

Where Do We Draw the Line?- An analysis of Prisoners' Rights

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Abstract

As we begin to trace the history of the presence of a legal regime in the society, we find something inseparable from the implementation of law, punishment and prisoners. In addition to which we find the evolution of the same through the different kind of punishments; deterrent, retribution, rehabilitation, etc. an example of this is the infamous penalisation *lex talionis* or the law of retaliation; an eye for an eye and a tooth for a tooth. However, nothing can be more accurate about its implication than what Mahatma Gandhi said: "an eye for an eye makes the world blind."

The purpose of our paper is to explore the complexities of the provisions related to rights of the prisoners as well as critically analyse the advantages and limitations whilst correlating the international standard to the one in India.

The paper is based on quantitative and qualitative research which aims to gather an in-depth understanding of human behaviour and its impact on a prisoner's rights. The authors seek to critique the legislative provisions, domestic and international, which govern prisoners' rights. Further, special emphasis has been placed on expert opinion. The paper also examines case studies for varying crimes and from different sections of the society. Thus, contrast has been drawn between the changing societal norms over the years, its relation to penal laws for the purpose of understanding to what extent prisoners rights must be at par with human rights and where exactly do we draw that line.

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Introduction

Prison is maybe the most perplexing form of punishment as it influences the prisoners' material belonging since they can gain little or practically no wages while imprisoned, they may lose their activity or vocation, go through their time on earth reserve funds, and have their aggregate lifetime earning capacity negatively affected. It influences the prisoner's body since he or she is under the control of others and almost no opportunity exists. Detainment may result in real physical damage, from assaults by prison guards or different prisoners or from sicknesses or wounds left untreated. Prison likewise assaults the mind by attempts at reconstruction and through the psychological disintegration that happens on account of the negative condition of the surroundings. During the 19th century, the philosophy and perspective behind imprisonment changed. Prison became an alternative to brutal corporal punishments. It was viewed as redemptive and fit for changing the people from inside to wind up as better individuals.

Methodology

The provisions of international law have been looked upon in contrast with the Indian standing on this subject. We have traced the evolution of these rights through history whilst exploring landmark judgments which have over time expanded the definition of prisoners' rights. At the same time the incorporation and translation of this evolution into the legislature, and the status of its implementation. Thus, a comparison has been drawn between the changing societal norms over the years and it's relation to penal laws.

Objective

During the early 1800s, it was believed that the prisoners had no rights. As indicated by the judges, the prisoners lost their rights when they carried out the crime for which they are being punished and, in this way, did not merit or deserve any rights. It was believed that the basic purpose of imprisonment was taking away any such that and that the commission of a crime was in itself that warranted as well as acted as a waiver of such provisions of law that granted these rights. It was believed that the Inspector General the prison had absolute authority in matters related to dealing with the inmates.

The objective of this paper hence shall remain to shed light on the fact that the purpose of imprisonment is to function as a rehabilitative process and not to comprise of mental and physical torture which have a permanent negative effect on the mind of the confined, which would consequentially set us back as a society and leave us circling in the same repetitive cycle of commission of crime and punishment, instead of being and acting as an opportunity

for growth and change which is the basic principle of human life; something we fail to realise by clogging our minds with rage and anger, and not appreciating the rule of law.

International Perspective

United Nations Charter

The standards were that Prisoners will be treated with inherent dignity and valued as human beings. All prisoners will hold the human rights and key opportunities set out in UDHR, ICESCR, ICCPR and the discretionary convention and additionally such different rights as are set out in other United Nations pledges. Right of the prisoners to partake in social exercises and instruction went for the full advancement of the human identity as well as the abolition of solitary as a discipline, or to the limitation of its utilization.

The Universal Declaration of Human Right

The relevant provisions of this declaration are that no one must be subjected to torture or to any inhuman or degrading treatment or any punishment. Everyone has a right to life and one must not be subjected to arbitrary arrest, exile or detention.

The International Covenants On Civil And Political Rights, 1966

ICCPR is one of the fundamentally important treaties as it is a core instrument and mechanism dealing with protection of rights of the prisoners. Under the provisions of the ICCPR one shall not be subjected to any cruel, inhumane or degrading treatment and punishment. Everyone must have a right against arbitrary arrest or detention. Further, every person deprived of liberty by way of rightful imprisonment must be treated with humanity and with respect for the dignity which is inherent to everyone.

United Nations Core Conventions and Instruments

Standard Minimum Rules for the Treatment of Prisoners deals with equality and against discrimination of the imprisoned, detainment of men and women in separate institutions. Further a complete segregation of civil and criminal prisoners as well as of underage prisoners. Prohibition of cruel, inhuman and degrading punishment and availability of at least one qualified Medical Practitioner with the knowledge of psychiatry.

Convention Against Torture and Other Cruel, Inhuman, OR Degrading Treatment OR Punishment: Its objective is to have state make effective and operational legislative and judicial measures to prevent and prohibit torture and criminalise such acts. Further, no state must expel, extradite or return a person who is in danger of being subjected to torture.

Indian Standing

The Constitution of India

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The Constitution of India does not explicitly give the arrangements identified with the prisoners' rights however on account of *T.V. Vatheeswaran v. Province of Tamil Nadu*,³ it was held that the Articles 14, 19 and 21 are accessible to the prisoners as well. The walls of the prison don't keep out our fundamental rights.

Article 14 of the Constitution of India says that the State will not deny to any individual the right of equality under the rule of law or the equal protection of laws in our country.

Article 19 of the Constitution of India ensures six opportunities to the all natives of India. Among these flexibilities certain opportunities can't be delighted in by the detainees as a result of the simple idea of these flexibilities. Be that as it may, "the freedom of speech and expression" and "freedom to become member of an association".

Article 21 of the Constitution of India says that no individual will be denied of his life or individual freedom aside from as allowed by law. This Article stipulates two ideas i.e., ideal to life and rule of freedom. By Article 21 of the Indian Constitution unmistakably it is accessible with the expectation of free individuals as well as to those individuals behind bars.

Following are such privileges:

1. Right of Inmates of defensive homes,⁴
2. Right to free lawful aid,⁵
3. Right to fast trial,⁶
4. Right against custodial viciousness and demise in police bolt ups or encounters,⁷
5. Right to live with human dignity,⁸
6. Right against savage and irregular punishment,⁹
7. Right to reasonable trial,¹⁰

Statutes

Prisons Act, 1894

Prisons Act, 1894 is the first legislation regulating the functioning of prisons in India. This Act's primary concentration is on reformation of the prisoners *vis-a-vis* the rights of such prisoners. Following provisions of the Prisons Act, 1894 are regarding the reformation of these prisoners:-

³AIR 1983 SC 361.

⁴UpendraBaxi v. State of U.P., (1983) 2 SCC 308.

⁵M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544.

⁶HussainaraKhatoon v. State of Bihar, (1980) 1 SCC 81.

⁷D.K. Basu v. State of W.B., (1997) 1 SCC 416.

⁸JeejaGhosh v. Union of India, (2016) 7 SCC 761.

⁹Jagmohan Singh v. State of U.P., AIR 1973 SC 947.

¹⁰Rattiram v. State of M.P., (2012) 4 SCC 516.

Human Rights vis-a-vis Justice System in Present Era : A Publication of Jus Dicere

1. Accommodation and sanitary conditions for prisoners as prescribed under section 4 of the Act,
2. Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison prescribed under section 7 of the Act,
3. Provisions relating to the examination of prisoners by qualified Medical Officer prescribed under section 24(2) of the Act,
4. Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and under-trial prisoners provided under section 27 of the Act,
5. Provisions relating to treatment of under-trials, civil prisoners, parole and temporary release of prisoners provided under section 31 and 35 of the Act.

The Prisoners Act, 1990

In this act it was laid down that it was the duty and responsibility of the government to remove any prisoner detained by an order of the court, who is of unsound mind and move him to a place such as a lunatic asylum and any other place where he will receive the proper treatment.

The Transfer of Prisoners Act, 1950

This particular act has the basic objective of laying down regulations regarding transfer of prisoners from a state to another for the purpose of rehabilitation or any vocational training or by reason of over-population of the jail within the state.

Judicial Precedents

What are Prisoners' rights? The answer to this question might seem deceptively simple; nonetheless, the person on the other hand fumbles while answering. The reason behind this hesitation perhaps has something to do with the dilemma as to what exactly do prisoners deserve. The Indian judiciary while dispensing its duty has time and again attempted to answer this question while maintaining the scales of balance between a victims' right to justice and a prisoner's basic human rights.

The Hon'ble Supreme Court of India held in the case of *Joginder Kumar v. State of UP and Ors.*¹¹ said that "The law of arrest is one of balancing individual rights and privileges, on one hand and individual obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively".

¹¹(1994) 4 SCC 260.

Human Rights vis-a-vis Justice System in Present Era : A Publication of Jus Dicere

The Apex Court of India held in the landmark case of Sunil Batra v. Delhi Administration¹² that “Are ‘prisoners’ persons? Yes, of course. To answer in the negative is to convict the Constitution of dehumanization and to repudiate the world legal order, which now recognizes rights of prisoners in the International Covenant on Prisoners’ Rights to which India has signed assent”.

The Hon’ble Supreme Court identified nine problems in a landmark case that are present in the Indian prisons such as:

1. “80% prisoners are under trials;
2. Delay in trial;
3. Even though bail is granted, prisoners are not released;
4. Lack or insufficient provision of medical aid to prisoners;
5. Callous and insensitive attitude of jail authorities;
6. Punishment carried out by jail authorities not coherent with punishment given by court;
7. Harsh mental and physical torture;
8. Lack of proper legal aid; and
9. Corruption and other malpractices”¹³

Impact and Implications

We inherit certain rights at birth merely by virtue of being human beings. The laws governing prisoners’ rights in India such as the Prison Act, 1894 are based on a colonial approach. Hence the ideology behind such legislations operates in complete contrast with the contemporary ideas of reformation of prisoners.

Even though, there are statutory legislations and judicial precedents wherein the rights which these prisoners are entitled to have been clarified, time again it has been proved that the colonial laws are futile in today’s age and are rarely effective. Ancient laws and lack of proper implementation of the guidelines laid down by International Conventions and precedents has stripped away basic human rights from the prisoners. Not only are they mistreated in the prisons, but they have to face social stigma all their lives due to the negative impact on their psychology and the inhumane perception of the society towards them.

Hence, perhaps even once they are out of the prison, they fail to lead a normal life and contribute to the society. The age old concept of locking up offenders started as a way of

¹²Sunil Batra v. Delhi Administration (1980) 3 SCC 488 W.P. (C) No. 406.

¹³Rama Murthy v State of Karnataka (1997) 2 SCC 642.

taking away the freedom of people so as to teach them how to be a part of the society but presently, the prisoners are retribution centres rather than rehabilitation stations.

Autrefois convict is the legal maxim of double jeopardy which states that no man shall be charged and punished twice for the same crime. This maxim has been incorporated in legal provisions all over the world however it is pertinent for us to deliberate upon the purpose of the origin of such maxim and whether or not it is being fulfilled. We must reflect upon the reality of the position of the prisoners and their ill-treatment and ask ourselves if the term of punishment is limited to the sentencing of the court, why must we allow inhumane treatment of these prisoners and make peace with the reality while consoling ourselves that it is well deserved.

Positive Outcomes and Solutions

A graduate spent seven days in police custody and 38 days in Arthur Road prison. His time in prison, he revealed to a local reporter, was nightmarish and the only thing that gave him hope was his belief in God and the saying 'this too shall pass'. The Indian Penal Code, a comprehensive law on what is and isn't legally allowed not only lays down the essentials of a crime but also the punishment for each crime. The essence lies in ensuring reasoned and well recorded punishments that can be applied equally to each offender. However, in reality, the punishment inflicted upon a prisoner is not only limited to the word of law but goes way beyond it and infringes upon basic human rights. The authors seek to propose the following solutions.

Legal Solutions

A bare reading of The Prisoners Act, 1894 reflects that the framers of the Act placed more emphasis on the working of the prison rather than rehabilitation of prisoners. Expecting to regulate the lives of prisoners by an act that was formed way before India became an egalitarian nation as we know it today is irrational and unreasonable. The Act should be amended as follows:

1. Ensuring proper hygiene and sanitation facilities available to all prisoners;
2. Transparent and fixed process that ensures prisoners are able to correspond/meet their family members;
3. Regular medical check-ups and availability of a proper medical department in every prison;
4. Emergency panic button in every cell which can be used if the inmate is being subjected to torture and/or has any medical emergency;

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5. Welfare programs which are of rehabilitative nature which at the same time also focus on the mental well-being of the prisoners.

Implementation

Even though legal scholars and academicians have proven to be experts in drafting comprehensive laws for each subject but hardly any importance is given towards implementation of those laws.

1. CCTV for the purpose of outside monitoring, which shall be beyond control of prison authorities.
2. A spread of awareness amongst prisoners about the rights available to them upon such imprisonment.
3. Ensuring a smooth functioning mechanism for any complaints that the inmate would like to make against another inmate as well as against the prison authorities.
4. External inspections to the prisons by appropriate authorities.
5. Prisoners appointed with an officer- to verify that the punishment received is in accordance with the sentence given by court. As well as to ensure appropriate treatment of the prisoner.
6. Make available counsellors who conduct psyche-evaluation tests regularly.

Conclusion

A car needs four wheels to run, a human needs two legs to walk and a democratic nation like India needs three independent organs – legislative, executive and judiciary to maintain balance between distribution of powers. This not only helps to divide the work for better efficiency but also ensures a continuous process of checks and balance. It is well known legal and management principle, responsibility and accountability need to operate together for better results. This principle should also be applicable to the prison authorities.

The prison is supposed to be a place meant for a reformatory purpose. However, the entire purpose fails when the prisoners are denied the very rights that are fundamental to their being a human being. Over the period of time, there has been a slow but constant change in the rights given to the prisoners. Few decades ago, prisoners were looked down upon and were considered to have forsaken all their rights. However, the modern society recognizes the rights of a prisoner. Hence, conviction for a crime does not reduce the person into a non person, whose rights are subject to the whim of the prison administration and authorities.

Human Rights vis-a-vis Justice System in Present Era : A Publication of Jus Dicere

It is the need of the hour that we take steps to ensure that the basic human rights of prisoners are not infringed and that they live with dignity because human beings denying other human their basic rights does nothing but taking us right back to the era of cannibalism and war.

Mere words on a paper have never been enough. It is time that laws are implemented and given the chance to fulfil its purpose – a peaceful society of equals.