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A Study On Role Of Judiciary In Protection Of Prisoner Rights In India

1. Ambati Omkar, Research Scholar, Department of Law, S.K.University, Anantapur.
2. Dr.M.Sreeramulu, Assistant Professor, Department of Law, S.K.University, Anantapur.

ABSTRACT

The present study is aimed to describe the prisoner rights granted by different judiciary bodies and recommendations of committees, the aim of untouched areas of judicial system. The study describes the prisoner rights granted by Prison Act 1894, Constitution of India, Committee on Jail Reforms, Criminal Procedure Code (now Bharatiya Nyaya Sanhitha) with exclusive rights of under trial Prisoners, Women prisoners and Prisoners Convicted with Death Sentence. Besides, study highlights the various areas where intervention of Judiciary system is more required towards protection of Prisoner Rights in India.

Key words: Role of Judiciary, Prisoner Rights, under trial Prisoner Rights and Women Prisoner Rights etc.

Introduction: The prisoner is defined as a person of liberty kept under involuntary restraint, confinement or custody. The prison is a place where prisoner deprived with limited freedom. Imposing sentence of prison as punishment plays significant role in Criminal Justice System to control criminal behavior and thoughts and bring positive and human thoughts which mould them to live in the society. The major aim behind the imprisonment is to protect the society from the crimes. The prison is not aimed to feel or force the criminals in the custody. All prisoners in the case are treated with respect, dignity, human values and rights. Before the independence, prisons were developed for the criminal person and against any illegal activity or against British Government. The prisons were very unsafe to inmates. The British Government used to punish most of the prisoners with inhumanely and mistreat them. Punishment was developed for such criminal and wrong-doers. It was one of the steps towards controlling the people from any illegal movement or crime or wrong doers. In the world, there was different capital punishment included such as flogging, mutilation, branding, pillories, imprisonment and death by hanging. Even today, some countries are following Capital punishment. In India the Britishers have developed the first prison in Goa, 1600. It was with small lockups for prisoners. Afterwards, a large prison complex construction was started in 1896 to 1906. It was Andaman Nicobar Jail. The British Regime has established more jails for prisoners. Prisoners were treated like animals in jail and there was rude behaviour by the Superintendent of Prison. During 18th century, there was no knowledge of human rights. The superior has power to rule the nation. After the changing scenario in the country, Indian Government Act 1935 was developed. After

Independence, Government of India has reformed “jails” or “prison” system with help from United Nations. It has been divided into different levels like National level, State level and District level of prison system was developed.

Our Indian Constitution and Prison Act 1894 provide the basic human rights to the prisoners as per the human grounds. In general, the right of prisoners is classified as rights under general needs, rights under physical needs, rights under non-physical needs and rights of women prisoners. The rights under general needs included fundamental rights provided under constitution to common citizen, however few of them are exempted in special cases. The physical rights comprises of right to access food, water, clothing, bedding, sanitation, hygiene, medical care and others. The non-physical or aspiration needs comprises of freedom from physical restraints, right to visitation needs, release on bail, speedy trial, free legal aid and right against custodial torture in prison. Women rights comprises of right to health, visiting, childcare in prison etc. Brief discussion on the prisoner rights is done in the present study. Besides, the role of Judiciary in protection of prisoner rights in India has been discussed and highlighted in the study.

1. Prisoner Rights in India- Judicial Provisions

a) **Prisoner Rights Act 1894:** The prisoners under this act granted various rights such as

- **Right to accommodation**, the section 4 of the Act deals with provision of accommodation to the prisoners. Besides, Model Prison Manual (2016) has given some directions regarding living conditions in prison as per human dignity which includes the accommodation, hygiene, sanitation, food, clothing, medical facilities etc.
- **Rights to shelter and safe custody of the number of prisoners**, if in any prison the number of prisoners are large and more than required then there is need to provide temporary shelter with high priority of their custody. This happens even in the case of outbreak of epidemic diseases.
- **Right to Medical Examination**, section 24 (2) of the Act provides the every prisoner should be treated by the qualified medical officer regarding his health and critical illness. The observed data should be entered by the jailer in the book properly. Similarly, Section 24(3), of the Act deals with female prisoner's medical examination. Section 26 (2) says that the no prisoner should be changed from one prison to another without certificate of medical officer. Section 26 (3) directs that no prisoner should not be discharged against his will and without opinion of medical officer.
- **Separation of Prisoners**, section 27 of the Act prescribed that prisoners in the prison should be kept separate on the basis of gender variation, Convicted and Under trial prisoners and Civil and Criminal prisoners. These practices make them not to see and meet and also prevent from having any inter-course relationship with other gender and other categories.
- **Solitary Confinement**, according to Section 29, No prisoners should be considered for solitary confinement. The officer should communicate with them to avoid themselves feeling lonely, no prisoner can be confined in a Prison cell for more than twenty-four hours. When they are punished for solitary confinement the medical officer should care about them once in a day.
- **The government provides the cloths and bedding for prisoners** under section 33(1) of the act directs that the jail Superintendant has to provide proper clothing and beds for all civil prisoners

and under trials without discrimination.

- **Criminal prisoner's employment:** Prisoners who are sentenced to imprisonment cannot be made to do manual labour for more than 9 hours a day, unless it's an emergency and the Superintendent gives written permission. While they engage in the work the medical officer shall come for rounds for checking whether they are working or not and if any prisoner is suffering with any issue during the working hours or assented work they will be provided treatment.
- **Other Rights** included in the section 37 which deal with medical treatment for sick prisoners. Section 39 of the Act deals with provision of the health facility to the prisoners. Similarly, under section 40 of the Act Civil and Under Trial Prisoners have the right for visit by the legal advisors at proper times.

b) **Prisoner Rights- Constitutional Provisions:** In State of AP Vs Challa Rama Krishna Reddy & Others (2000)5 SCC 712, the Hon'ble Supreme Court held that whether convict or under trail prisoner should be considered as human being and he has right to enjoy all the fundamental rights guaranteed by Constitution of India. The rights includes Fundamental Rights as per Article 14 (equality before law), Article 19 (freedom of voice, expression, form of unions and association, free moving and reside in Indian territory), and Article 21 Right to life and right to personal liberty.

c) **Rights of Prisoners under Criminal Procedure Code (Cr.P.C now BNSS)**

The prisoners are granted different rights under criminal procedure code Right to be informed of grounds of Arrest and Right to Bail (Section 50 of Cr.P.C and Section 47 of BNSS), Right of arrested person to meet his advocate of his choice during Interrogation (Section 41-D of Cr.P.C and Section 38 of BNSS), Right to Speedy Trial (Section 309(1) of Cr.P.C and Section 346 of BNSS), Right to Medical examination (Section 54 of Cr.P.C and Section 53 of BNSS), Right of prisoner to be produced before Magistrate without delay beyond 24 hours (Section 57 of Cr.P.C and Section 58 of BNSS), Right to be released on Probation of good conduct (Section 360 of Cr.P.C and Section 401 of BNSS), Right to be released on bail without surety (Section 436 of Cr.P.C and Section 478 of BNSS),

d) **Rights Under All India Committee on Jail Reforms (1980-83):** The committee on jail reforms has recommended some of the rights to the prisoners as right to be treated as human being, right to integrity of the body, mind and non-privation of fundamental right, right to basic needs, right to communication, right to access law, right to meaningful and gainful employment and wages and right to be released on the due date.

e) **Rights of Under Trial Prisoners:** The under trail prisoners have rights as rights granted to convicts, besides, under trail prisoners are granted few additional rights as per the precedents and statutes. They are as follows, Right to be released when he was served half of the maximum sentenced (Section 436 –A of CrPC and Section 479 of BNSS), Right to be released on bail (Section 436 Cr PC and Section 478 of BNSS) if he is arrested under bailable offences, and cases pending more than two years (Saaheen Welfare Assn' Vs Union Bank of India 1996 SCC (2)61, when police investigation is not completed within stipulated time, against violation of fundamental rights, to

consult their own doctors and other basic rights granted under prison Act

- f) **Rights of women Prisoners:** In India women prisoners have the right as male prisoners have, besides, Ministry of Women and Child Development outlined some the rights possessed as separate prison, women staff, accommodation, sanitation and hygiene, health examination, nutrition, education, skill and vocational training, legal aid, right against violence, contact with outside world, children up to six years are allowed to live with her mother, right to re-integration with society after release and special provision for arrest of women.
- g) **Rights of Prisoners Sentenced to Death.** The prisoners who are sentenced to death have the rights such as proviso of legal aid, examination of regular mental health, right to submit mercy petition, communication of rejection of mercy of petition, right to receive documents such as court papers, judgments, facilitating and allowing final meeting between prisoner's and his family
- h) **Other Rights:** The other rights are given to the prisoner based on the circumstances and case types they were arrested. They included right of inmates to live in humane and good condition (Uppendra Baxi Vs State of UP (1983)2SCC308), Right to free legal aid (Wadanrao Haskot Vs State of Maharashtra (1978)3 SCC 544, Right to speed trial (Hussainara Khatoon Vs State of Bihar (1980)1 SCC 81), Right against custodial violence, lock up death & Encounters, rights against solitary confinement, hand cuffing & bar fetters, Right to communicate lawyers, friends and family members, Right to get reasonable wage in prison (minimum wages Act 1948), Right to expression (State of Maharashtra Vs Prabhakar Panduranga Sanzgiri & Anr 1966 AIR 424,) Right to be informed about legal aid, Right to communication, Right against Double Jeopardy, Right to receive books, magazines inside the jail.

Need of more Judiciary Role in Prisoner Rights:

The role of judicial system is very significant in prisoner rights, it has been announced by many judgments and guidelines regarding the prisoner rights in different cases. However, still many incidents are occurring in the various places of the country. Therefore, some key untouched areas against the violation of prisoner rights where role of judiciary is high needed is discussed in the present study.

- The Survey of Nimhans and National Commission for Women study in the Central Prison; Bangalore was conducted in the year 2011. It is noticed in the survey that in the Indian prison many of the women were illiterate, had never stepped out of their houses, and had no financial resources and many had been arrested on petty charges. Most had no idea about legal procedures, such as, what is the process of trial, how to arrange for a defense lawyer, what laws exist to protect their children or property etc.
- Legal aid workers are needed to help such person in getting them released either on bail or on personal recognizance. The bail provisions must be interpreted liberally in the case of women prisoners with children, as children suffer the worst kind of neglect in the world when the mother is in prison. ("Legal Aid for Prisoners")
- In India, the available of prisons is inadequate which result in overcrowding of the prisons

where judiciary system has to direct the government to build more prisons in the country.

- The UN standard Minimum Rule states that, it is mandatory to provide the separate residence for young and child prisoner's from the adult prisoners. Subsequent UN directives have been enacted the Basic Principles for the Treatment of Prisoners and the Body of Principles for the Protection of all Persons under any form of detention or imprisonment.
- Thus the financially poor prisoners in the prison did not always get the provisions in law though the State was obliged to provide the legal aid. As also observed by the Mulla Committee, most prison inmates belong to the economically backward classes and this could be attributed for their inability to arrange the bail bond
- At present the prisoners are not getting minimum facilities such as bed and cloth etc., thus, our judicial system has to focus on the meeting this needs.
- The judicial system has to direct the government towards fulfillment of adequate staff in the prisons to enhance continuous monitoring in the jail.
- In most of prisons, intervention of political leaders gradually increasing in the form of appointment of their favorable officers torturing their opponents, thus, present judicial system has limited political interventions in appointing of Jail officials.
- The Judicial Officers should appoint a monitoring agency to monitor the protection of prisoner rights, exclusively women prisoners.
- There is need of more rigorous actions against the official who caused the violence of prisoner rights and custodial death, besides official suspension and also there is need for compensation for prisoner family.
- Though prisons are supposed to be correctional institutions in which the variables that affect the conditions of confinement are the criminal records of their inmates and their behavior in prison, other factors play an important part in many countries.
- The lack of eminent lawyers in the legal aid panels at that time was also a concern. Several suggestions were made to speed up the trial processes, so that the population of under trials could be reduced to a lower population in prison.
- The judicial system should control jail officials from using the prisoners for their personal and family requirements.
- The judiciary system should implement more open prisons in the country.
- The judicial system should not encourage the base less cases and should impose the penalties on persons who filed such cases.
- The judiciary system need to implement more technology to finish the long standing cases and reduce the under trail prisoners in the prisons.
- The first phase of ancient civilization in India when Dharma was Supreme, the offenders were shown the maximum tolerance, but that was gradually ousted by the political party of the King in the middle ages.
- In India, the International Covenant on Civil and Political Rights (ICCPR) remains the core

international treaty on the protection of the rights of prisoners. India has ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice.

REFERENCES:

- CharlesSobrajvsSuptd.CentralJail—AIR1978SC1514Rustom
CowvasjeeCoopervs.UnionofIndia—AIR1970SC1318
- Francis Coralie Mullin vs. The Administrator Union Territory of Delhi, (1981) 1 SCC 608
- Furqan Ahmad (2003),Protective Judiciary in Aid of Human Rights in India“, 43(2) Indian Journal of International Law 349-359
- Human Rights and Justice System—Ashwan Kant Gautam Maneka Gandhi vs. Union of India – AIR 1978 SC 579
- Hussainara Khatoons (I) v. Home Secretary, State of Bihar AIR 1979 SC 1360
- Human Rights and Humanitarian law—Developments in India and International Law South Asia Human Rights Documentation Centre (SAHRDC) Hand Book of Human Rights and Criminal Justice in India – SecondEdition—SAHRDC
- James Nickel (2013), with assistance from Thomas Pogge, M.B.E. Smith, and Leif Wenar, Stanford Encyclopaedia of Philosophy, Human Rights
- Law Relating to Protection of Human Rights under the Indian Constitution and Allied Laws by Justice Palok Basu.
- Lalwani, D.P(2006), Foundations of Human Rights and Role of Government“, 9(1) Journal of the Institute of Human Rights 40-57
- Nidhibeniwal, Role of Judiciary in Protecting the Rights of Prisoners, Retrieved from: <http://www.legalservicesindia.com/.../role-of-judiciary-in-protecting-the-rights-of-prisoners->.
- Sirohi : J.P.S.; Criminology, and Penology, Haryana, AllahabadLaw Agency, ed. VI (2004).
- SunilBatravs.DelhiAdministration—AIR1978SC1675