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A socio-legal study of prison system and is reforms in India

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Abstract

India is the world's largest democracy in more than name. It has free elections, a multi-party parliamentary system, a diverse and outspoken free press, an independent judiciary and the country abounds with the non-governmental organizations that take pride in their independence and that helps to make up a lively civil society. Yet if the checks and balances of democracy are supposed to curb the government lawlessness, something has gone wrong in our country. At least, it seems from an examination that has been recently conducted on imprisonment and police detention in our country. In some major cities of the country that we visited, and probably elsewhere as well, anyone unlucky enough to be arrested faces a far greater likelihood of torture, or worse, at the hands of the police than in many of the countries entirely lacking in the protections for civil liberties available in India.

Though we had some inkling in advance that we would find extensive police abuse of the detainees, we were not prepared for what we discovered about the prisons and jails to which detainees are sent after the police are done with them. They would be bad, if only because the life is hard for the most of the Indians outside the prisons. It stands to a reason, therefore, if incarceration is meant to punish then life inside the prisons should be worse. What took us by surprise, however, is the manner in which it is worse for the great majorities of prisoners and, more surprising, the fact that the imprisonment is somewhat less harsh than we had expected for some prisoners.

Though prisons are supposed to be leveling institutions in which the variables that affect the conditions of confinement which are expected to be the criminal records of their prisoners and their behavior in prison, other factors are there that may play a part in many countries.

Keywords: incarceration, convicted, overcrowding, whipping, flogging, prison

Introduction

Although prison systems everywhere are marked by inertia, few can match India's in immutability of practice. A country which over 40 years ago cast off British rule still administers its system under the colonial Prisons Act of 1894. Perhaps because the act is such a relic of the past, or perhaps because prison officials prefer the route of least accountability, the various state prison manuals that embody the 1894 provisions are collectors' items, not only in short supply but expensive. A number of prison commissions have attempted to update and revise the code, but aside from a few states, these efforts have not received legislative approval. It is not only the rules and regulations but day to day reality of Indian prisons which is so archaic.

The Human Right Watch in their paper in 1991 found that the prison sanction (which in the west grew apace with modernization) has not achieved centrality within India; incarceration is probably not more extensive now than it was under British rule. Numbers often give a false sense of precision in India -- "give or take a few million," is a frequent and appropriate qualifier to any estimate -- but they do delineate the boundaries of the prison world. The most prestigious and thorough investigation of the prisons, the All India Committee on Jail Reform (under the chairmanship of the retired Supreme Court justice, Anand Mulla), found 1220 facilities in the country as of December 31, 1980, of which 822 (67 percent) were lock-ups, and almost all of the others, state prisons; together they held some 160,000 inmates. The Indian states, it is true, vary enormously in their record-keeping skills and are notoriously lackadaisical about responding to inquiries from national commissions. Yet, even if the figure were off by a factor of two or three, India would still have one of the lowest rates of incarceration in the world. (The United States, with the highest known rate, has less than one-third of India's population, and incarcerates more than six times as many people as were actually counted in the Indian system a decade ago.) This conclusion is buttressed by the fact that with all due allowance for overcrowding, India does not have the prison buildings to hold that many more inmates. More, the overall lengths of prison stays are quite short (again by American standards). Of the 160,000 inmates ten years ago, 92,000 were undertrials, and their periods of confinement while they awaited their turn in court, were almost always less than a year (92 percent). Of the 59,000 inmates already convicted of crimes, 32 percent served less than one year; 16 percent one to five years; 8 percent five to ten years, and 44 percent over ten years.

Thus, the prisons did have a cadre of long-termers, 26,000 in number, but they were a small fraction (16 percent) of all persons incarcerated. Third, and perhaps most telling, the criminal system, as we have seen, relies extensively on summary justice. To the extent that police (or soldiers) beat or kill putative offenders, imprisonment becomes a superfluous sanction. If the numbers of inmates is low, it is because punishment is often meted out in rough and ready fashion. As one would then expect, prisoners are drawn from the lowest classes, and undoubtedly the lowest castes, although contemporary.).

The overcrowding, lack of physical and mental activities, poor sanitary facilities, lack of decent health care, all increase the

likelihood of health problems in prisons. Kazi *et al.* (2009) mentioned that "prisons are excellent venues for infectious disease screening and intervention, given the conditions of poverty and drug addiction". It is surprising and indeed shocking that despite the large prison population in India, there is a complete dearth of published information regarding the prevalence of health problems in prisons. An exception is a small study in the Central Jail at Hindalga in the Belgaum (the district of Karnataka) 850 prisoners were evaluated (letter in the Indian J Community Medicine, Bellad *et al.* 2007). Scholars, policymakers, and practitioners have recently begun to pay serious attention to the issues of prisoners' reentry and reintegration [Petersilia & Travis 2001, Lynch & Sabol 2001b, Travis *et al.* 2001, the Corrections Management Quarterly 2001 (special issue)].

Prison Reforms and Social Change (Kaustubh Rote)

A well-organized system of prisons is known to have existed in India from the earliest time. It has been kept in record that Brahaspati laid great stress on imprisonment of convicts in closed prisons. Manu was against this system yet. It was a common practice for the prisoners to keep in solitary confinement so as to afford them an opportunity of self-introspection. The object of punishment during Hindu and Mughal period in India: deter offenders from repeating crime. The recognized modes of punishment were death sentence, hanging, whipping, flogging, branding or starving to death. The prisoners were ill-treated and even now, tortured and subjected to most inhuman treatment in the prison. The Prisoners were kept under strict control and supervision. Thus prisons were the places of terror and torture and prison authorities were expected to be most tough and rigorous in implementing sentences to the prisoners. The British colonial rules in India had been marked the beginning of penal reforms in this country. The British prison authorities made emphatic efforts to improve the conditions of Indian prisons and prisoners as well. They introduced most radical changes in the existing prison system keeping in view the sentiments of the home-grown people. The prison administrators, who were mostly British officers, had classified the prisoners into two heads namely violent and non-violent prisoners. The Prison Enquiry Committee has been appointed by the Government of India in 1836, recommended for the eradications of the practices of prisoners working on roads. Most Adequate steps were also taken to eradicate the corruptions among the prisons' staffs. An officer called Inspector General of Prisoners, has been appointed for the first time in 1855, who was the Chief Administrator of prison in India. His main function was, "maintaining the discipline among the prisoners and the prison authorities". The conditions of prisoners were harsher than animals in India, and the prisoners were treated with hatred. There was no uniform civil code for giving punishment to prisoners. The meaning of the punishment itself was: "to crush the prisoners". Jailors were dire persons. But in the year of 1835, some thought of reformation arose. The Prisoners' Acts were enacted to bring the uniformities in the working of the prisoners in Indian Prison. The Act had been provided for the classifications of the prisoners and the sentences of whipping were abolished. In India, the medical facilities what were already available to the prisoners in 1866 were further improved and better amenities started to provide to women inmates to protect them against contagious diseases. It must be stated that freedom movement had a direct impact on prison conditions in India.

Evolution of prison system in India

The evolution of prison system in India is very dramatic. One may say that Indian prison system is one of the very complex systems of the world to understand. In general three phases may be distinguished in the history of prisons. During the first, which lasted until the middle of the 16th century, penal institutions were chiefly dungeons of detention rooms in secure parts of castles or city, in which prisoners awaiting trial or execution of sentences were kept. The second phase was one of experimentation with imprisonment a form of punishment for certain types of offenders, mostly, Juveniles. The third phase was the universal adaptation of imprisonment as the substitute for all capital punishments. Prisons in the shape of the dungeons had existed from the time immemorial in all the countries of the world. In his book, 'The Future of imprisonment', Norvel Morris refers to punitive imprisonment used extensively in Rome, Egypt, China, India, Assyria and Babylon and firmly established in Renaissance Europe. But prison sentence, as a specific punishment, is relatively recent origin. The prison as we know it has now come into existence largely as an interim house of detention of an offender pending trial and punishment.

In India, the early prisons were only places of detention where an offender was detained until trial and judgment and the execution of the latter. The structure of the society in ancient India was founded on the principles enunciated by Manu and explained by Yagnavalkya, Kautilya and others. Among various types of corporal punishments – branding, hanging, mutilation and death, the imprisonment was the most mild kind of penalty known prominently in ancient Indian penology. The main aim of imprisonment was to keep away the wrong doers, so that they might not defile the members of social order. These prisons were dark dens, cool and damp, unlighted. There was not proper arrangement for the sanitation and no means of facility for human dwelling. Fine, imprisonment, banishment, mutilation and death sentence were the punishments in vogue. Fine was for the most common and condemned person who could not pay his bill to bondage until it was paid by his labour. Though the Indian law gives a little description of jail life, even then historical account gave a clear picture after the analysis of the available data. A few Smiriti writers supplied some information concerning with the jail.

Constitutional provisions and various international conventions on prison system and inmates

A society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and prove services and of recourses made available to them. It is the human life that necessitates the human rights. Being in the civilized society, organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. Thus every right is considered as a human right as that helps a human to live like a human being. Even if the person is deprived some of his rights dye to commission of some wrongs, he is entitled to their rights unaffected by the punishment for wrongs. Especially, when the principles and objectives of criminology and penology are acquiring a human face the enforcement of the human rights assume a very great relevance. Simply because a person is "under a trial or

convicted", his rights cannot be discarded as a whole.

A man on becoming a prisoner, whether convict or under trial, doesn't cease to be human being. Though the prisoners can't be treated as animals yet the barbarous treatment sometimes given to them in the prisons is not qualitatively human compared to the one given to the caged inmates. The grim scenario of prison justice assumes in human misanthropic fragrance when the intellect of prisoners is blemished, personhood of prison is fortified and they are forced to lose their integrity and individuality and thereby compelling them to become the right less slaves of the of the state It become gruesome indeed and calls for interference of judicial power as the constitutional sentinel, when the jurisprudence of prison justice becomes an escalating torture and the violent violation of the human rights is perpetrated by agencies of the state. The mandates of the preamble, fundamental rights and Directive Principles Provisions of the Indian Constitution seem to be outlawed from the security bound prohibited areas of high walled jails.

Human rights are founded in the heart and mind of every citizen who in common effort should labor to gather to create a world in which fundamental rights and freedoms can be realized for all citizens. The people of the world in the chart of U.N. have reaffirmed the faith in the Fundamental Human Rights, in the dignity and work of human person. One of the purposes laid down in Article 1 of the United Nations Organization is to promote and encourage respect for human rights and for fundamental freedoms of all. To achieve this purpose, the U.N. General Assembly adopted the "Universal Declaration of Human rights" on December 10, 1948 to promote respect for and to the secure universal and the effective recognition and observance of these rights and freedoms. Article 3 of the declaration provides to everyone the right to life, liberty and security of perso. Article 5 outlaws the tortures, or cruel, in human degrading treatment or punishment. Article 8 provides person that no one shall be subjected to arbitrary arrest, detention or exile. Article 10 provides arrest, detention or exile Article 10 provides for fair public hearing by impartial tribunals. Accused shall be presumed to be innocent unless proved the guilty and he shall not be punishment under ex post facto lows. Arbitrary interference with his privacy, family, home or correspondence or attack on his honor or reputation shall not be allowed.

Article 21 of Indian Constitution, among others, is the embodiment of wide range of human rights a single sentence of that Article - "No person shall be deprived of his life and personal liberty except according to procedure established by law" become a perennial source of human law. Article 21 guarantees about the right to human dignity even to the prisoners. In fact right to human dignity belongs to all the human beings inside and outside the prison in India. Whether prisoners are entitled to fundamental rights guaranteed by the constitution was one of the important issues examined by the supreme court immediately after the commencement of the constitution The Court declared that when a person loses his right to personal liberty by way of detention under a valid law enacted by a competent legislature, and so long as long he remains under such detention, he ceases to be entitled to enjoy his other fundamental freedoms. The courts have recently viewed third degree methods and custodial deaths in police custody as the serious violations of human rights and constitutional provision of right to life and liberty.

Under the Indian Constitution, there is no such provision in part III which can safeguard the discretionary and sometimes brutal treatment given to the prisoners. But the supreme court of India, by interpreting Article 21 of the Constitution has developed human rights jurisprudence for the preservation and protection of prisoners' right to human dignity. In the case of Charles Shobroj v- Superintendent Central Jail, Tihar, New Delhi Supreme court recognized that the right to life is more than mere animal existence or vegetable substance. Even in prison a person is required to be treated with dignity and one enjoy all the right specified In Article 21. Sunil Batra V. Delhi Administration in this case, supreme court held that the prisoners are not wholly denuded of their fundamental right they are entitled to all the constitutional rights unless their liberty has been constitutionally curtailed. Though a prisoner's liberty is in the very nature of the thing circumscribed by the very fact of his confinement is: his interest in the limited liberty left to him is that all more important.

Conviction for a crime does not reduce the person into a non-person whose right are subject to the whim of prison administration and therefore the imposition of any major punishments within the prison system, are conditional upon the observance of procedural safeguards freedom behind bar is part of Indian constitution trust and the index of our collective consciousness. Supreme court of India recognized several rights and protection for the prissiness, like as:

i) Right for the free legal aid.
ii) Right for the speedy trial
iii) Right against the hand cuffing
iv) Right against the inhuman treatments
v) Right against the public hanging
vi) Prisoner's Grievances

In M.H. Hoskot v State of Maharastra the supreme Court aid down that right to free legal aid at the cost to the state to an accessed who could not afford legal services for the reason of poverty in India, indigence or incommunicado situation was part of fear, just and reasonable procedures implicit in Article 21.

In Anil Rai v. State of Bihar 9 Supreme Court took a serious note of delay in delivery of judgements. The court has observed that any inordinate, unexplained and negligent delay in pronouncing the judgement by the high court infringed the right under Article 21 of the Constitution. In Prem Shanker v Delhi Administration10, the Supreme Court declared that hand cuffing is prima facia inhuman and therefore unreasonable is over harsh and that the first flush, arbitrary. A rule requiring for every trial person accused of a non-boilable offence punishable with more than 3 yrs. Prison term to be routinely hand cuffed during the transition from prison to court for trial violates Article 14, 19 & 21.

No doubt about the democratic legitimacy which characterizes our era. Liberty and freedom are the elements of prisoner's human right and democracy. In so far as developing countries are concerned, it has to be observed that, one must believe in one's country's democracy and human rights of prisoners.

Existing statues for prison management in India

The existing statutes which have a bearing on regulation and management of prisons in the country are:

1. The Indian Penal Code, 1860.
2. The Prisons Act, 1894.
3. The Prisoners Act, 1900.
4. The Identification of Prisoners Act, 1920.

5. Constitution of India, 1950
6. The Transfer of Prisoners Act, 1950.
7. The Representation of People's Act, 1951.
8. The Prisoners (Attendance in the Courts) Act, 1955.
9. The Probation of the Offenders Act, 1958.
10. The Code of the Criminal Procedure, 1973.
11. The Mental Health Act, 1987.
12. The Juvenile Justice (Care & Protection) Act, 2000.
13. The Repatriation of the Prisoners Act, 2003.
14. Model Prison Manual (2003).

Based on the recommendations of various Committees, Central assistance was provided to the States on a matching contribution basis to improve security in prisons, repair and renovation of old prisons, development of borstal schools, medical facilities, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosure. The total assistance provided to State Governments from 1987 to 2002 was Rs. 125.24 crore. The Eleventh Finance Commission had also been granted an amount of Rs 10 crore to the Government of Arunachal Pradesh for the construction of jail.

The scheme for modernization of prisons was launched in 2002-03 with the objective of improving the condition of prisons, prisoners and prison personnel. The components include construction of new jails, repair and renovation of existing jails, construction of additional barracks, improvement in the sanitations & water supply and construction of staff quarters for prison personnel. Activities under the scheme have been construction of 168 new jails, renovations, repairs and construction of 1730 new barracks, construction of new quarters of number 8965 for staff as well as improvement of water and sanitation in jails. The scheme had extended to 31st March 2009, without affecting total outlay of Rs.1800 crore (Govt. of India, Ministry of Home Affairs). The second phase has been envisaged in 2009 with a financial outlay of Rs 3500 crores. However, manhy questions have been raised whether modernization can bring about the change without integrity of any purposes. Can separation of any institution from public support and scrutiny make it transparent and attentive for its objectives? Any government that claims attempting to integrate the felon into society first of all should declare prison is as much a public institution as that of a university or hospital; remove its isolation and integrate it functionally and physically into the society; make police, judiciary, medical and educational departments, conscious of their accountability for pathetic prison conditions (Karnam 2008). Otherwise the most of things are not going to change just with the allocation of crores of rupees and launching of schemes.

Prisoners' rights: constitutional provisions

The fundamental rights guaranteed under the Constitution are not absolute and many restrictions have been imposed on their enjoyment. Right to freedom of the person is one of the most important rights among the fundamental rights. When a person is convicted or put in the prison, his status is much different from that of an ordinary person. A prisoner, in India, cannot claim all the fundamental rights that are available to an ordinary person. The Supreme Court of India and various High Courts in India have discussed flue scope various decisions. Before discussing these decisions it is very much necessary to see various constitutional provisions with regard to prisoners' rights.

Statutory Provisions

There is no guarantee of prisoner's right as such in the Constitution of India. However, certain rights which have been enumerated in Part III of the Constitution are available to the prisoners also because a prisoner remains a "person" inside the prison. The right to the personal liberty has now been given very wide interpretation by the Supreme Court. This right is available not only for free people but even to those behind bars. The right to speedy trial4, free legal aids, right against torture, right against in human, and degrading treatment accompany a person into the prison also. One of the important provisions of the Constitution of India is generally applied by the courts, which is Article 14 in which the principle of equality is embodied. The rule that "like should be treated alike" and the concept of reasonable classification as contained in the article 14, has been a very useful guide for the courts to determine the category of prisoners and their basis of classification in different categories.

Originally the treatments of prisoners inside the prisons were cruel and barbarous. 'When a person was convicted, it was thought that he lost all his rights. The prison community was treated as the closed system and there was no access for outsiders in the affairs of the prisoners. The authorities, under the guise of disciplines, were able to inflict any injury upon the inmates in the prison. The courts, in India, were reluctant to interfere in the affairs of the prisoners: it was completely left to the discretion of the executive. But gradually, a change was visible.

Right to Fair Procedure

When we trace the origin of the prisoner's right in India, the embryo we can find in the celebrated decision of G. K.Gopalan v. State of Madras. One of the main contentions raised by the petitioner was that the phrase "procedure established by law" as contained in article 21 of the Constitution includes a 'fair and reasonable' procedure and not a mere semblance of procedure prescribed by the State for the deprivation of life or personal liberty of individuals. The majority view in Gopalan was that when a person is totally deprived of his personal liberty under a procedure established by the law, the fundamental rights including the right to freedom of movement are not available.

"There can't be any such thing as absolute or uncontrolled liberty wholly freed from restraint, for that would lead to anarchy and disorders. In some cases, the restrictions have to be placed upon free exercise of individual rights to safeguard.

Prisons Act 1894, on the basis of what the present jail management and administration operates in India. This Act has hardly undergone through any substantial change. However, the process of reviewing of the prison problems in India has been continued even after this. In the report of the Indian Jail Committee (IJC) 1919-20, for the first time in the history of prisons, 'reformation and rehabilitation' of offenders were identified as the main objective of the prison administrator. Several committees and commissions have been appointed by both central and state governments after Independence, which has emphasized humanization of the conditions in the prisons. The need for completely overhauling and consolidating the laws related with the prison has been constantly highlighted.

The Government of India Act 1935 has resulted in the transfer of the subjects of jails from the centre list to the control of provincial governments, hence further reduced the possibility of uniform implementation of a prison policy at national level.

The State governments thus having their own rules for the day to day administration of prisons in India, upkeep and maintenance of prisoners, and prescribing procedures.

In the year of 1951 the Government of India had invited the United Nations expert on correctional work, Dr. W.C. Reckless to undertake a study on the prison administration for Indian Prison and to suggest policy reform for it. His report was titled as 'Jail Administration in India' made a plea for transforming jails into reformation centers so that reformation of India could be easy for the Indian prison. He also recommended that the revision should be for outdated jail and provided the manuals. In the year of 1952 the Eighth Conference of the Inspector General's of Prisons, have also supported the recommendations of Dr. Reckless regarding prison reformation. Accordingly the Government of India has appointed the All India Jail Manual Committee in the year of 1957 for preparing a model prison manual. The committee submitted report in 1960. The report had made a forceful plea for formulating a uniform policy and latest methods relating with the jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc.

Judicial approach towards prison system

Prison is a place where the criminal justice system put its entire hopes. The correctional mechanisms, if fails will make the whole criminal procedure in vain. The doctrine behind the punishments for a crime has been changed a lot by the evolutions of new human rights jurisprudence. The concept of the reformation has become the watchword for prison administration these days. Human rights jurisprudence advocates that, no crime should be punished in a cruel, degrading or in an inhuman manner. On the contrary, it is held that any punishment that amounts to cruel, degrading or inhuman should be treated as an offence by itself. The transition caused to criminal justice system and its correctional mechanism has been adopted worldwide. Here, the inquiry is made to know the extent of inclusion of these human rights of prisoners into Indian legislations.

Internationally, it has become a well-accepted rule that the correctional mechanism in criminal justice administration should comply with reformative policies. It has also declared that all the prisoners shall be treated with respect due to their inherent dignity and value as human beings. There are a set of rights identified by the international legal system so as to save the human dignity and the value of the prisoners and there by the reformative theme of correction. In this preview, the rights guaranteed that the under the international legal system is to be looked into and legislative concern for the same in India.

The modern idea about the prison has been envisaged by the judges through the decision making process. Even the concept of open jails has been evolved by the time. No longer can prisons be called as an institution that delivering the bad experiences. Krishna Iyer, J opined prison as:

> *"A reformative philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner's personality through a technology of fostering the fullness of being such a creative art of social defense and correctional process activating fundamental guarantees of prisoner's rights is the hopeful note of national prison policy struck by the constitution and the court."*

Judicial Review

The Indian judiciary, especially at the level of the Supreme Court and the High Courts, has for long been concerned with the concept and practice of justice. What constitutes justices and for whom? How do we truly achieve the laudable constitutional precepts that 'no one is above the law' and that 'all persons are entitled to the equal protection of the law'? How do we cope with the problem that in principle, 'all persons are equal under the law' but in reality, 'some are more equal than others'? In its infancy, immediately after independence, the Supreme Court of India grappled, not always successfully, with the problem of striking a balance between the much-needed programmes of economic and social reform (for example, land reform and land redistribution) on the one hand and establishing the credibility of the newly-born Indian State in terms of fostering the rule of law and respecting the rights vested under laws that preceded independence and the very Constitution itself, on the other. During the first couple of decades when, for all practical purposes, India was functioning as a *de facto* one-party political system, the Supreme Court focused on promoting the values of constitutionalism, separation of powers and checks and balances over and in each organ of the State. The Supreme Court and the High Courts were ever-vigilant in their review of executive actions, hence ensuring to the public for requisite protections against the excesses of authority or abuses of power. They were equally vigilant in their review of legislative actions, both in respect of lawmaking as well as in the balancing legitimate parliamentary powers, (necessary for the effective functioning of Parliament) with parliamentary privileges, notably that of the punishing for contempt.

In the decades thereafter, the Supreme Court turned its attention towards the frequency with which the Parliament was amending the Constitution using the dominance of political party at both the national and state levels to the maximum. The Court has elaborated upon the distinction between the constituent and legislative power. Moreover, as the judiciary and the Indian political system matured, the Supreme Court firmly established the primacy of the Constitution through its articulation of the basic structure doctrine, thereby safeguarding those features that are inherent in Constitution from being altered through the mere exercises of the legislative power.

In post-independence India, the inclusion of explicit provisions for 'judicial review' were necessary in order to give the effect to the individual and group rights guaranteed in the text of the Constitution. Dr. B.R. Ambedkar, who chaired the drafting committee of our Constituent Assembly, had described some provisions related to the same as the 'heart of the Constitution'. Article 13(2) of the Constitution of India prescribes that the Union or the States shall not make any law that takes away or abridges any of the fundamental rights, and any law made in the contravention of the aforementioned mandate shall, to the extent of the contravention, be void.

While judicial review over administrative action has evolved on the lines of common law doctrines such as 'proportionality', 'legitimate expectation', 'reasonableness' and principles of natural justice, the Supreme Court of India and the many High Courts were given the power to rule on the constitutionality of legislative as well as administrative actions. In most of the cases, the power of judicial review is exercised to protect and enforce the fundamental rights guaranteed in Part III of the

Constitution. The higher courts are also approached to rule on questions of legislative competence, mostly in the context of Centre-State relations since Article 246 of the Constitution read with the 7th schedule, contemplates the clear demarcation as well as a zone of intersection between the law-making powers of the Union Parliament and the various State Legislatures. Hence the scope of judicial review before Indian courts has evolved in three dimensions – firstly, to ensure fairness in administrative action, secondly to protect the constitutionally guaranteed fundamental rights of Indian citizens and thirdly to rule on questions of legislative competence between the centre and the states. The power of Supreme Court of India to enforce these fundamental rights is derived from Article 32 of the Constitution. It gives the right to citizens directly approach the Supreme Court for seeking remedies against the violation of these fundamental rights.

With the advent of Public Interest Litigation (PIL) in recent decades, Article 32 has been creatively interpreted to shape innovative remedies such as a 'continuing mandamus' for ensuring that executive agencies comply with judicial directions. In this category of the litigation, judges have also imported private law remedies such as 'injunctions' and 'stay orders' into what are essentially public law-related matters. Successful challenges against statutory provisions result in reliefs such as the striking down of statutes or even reading down of statutes, the latter implying that courts reject a particular approach to the interpretation of the statutory provisions rather than rejecting the provisions in its entirety.

Beginning with the first few instances in the late-1970's, the category of Public Interest Litigation (PIL) has come to be associated with its own 'people-friendly' procedures. The foremost change came in the form of dilution of the requirement of 'locus standi' for initiating proceedings. Since the intent was to improve access to justice for those who were otherwise too poor to move the courts or were unaware for their legal entitlements, the Court allowed actions to be brought on their behalf by social activists and lawyers. In the numerous instances, the Court took *suo moto* cognizance of matters involving the abuse of prisoners, bonded laborers and inmates of mental institutions, through letters addressed to sitting judges.

The Reformation, as the objective of punishment

Krishna Iyer, J. was the person who advocated strongly for orienting reformative treatments of prisoners in the prison. In all his judgments he tried to incorporate the reformative values into the prison administration. The concept of the crime was also redefined by the judges at his time. It was observed that:

> *"Crime is a pathological aberration that the criminal can ordinarily be redeemed that the state has to rehabilitates rather than avenge. The sub-culture that leads to the anti-social behavior has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is individual and the goal is salvaging him for the society. The infliction of the harsh and the savage punishment is thus a relic of past and regressive times".*

The above judgment conveys that the right influence of the international human rights doctrine over the Indian judiciary. The Court in the *Giasuddin* emphasized that, on the Gandhian approach of treating offenders as patients and therapeutic role of punishment. The Supreme Court after the considerations of all the circumstances of the appellant directed that the sentence should be reduced to 18 months. The court also directed, guarded parole release every 3 months for at least a week punctuating the total prison terms and the assignments of the suitable mental cum-manual work and payment of wages in jail. Thus the concept of the reformation was planted even out of the four walls of prison by this judgment.

Free from torture and cruel treatment

Supreme Court in many instances made it clear that the prison treatments in the prison should not be caused any kind of torturous effect over the inmates. Even the practice of the separate confinement and the solitary confinement was deeply discouraged by courts at many instances. The court clearly has pointed out that the prison authorities cannot make prisoners to solitary confinement and hard labor. As to ensure the prison practices the Supreme Court in this judgment also directed the district magistrates and the sessions' judges to visit the prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances.

Discussing the same premise the court vehemently criticized that the practice of using bar fetters unwarrantedly. The court held the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of the beasts, would certainly be arbitrary and questionable under Article 14. Thus putting bar fetters for a usually long period, day and night, and that too when the prisoner is confined in secure cells from where escape is somewhat inconceivable without any due regard for the safety of the prisoner and the security of the prison is not justified. Judicial interferences of this kind have coined many rights for the prisoners what would not be unless ever possible. It will be nice to quote Krishna Iyer, J. at this occasion. He remarked:

> *"Society must strongly condemn crime through punishment, but brutal deterrence is fiendish folly and is a kind of crime by punishment. It frightens, never refines; it wounds never heals".*

The message of reformation through the prison treatment has to be there in every measures adopted by the authorities in the prisons. The human right to be safe in the prisons as mandated by the international human rights law is being incorporated into Indian law by judicial initiatives. International law gives the widest possible protections to the prisoners in the prison from the tortures and that kind of a protection can only be accommodated by legislature.

Maladministration in prison

Every prisoner has the right to enjoy all the rights entrusted to a normal human being subjected to reasonable restrictions by the international human rights law. The prison authorities are bound to look after the management of prisons with this outlook. So it can be powerfully argued that any lapses in the management of prison will also cause infraction over the human rights of prisoners. The view of Indian judiciary also accompanies this view to a greater extent. Talking about the mismanagement in prison, apart from the official lapses the maintenance of discipline between the prisoners will also be of high concern. The same have been going on in the present days and only few years back, the Supreme Court ordered to launch

a prosecution against certain Superintendents and other jail officials for offences punishable under Ss. 120B, 217 & 218 of the Indian Penal Code. Concluding the judgment in *Asha Arun Gawali*, court shockingly observed that:

> *"…norms relating to entry of persons to the jail, maintenance of proper records of persons who entered the jail have been observed more in breach than in observance and the rules and regulations have been found thrown to the winds … What is still more shocking is that the persons have entered the jail, met the inmates and hatched conspiracies for committing murder. The High Court appears to have justifiably felt aghast at such acts of omissions and commissions of jail officials which per –s e constituted offences punishable under various provisions of the IPC and has therefore, necessarily directed the launching of the criminal prosecution against them, besides mulcting them with exemplary costs".*

The message of reformation is indefensibly spoiled at the consent and convenience of jail authorities and the same went against the basic aspirations of human rights law. The court in many instances stressed on the need to provide proper atmosphere, leadership, environment situations and circumstances for re-generation and a reformatory approach. Illegal accomplice between criminals and prison officials make all these aims in vein.

Freedom of speech and expression

Prisoners, alike others, can access many human rights made in Universal Declaration of Human Rights and international covenants. Indian judiciary had also recognized that the right of the prisoners to enjoy the right to freedom of speech and expression. It is much interesting to note that the judiciary took such a view before the *Kesavanada Bharathi* judgment came and evolution of the concept of justice as fairness. Alongside with this, it is worthwhile in discussing about the judicial declarations of the right of press to interview prisoners. This judgment has certain implications over the right of the prisoners in exercising their right to the freedom of speech and expression.

Reformative approach towards prison system

Prisons, as institutions, are barely considered when it comes to State budgets. Though budgets are fixed and allocated, but they never suffice and the money sometimes never reaches proper hands. As a result, prisons find themselves starved of adequate funding. This systematically constructed isolation of our prisons deflects the gaze of civil society institutions, which includes the Media. Due to this, all the steps taken for the proper management of prisons become unfruitful.

The Model Prison Manual compiled by the Bureau of Police Research & Development, is a perfect document to look into proper maintenance and management of prisons and it is necessary for the States to comply with the guidelines given in it in every possible way.

Moreover, the Draft of National Policy on Prisons formulated by the All India Committee on Jail Reforms of 1980-1983 lays certain express guidelines that State shall endeavour to bring about basic uniformity in the minimum standards of management of prisons and the treatment of offenders in the country. *It further suggests incorporation of the principles of management of prisons and treatment of offenders in the Directive Principles of State Policy embodied in Part IV of the Constitution of India and also lays emphasis on inclusion of subject of prison and allied institutions in the Concurrent List of Seventh Schedule to the Constitution of India.* The Judiciary should also play an active role and should keep an eye on the working of prisons. It is a directive of Supreme Court that there should be nomination of Lawyers by the Judiciary to visit prisons as part of the visitorial and supervisory judicial role. Periodical visits by District Magistrates and Sessions Judge should also be made. Management and maintenance of prisons needs to be given more emphasis in the affairs of the country. *Prison should be made as much a public institution as a university or hospital and there is a need to remove its isolation and integrate it functionally and physically into society for, only then, the Prison Manual so prepared will become useful.*

Educational facilities in prison

There is a proven correlation between illiteracy, innumeracy and offending. Most of the prisoners have access to educational courses and training while in prison. The objective is to enable them to gain the skills and the qualifications that will help them to find employment on release. Research shows that the prisoners who gain the employment after their release are far less likely to re-offend.

The correctional system in the United States (USA) is experiencing a metamorphosis. Consequently, now is a critical time for the development of robust theories of the prison culture. Prison populations continue to soar at alarming rates, and laws impacting the prison population continue to change. Determinate sentencing laws, including Three-Strikes Laws and habitual offender statutes, have helped give the prison population a new dynamic, as the number of elderly offenders continues to grow. Other offender groups who are represented in increasing proportions are those inmates with the terminal diseases, such as AIDS, and female offenders. It is completely and precisely possible that this crossroad in corrections cannot be fully understood in the context of traditional models of the prison culture. Even if theoretical models take on a new composition, elements of the classical models will inevitably remain, as they are still relevant in gaining an understanding of the prison culture.

Socialization process in the prison system

Though the law enforcement agency responsible for the security of the county jail system, where many of the observations for this paper occurred, denied a request to conduct interviews of its employees and the inmates housed in the jail system, my employment with this agency enabled me to observe the jail environment during the course of my daily assignment. For outside researchers we can only hope that the erected barriers preventing independent examination of the jail environment will in the future be dismantled.

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