that the conditions in these lunatic asylums are wholly revolting and one begins to wonder whether they are places for making insane persons sane or sane persons insane. We do not know what are the conditions in which the inmates of the MansikArogayashala, Kanke live and what are the medical facilities provided to them, but we hope and trust that the conditions there are satisfactory. We would like to take this opportunity of impressing upon the State Government that in a large State like the State of Bihar, there must be an adequate number of institutions for looking after the mentally sick and the practice of sending lunatics or persons of unsound mind to the jail for safe 189 custody is not at all a healthy or desirable practice, because jail is hardly a place for treating those who are mentally sick. We cannot, therefore, order release of the abovementioned prisoners, but we would direct the Superintendent of the Hazaribagh Central Jail to have these prisoners examined by the Psychiatric Specialist attached to the MansikArogayashala, Kanke or any other Psychiatric Specialist once every six months and submit a report of such examination to the District Judge, Hazaribagh and if as a result of such examination, it is found at any stage that the prisoner concerned has become sane or has regained his soundness of mind, the District Judge will immediately order his release from the jail and the State Government will provide him the necessary funds for meeting the expenses of his journey to his native place as also for his maintenance for a period of one week.

CONCLUSION

By looking at the prisoners, whether it be under trial, convicted or women prisoners they all face one or the other problem. One of the major problem is the overcrowding in the jails. Due to this overcrowding the jail inmates are not properly taken care of and which leads to commission of other crimes also. The govt need to make up more prisons in this context so that these prisoners can be tackled easily. And health and sanitation facilities must be improved. For the women inmates whose children are less than six years of age better food and residence be provided for mother and child. And for the under trials they must be kept in separate barracks from convicts for their own protection only.

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