



Prisoners' right to health under the Indian prison laws

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Abstract

The harsh reality of the prisoners' experience in the so called reformatory institutions is something worth pondering upon in today's world where one often talk about development in every aspects including health care system. No doubt India is heading towards a bright future in all its entirety, however, one of the very big challenges which remains before the Nation is how far it has been able to develop its health care system which can be easily made accessible to its 1.3 Billion Population, most importantly to its poor and needy population which includes the inmates confined in the prisons across the Country. In India, most of the prisons are over-crowded which is the main reason for all the other related health issues like sanitation problems, infections among the inmates, especially during Covid pandemic, issues of malnutrition etc. when the prisoner is in the prison, the state authorities owe a duty to provide health care to the prisoners since right to health is one of the fundamental rights guaranteed under Article 21 of the Indian Constitution. This paper attempts to discuss the laws relating to prisoners' rights in India specifically their right to health and analyze the issues thereof.

Keywords: Prisoner, reformatory institution, inmates, fundamental rights, right to health

Introduction

The very first question that could have come to the mind of every fellow human being while having thought of a prisoner is that he or she is in the situation out of his or her own wrong doings and that they have committed any offence. In other words, there is a general misperception among the people that every prisoner is an offender. However, it is not always true to say that every prisoner is an offender since one may land in the prison out of false allegation thereby waiting for the decision of the court. Every prisoner has all the fundamental rights guaranteed by the Constitution of India and most importantly their human rights should not be compromised at any cost by the prison authority. Their fundamental rights do not fail to exist simply by the fact that they are in the prison. All human beings have equal rights including the inmates staying in prisons. Everyone have the basic rights such as the right to life, right to health, right to food etc to mention some. Article 21 of the Indian Constitution guarantees the above stated basic rights to everyone without the exception of the prisoners. In *Sunil Batra vs. Delhi Administration* ^[1], the basic rights of the prisoners were highlighted by the Supreme Court of India. The Supreme Court in *Shri Ram Murthy vs. State of Karnataka* ^[2] has upheld the protection of prisoners' health by giving the reason that people in prison suffer a double handicap not only do they do not enjoy equal access to the medical expertise to which free citizens are entitled, they are also more vulnerable to health hazards due to prison surroundings. The Model Prison Manual upholds every prisoner's right to basic health needs. These include a balanced diet, medical care, access to clean drinking water etc. In a number of Judgements on various aspects of prison administration, the Supreme Court of India has laid down three broad principles (i) a person in prison does not become a non-person. (ii) A person in prison is entitled to all human rights within the limitations of imprisonment. (iii) There is no justification in aggravating the suffering already inherent in the process of incarceration ^[3]. Above all these, the

prisoners have the inalienable rights guaranteed to them by various International Treaties and Covenants.

Prisoners' Right to health under the existing Prison Laws

The Prisons Act, 1894, the first legislation regarding prison regulation in India contained few provisions relating to basic needs of the inmates such as separate accommodation for different category of prisoners, sanitary condition, determination of the mental and physical state of prisoners, provisions for sick prisoners etc. apart from the above mentioned facilities, the Act also encompassed many other aspects for the better regulation of the prison administration. For the purpose of the present study, only the relevant provisions have been taken up for discussion.

Section 4 of the Act confers right to physical well being and protection of the prisoners thereby imposing duties upon the state to provide accommodation to the inmates atleast in some room typed habiter. Under section 14 of the Act, the Medical Officer has been mandated to report to the Superintendent of the prison about the case of a prisoner who is likely to be injuriously affected by the discipline or treatment to which he/she is subjected. In doing so, the Medical Officer owes the duty to assess the mental as well as the physical condition of the prisoners which in fact is very much a right given to the so called prisoner to know the condition of his health in both sense.

Section 37 of the Prisons Act specifically deals with the provisions for sick prisoner. Treating the sick person on time could save the precious life of the person no matter who he is. Prisoner also has the fundamental right to life. Clause (1) of section 37 provides that the names of sick prisoner desiring to see the Medical Superintendent, or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the jailor. After this, the subsequent clause mandates the jailor to call the attention of the Medical Subordinate without any delay to any prisoners desiring to

see him, or whose state of mind or body appears to require attention. Further Section 39 iterated about the need for having a place for reception of the sick prisoner in every prison hospital.

It could be seen from the above discussion that the oldest prison law in India was equipped with some of the most important features which ensure a hygienic living condition for the inmates. Nevertheless, the concern and the kind of prompt action to be followed by the Medical Superintendants and the subordinates as per the provisions envisaged under the said Act is worth appreciating. However, the sad reality does exist in this context as well. In term of implementation of the above highlighted beautiful provisions of law, it still remains a dream yet to come true practically.

The Central Government in the year 2023 finalised the Model Prisons Act, 2023 to replace the pre-independence era Prisons Act, 1894 which is more than 131 years old and which mainly focused on keeping criminals in custody and enforcing discipline and order in prisons not much provision for reform and rehabilitation. The new model Act focuses on transforming and rehabilitating inmates back into the society as law abiding citizens and viewed prisons as reformative and correctional institutions. It is left to the states and union territories to endorse the model and implement it suitably with its own state or union territories. In relation to the prisoners' right to health, the new model has provisions which focus on the mental and physical well being of the prisoners. The said provisions are really worth acknowledging since mental health of a person is considered of prime importance in assessing the overall well being of an individual.

The Prisoners Act, 1900 is a legislation relating with the consolidation of the law relating to prisoners confined by the order of a court. It would not be wrong to say that this particular law does not have any specific provisions concerning the right to health of the prisoners which is the subject matter of the present paper.

Since prison is a state subject under Entry-4 in the State List of the Seventh Schedule to the Constitution of India, management and administration of prisons falls under the domain of state governments. In practice, the states prepare their own prison manuals for the management of prisons in their respective jurisdictions. However, on a very positive note, the Government of India in 2003 keeping in view of the directions given by the Supreme Court of India in *Shri Ram Murthy vs. State of Karnataka* ^[4] and also taking into account the recommendations of various Committees regarding the need for bringing uniformity in the prison laws across the country constituted the All India Model Prison Manual Committee headed by Director General of Bureau of Police Research and Development (BPRD) to prepare a Model Prison Manual for the superintendence and management of prisons in India which should be adopted by the States in their Prison Manuals. The Ministry of Home Affairs circulated the said manual in December 2003 to all the state governments and union territories for adoption for the purpose of effective and efficient management and superintendence of prisoners.

The Model Prison Manual could be said to be the most comprehensive law on the management and superintendence of prisons in India and has been developed after due consultations with the various states and union territories.

For developing prison system in the country as an effective instrument for the reformation and rehabilitation of offenders, the draft Model Prison Manual aims at ^[5]:

1. Bringing in basic uniformity in laws, rules and regulations governing the administration of prisons and the management of prisoners all over the country;
2. Laying down the framework for both sound custody and treatment of prisoners;
3. Rationalisation of prison practices to cater effectively to various categories of prisoners;
4. Spelling out minimum standards of institutional services for the care, protection, treatment, education, training and resocialisation of incarcerated offenders;
5. Evolving such procedures for the protection of human rights for prisoners as they are entitled to within the limitations imposed by the process of incarceration.
6. Individualisation of institutional treatment of prisoners in keeping with their personal characteristics, behavioural patterns and correctional requirements;
7. Providing a scientific basis for the treatment of special categories of prisoners such as women, adolescents and high security prisoners;
8. Outlining an organisation of the Department of Prisons and Correctional Services which is conducive to its declared objective and to delineating the duties and functions of the staff at various levels;
9. Developing coordination between the Department of Prisons and Correctional Services and other components of the criminal justice system;
10. Ensuring availability of the necessary service inputs from other public departments in an efficient functioning of prisons;
11. Forging constructive linkages between prison programmes and community-based welfare institutions in achieving the objective of the reformation and rehabilitation of prisoners;
12. Leaving flexibility in the suggested provisions so as to allow for adaptation to local conditions without undermining uniformity in rights and duties of prisoners.

In recent years steps have been taken by some State Governments to up-date their existing Prison Manuals and usher in prison reforms. But prison reforms is a continuous process and the present draft seeks to provide a framework for such reforms with respect to treatment of prisoners of all categories and improved living and working conditions for the prison personnel ^[6].

The above aims and objectives of the Manual seem to comprehend with fair treatment to all the categories of prisoners. Regarding the health and hygiene of the inmates provisions enlisted under item number (ii) talks about the incorporation of legal framework pertaining to sensitive treatment of the prisoner including the under trials. A very careful handling of every prisoner is important from the perspective of creating a reformative environment for the prisoners which in turn helps in giving a good vibes to the mentality of the inmates. In this way the prisoner's physical and mental health could be helped to improve to some extent.

Another item no.(iii) contained in the objectives of the Model Manual emphasized on the rationalization of prison practices so that different categories of prisoners lodged in jails could be catered to their needs in the effective manner.

This objective also may be considered as of great essential in addressing the healthy living condition of the prisoners.

The objective spelled out under item no. (iv) has emphasized on ensuring minimum standards of institutional services for the care, protection, treatment, education, training and resocialisation of the incarcerated offenders. From the words used, it could be understood that this very objective focused on the convict prisoners. If the minimum standard of institutional services which are designed in tune with that of the United Nations' Standard Minimum Rules are being implemented then obviously, the living condition of all the inmates would be improved greatly which in turn helps them in developing their mental and physical health while staying inside the prisons. And after release from the prison having received enough training and education while staying inside the jails, the offenders would be able to resocialize on the society with the fellow citizens in a more emphatic manner.

Another instilling objective is laid down under item number (vii) regarding special categories of prisoners, viz, women, adolescents and high security prisoners. The objective aims at providing treatments to the above stated category of prisoners in a scientific manner. It may be understood in the sense that if systematic approach has been adopted in ensuring that women, adolescents and the high security prisoners are being treated on needs based condition then their well being during their stay in jails could be achieved. The needs and necessity of different type of group varies tremendously. Hence, in order to address effectively to the various needs of different type of category of prisoners, the scientific approach in dealing with them is very essential. In doing so, the prisoners' right to health and safety could be ensured by the authority.

Besides the comprehensive objective, the Model Prison Manual contains a lot other beautiful provisions concerning the effective management and regulation of prison and the prisoners. It also is embedded with provisions emphasizing on the health and hygiene of the inhabitants inside the prison. Proper and well ventilated cells are recommended to be built for keeping the prisoners in a healthy environment. Moreover, it also emphasized on constructing septic tanked toilets and separate bath rooms in the prisons to ensure better and hygienic sanitation for the prisoners which is closely associated with the right to health of the prisoners.

Conclusion

It could be seen from the above discussion that the Indian Laws relating to prison and prisoners ensure very little scope for the prisoners' right to health and safety. The age old Prisons Act can be considered as an outdated document and as such efforts have been made by the Central Government to introduce the new age Prisons Act which is believed to be effectuated by the Model Prison Manual is yet to adopted and implemented by the states and union territories of the country. A worth appreciating and acknowledging actions taken up by the Central government is that of the drafting of the Model Prison Manual in the year 2003 and which has been readopted in the following years severally in order to bring about a uniform law relating to prison administration and management across the country. As have seen above, the said Manual is a very comprehensive law and if adopted and implemented in its true letter and spirit could bring about a revolution in the overall administration and management of prisons thereby

ensuring the minimum standards of treatment to all kinds of prisoners in every aspect. The provisions embedded in the Model Manual concerning health and hygiene of the prisoners can be considered a big move in ensuring right to health of the inmates. Nevertheless, it would not be wrong to say that the Central Government has tried to implement the mandates of the United Nations Guidelines in its all possible way, however, the sad reality lies with the fact that the inactive role play by the stake holders, especially the state governments is hindering the process of revolution on the pretext of various reasons. The recommendation of the Manual to include "prison affair" under the concurrent list, if happens then only things could be improved. To conclude it should be noted that whatever necessary provisions/mandates may be there, but if not given heed to and implemented well by all the stake holders then it is of no use. Nevertheless, lets be hopeful that the new Prison Act mandated by the Model Prison Manual shall be adopted by all the States and Union Territories very soon in the coming days to bring about a change in the management and administration of prisons ensuring protection every rights of the inmates.

References

1. Sunil Batra vs. Delhi Administration, 1978 (4) SCC 494
2. Shri Ram Murthy vs. State of Karnataka, (1997) SCC (Cril.) 386
3. Model Prison Manual