



Role of judiciary in the protection of rights of prisoners: A path towards prison reforms

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Abstract

The concept of implementation of human rights in Indian prison jurisprudence could be traced after the post Indian independence period. Judiciary, by way of judicial activism, judicial interpretation and judicial pronouncements has led to recognition and protection of rights of Indian people in each and every sphere including the institution of prisons. Indian judiciary has consistently played a drastic role in the protection of violation of human rights of prisoners based on the fundamental rights envisaged under the Indian Constitution.

This paper deals with analysis and providing an insight into the ever evolving Indian prison jurisprudence. Along with that, an effort has been made to recognise the considerable role of judiciary in refining of unrefined colonial era Indian prison jurisprudence. Judiciary has played an eminent role in modernisation of prison jurisprudence, based on the changing dynamics of jurisprudence of penology. Hereby, an attempt has been made regarding analysis of role of judicial activism in transformation of Indian prison system, by giving more inclination towards human rights jurisprudence in judicial decisions, particularly in favour of prisoners.

Keywords: Judicial, activism, prison, prisoner, human rights, colonial, penological, Indian constitution, dynamic, jurisprudence

Introduction

Crime and punishment are interlinked phenomenon, since ancient times. Crime is an unlawful act punishable according to the legal framework of the particular country. Punishment is necessary for controlling of crime and maintenance of law and order in a particular society. Initially, the kinds of punishments inflicted on a criminal were based on the philosophy of deterrence and retribution. Punishments were mainly focused on the principle of 'Lex Tallinois (eye for an eye and tooth for a tooth)' ^[1]. With the advancement in jurisprudence of penology and as the concept of human rights gained importance after the movement of French revolution, the concept of punishment mainly focused on reformation and rehabilitation of the offender. Accordingly, there was a drastic change in the concept of punishment after the Second World War. Initially, the prime focus of the jurisprudence of penology was eradication of crime from the society. Rights of prisoners often took a backseat, leading to infamous instances of violation of human rights of prisoners. With the acknowledgement of human rights by the United Nations Organisation, concept of protection of human rights of prisoners also emerged. Hereby, the concept of infliction of the punishment mainly focused on the reformatory and rehabilitative theories of punishment, rather than deterrent and retributive theories of punishment. Along with that, institution of prisons also evolved from a place to keep the offenders in pre-trial or under-trial stage to a main method of reforming the offender subjected to incarceration ^[2]. Henceforth, refined prison jurisprudence is based on a number of factors, such as:

1. Twofold objectives of prison institution consisting of maintenance of prison discipline and reformation of the offender by individualised treatment;

2. Maintaining a balance approach between enforcement of prison discipline and reformation of offenders throughout the process of incarceration;
3. Prisoner being a subject of prison system to the main object;
4. Protection of human rights of prisoners within the institution of prisons;
5. Focusing on reformation and rehabilitation of the offender by way of individualised treatment throughout the process of incarceration;
6. Liberalisation of the process of incarceration by reformatory instruments, such as parole, remission and clemency jurisprudence ^[3].

Prison system in India has its ancient roots, however, it was not well organised. Imprisonment was only meant for keeping the offenders, not as a punishment. With the advancement of society, concept of prisons started to be well organised and incarceration became a main method of punishment. In India, British regime introduced well organised prison system. Indian prison system, initially, under the British regime lacked the incorporation of human rights jurisprudence, as prison system was mainly designed to achieve colonial imperialist motives. Hereby, during the colonial rule, Indian prison institution was only focused on the enforcement of prison discipline, rather than reformation and rehabilitation of the offenders. With the advancement in the concept of recognition of human rights, mainly in Europe and downfall of the imperialist colonial system, Indian prison jurisprudence also started to be more focused on maintaining of a balance between enforcement of prison discipline and reformation of offenders by individualised treatment. Thereafter, as India gained independence, concept of human rights also emerged and judiciary also started to acknowledge its role in protection of rights of

marginalised sections of society, such as prisoners. Hereby, judiciary has played an eminent role in transformation of prison jurisprudence by establishment of human rights of prisoners through judicial directives ^[4].

Prison jurisprudence in India

In ancient India, criminal justice system was not well developed. Usually, system of crime and punishment was based on the philosophy of 'dharma' and 'danda'. Punishment was based on the concept of deterrence and retribution. Barbaric kinds of punishment were inflicted on the criminals. Along with that, the system of penology mainly suffered from class, caste and gender based discrimination. Imprisonment was not recognised as the main method of punishment and it was used as a place to keep the offender, till the enforcement of the punishment. The institution of prisons was not well refined and suffered from various flaws, such as lack of proper ventilation and basic human needs ^[5]. Thereafter, during the Moghul rule, the barbaric kinds of punishments were still in operation. There were different kinds of jails, but incarceration was still not recognised as the main method of punishment. Punishments during the Moghul rule were deterrent and retributive in nature. Accordingly, under the Moghul rule crime was classified into following sub-categories:

- a. Crimes against God,
- b. Crimes against state,
- c. Crimes against private person.

Accordingly, different forms of punishments were inflicted, such as, fine imprisonment, banishment, execution. Usually, old forts, castles and central prisons were utilised for being utilised as prison infrastructure. There was class based discrimination, as prisons were categorised according to the status of the person. Hereby, the Gwalior fort was used for incarceration of officials and noble offenders. It could be well established that during the Moghul reign also, deterrent and retributive form of punishment dominated the jurisprudence of penology and prison system was not well developed. Incarceration was not considered as a main method of punishing the offender ^[7]. The post Maratha period was mainly influenced by Christian and Portuguese. Accordingly, basic methods of punishments were reclusion and cellular confinement, based on Christian church philosophy of not to shed blood. In 1600, Portuguese constructed a church prison in Goa consisting of approximately two hundred separate cells for prisoners ^[7].

Thereafter, with the emergence of East India Company in India, criminal justice system including prisons underwent a drastic change. Prisons were initially constructed by the East India Company during factory period. The Britishers constituted first British jail in India in 1665 within the premises of Fort. St. George, located at Madraspatnam. In 1784, the East India Company was give power by the British parliament to establish rule over India. At that time, in India, there were 143 civil jails, 75 criminal jails and 68 mixed jails. As the Britishers gained significant control over eastern India in 1787, prisoners were used as free labour for raw material extraction and processing. Along with that, under the British imperialist colonial regime, prisoners were exploited and used as forced labour in jungle clearing, raw material extraction, building of roads and infrastructure development ^[8]. In 1835, Lord Macaulay highlighted the deplorable condition of prisons in India in front of

Legislative Council of India. Thereafter, in 1889, Jail Commission was constituted, consisting of two members, both government officers serving under the Indian government. Hereby, the Commission gave several recommendations. Remarkably, one of the most important recommendation was constituting of three classes of jails in each Presidency, consisting of large central jails for convicts sentenced to more than one year of imprisonment term, district jails at the headquarter of districts and lastly, subsidiary jails and lockups for under-trial prisoners and convicts sentenced to short terms of imprisonment. Accordingly, in the year of 1894, first Prisons Act was enacted and implemented under the British rule. It replaced the four local Acts related to prison functioning and led to formulation of uniform management of prisons all over India. Main focus of Prisons Act, 1894 was enforcement of prison discipline, prison infrastructure, prison offences, prison discipline, health and employment, admission and discharge of prisoners. It lacked reformation and rehabilitation of prisoners. Prison Act of 1894 was based on colonial mindset regarding suppression of the native population, infliction of torture on freedom fighters and to attain imperialist objectives. In 1919-1920 Indian Jail Committee Report for the first time identified and acknowledged reformation and rehabilitation of offenders by the process of incarceration, as the objectives of prison administration, alongside the enforcement of prison discipline ^[9].

Furthermore, post the Indian independence, in 1951, Report on "Jail Administration in India" was put forth by Dr. Walter C. Reckless. It recommended establishment of after-care units, probation and substantial changes in basic prisons functioning with respect to human rights jurisprudence ^[10]. Thereafter, many Mulla Commission and V.R. Krishna Iyer Report also gave noticeable recommendations for reforming of the conditions of Indian prisons, individualised treatment and inculcation of human rights jurisprudence throughout incarceration and recognition of rights of various categories of prisoners, especially women prisoners ^[11]. In *Ramamurthy v. State of Karnataka* ^[12], Supreme Court acknowledged the need for an all India Prison Manual for improving the methodology of prison functioning and bringing the uniformity within the functioning of prisons all over the country. Hereby, Supreme Court directions paved way for formulation of a Model Prison Manual of 2003. Furthermore, in 2016, a new Model Prison Manual replaced the existing Manual to cope up with changing needs of the prison functioning and technological advancements. Noticeably, in 2023 Model Prisons and Correctional Services Act was passed by the Indian government to replace the existing Prisons Act of 1894, Prisoners Act of 1990 and The Transfer of Prisoners Act 1950. Hereby, basic objectives behind the replacement of the three above mentioned legislations by Model Prisons and Correctional Services Act of 2023 were, as follows:

1. To provide an updated Act for functioning of prisons by replacement of old colonial era legislations;
2. To implement a correctional ideology by adopting a balanced approach of maintaining of prison discipline & reformation of prisoners based on individualised treatment;
3. To devise an inclusive approach by providing a detailed reference to provisions related to transgender prisoners,

- women prisoners, individuals suffering from mental and other disabilities;
4. To upgrade prison management and security with the help of modern day technological advancements in the concerned field of penology ^[13].

Moreover, Indian prison system, though being upgraded to a significant level by the combined efforts of government and judiciary, is still suffering from a number of flaws, mentioned as following:-

1. Lack of functional uniformity, as prisons is a state subject;
2. Overcrowding of prisons;
3. Consistent violation of human rights of prisoners;
4. Large number of under-trial prisoner population;
5. Under-trial and convicted prisoners lodged together in many jails;
6. Pressure on the resources of the state due to prison overcrowding;
7. Lack of required level human and financial resources;
8. Minimal number of open air jails and model central jails;
9. More focus on prison discipline, rather than reformation of prisoners;
10. Restricted use of liberalised penological methods, such as parole, remission and clemency jurisprudence;
11. Violation of rights of women prisoners;
12. Colonial era ideology is still prevalent in the functioning of prisons all over the country.

Henceforth, there is a need for consistent prison reforms based on the requirement of different types of prisons being classified on the basis of working and functionality. There is a need for increasing the framework regarding protection of human rights of prisoners keeping in mind the dual objectives of incarceration related to prison discipline and reformation. Along with that, there is a need for pin pointed approach to be adopted at different state levels regarding initiation of reforms at the level of sub-jails, district jails, model central jails, open air jails, borstal jails, women jails and other correctional centres. There is need for implementation of punishments, such as community service in trifling matter, leading to reduction in burden of prison administration.

Rights of prisoners and judicial sensitivity

Judiciary performed an eminent role in the liberalisation of prison jurisprudence and recognition of human rights of prisoners in India, especially after the Indian independence. Judiciary, by way of judicial interpretation, pronouncements, guidelines and judicial activism led to implementation of human rights jurisprudence in Indian prison system, based on fundamental rights provided within the Indian Constitution. Hereby, judicial activism is an essential concept within democratic fabric that plays an important role in protection of people's rights. It is well established fact that judicial activism has transformed prison jurisprudence in Indian scenario, particularly after post-emergency era. Judiciary has given various directives, mainly in order to protect fundamental rights of prisoners that fall in the purview of one of the most marginalised sections of society. In the initial phase, since Indian independence the apex court primarily followed a policy adhering to the narrow interpretation and implementation of

the doctrine of judicial activism in its judgements. ^[14] However, after post emergency era, role of Indian Supreme Court underwent a drastic change. It led to more frequent applicability of judicial activism in favour of human rights jurisprudence. Hereby, in *D. Bhuvan Mohan Patnaik v. State of Andhra Pradesh* ^[15], Supreme Court clarified that imprisonment does not abrogate all the basic rights granted by the Indian Constitution. It was held that methods, such as using of electrified barbed wire are basically out dated methods linked to enforcement of prison security and discipline. Thereafter, in *Hiralal Mallick v. State of Bihar* ^[16] Supreme Court stressed on rehabilitation of convicts and prisons renovation. It was highlighted that policy makers are well aware about inhuman prison conditions that are in dire need of improvement. Prisons must not be in a state that results into violation of rights of prisoners. Moreover, in *Maneka Gandhi v. Union of India* ^[17], the 'due process of law' clause was considerably interpreted, that further led to widening of the scope of 'personal liberty' in accordance with Article 21 of Indian Constitution. Accordingly, the principle was also extended to the prison conditions in relation to rights of under-trial prisoners languishing in jails ^[18]. Justice V.R. Krishna Iyer in *State of Rajasthan v. Balchand* ^[19] evolved the guiding doctrine of 'bail is the rule and jail should be an exception', based on the jurisprudential principle of 'innocent until proven guilty' ^[20]. Moreover, in *Charles Shobhraj v. Delhi Administration* ^[21], Supreme Court emphasised on protection of fundamental rights of prisoners subjected to reasonable restrictions. It was observed that fundamental rights of prisoners are not restricted to a certain extent by way of imprisonment. Along with that, in *Sunil Batra v. Delhi Administration* ^[22], Supreme Court exercised judicial activism, by way of writ of habeas corpus, in wider sense. It was held that the reason of undergoing incarceration by 'due process of law' does not prevent use of writ of habeas corpus, with an objective of protecting his inherent rights. Thereafter, in *Hussainera Khatoun v. Home Secretary Bihar* ^[23], Supreme Court significantly increased the scope of Article 21 and established that fundamental right covers right to trial in time bound approach, as 'justice delayed is justice denied'. In *Sheela Barse v. Home Secretary Bihar* ^[24], Supreme Court practiced judicial activism on the basis of writ petition filed before them, upholding that human and fundamental rights of prisoners should not be violated by concerned authorities by way of custodial torture. Furthermore, in *Abdul Rehman Antulay v. R. S. Nayak* ^[25], it was clarified that right to speedy trial is a genuine right demanded by the accused. Hereby, if the right to speedy trial is not acknowledged, it will be a relevant factor in favour of the accused person. Also, in *D.K. Basu v. State of West Bengal* ^[26], the court once again gave a detailed set of guidelines regarding protection of prisoners from custodial death and violence. It was observed by the apex court that prisoner rights need to be protected under Article 21 of the Indian Constitution. Remarkably, in *Ramamurthy v. State of Karnataka* ^[27], top court by way of judicial activism brought into limelight an urgent requirement of upgrading and time bound implementation of prison reforms. Directions were given in context to formulation of a new Model Prison Manual by central government, as well as, by state and union territory governments. It led to streamlining the operation of prison institutions all over India. In *Laxman Naskar v. State of West Bengal* ^[28], Supreme Court

streamlined the factors governing grant of remission, as following:-

- a. Offence to be an individual act of crime, rather than affecting the society at large;
- b. Future chances of committing of crime once again;
- c. Convict has been transformed enough, so that he would not have any interest in criminal activities;
- d. Logic behind further imprisonment of the prisoner;
- e. Socio-economic condition of the individual undergoing incarceration.

Furthermore, the apex court in *Rupa Ashok Hurra v. Ashok Hurra* ^[29] held that the court will allow Curative Petition by the victim who has suffered from miscarriage of justice, to seek a second review of final order of the court. In *Epuru Sudhakar v. State of Andhra Pradesh* ^[30], apex court held that judicial review of order of remission is allowed on grounds, summarised as following:-

- a. Mindless application;
- b. Mala fide order;
- c. Irrelevant considerations;
- d. Relevant matters left unconsidered;
- e. Arbitrariness in the order.

Moreover, Supreme Court in context to the right of speedy trial upheld in *Vaman Narayan Ghiya v. State of Rajasthan* ^[31] that 'undue delay' in passage of process of trial is a reasonable ground regarding granting of bail, even under special Legislation under N.D.P.S. Act, 1985. Hereby, judiciary by way of judicial activism significantly liberalised the concept of granting bail. In *State of Maharashtra v. Saeed Sohail Shaikh* ^[32], the apex court held that several types of confinement under the Prison Act, 1894 could be imposed to a certain extent and within limitations set up by Articles 14, 19 & 21 under the Constitution. As well as, prison administration, single handily is not empowered to put a person in solitary confinement. In *Re: Inhuman conditions in 1382 v. Director General of Prisons, State of Andhra Pradesh* ^[33], Apex Court once again increased the scope of Article 21 of Indian Constitution observing that under-trial prisoners have a right to free legal aid, human rights and speedy trial. It was clarified that prisoners retain their fundamental rights, even in custody. It is an ongoing case, in which Supreme Court is monitoring the application of reforms inside the prisons of various states. The court stressed upon that the proper conditions within the prisons need to be inclusive of:-

- a. Specified amount of sleeping space;
- b. Reasonable amount of space for ensuring mobility;
- c. Proper kitchen and food provisions for prisoners;
- d. Adequate health facilities;
- e. Other kind of basic requirements.

Also, the court acknowledged that governments of the states and union territories have not considerably recognised the situation of inhuman prison conditions. It was stated that having a vast campus area, does not directly meant that prison is having enhanced capacity. Enhanced facilities consist of proper facilities being provided to each and every prisoner. Along with that, the court emphasized that the concerned stakeholders are required to 'rise to the occasion' and must fulfil their obligations related to the concerned issue of prisons in a time bound manner. Such matters should not be treated casually. The court highlighted that

issues related to prisons need to be entailed by historical background including diverse needs related to its staff manpower and required infrastructure. It was held that Section 479 of *Bharatiya Nagarik Suraksha Sanhita, 2023* should be applied in an efficient time bound manner by all the states. It is noteworthy that Indian jails are overpopulated with under-trial prisoners, leading to indirect infringement of the jurisprudential principle of 'innocent until proven guilty', establishing the principle vice-versa. Furthermore, in *Sanadhar v. State of Chattisgarh* ^[34], the apex court upheld that convicts that had already spent a decade in jail and in context to that their appeal is not yet being heard, must be granted bail unless there are reasonable grounds to deny it in a particular case and remission should be given to prisoners that have already served 14 years in prison. In *A. G. Perarivalan v. State & Anr* ^[35], the court acknowledged federal framework of Indian democracy. Hereby, it was upheld that states have the reasonable power to aid and advice the Governor in case of pleas of pardon under Article 161 of Constitution. Accordingly, non-exercising of these powers granted under Article 161 or illogical delay in applying of such powers are not attributable to prisoner. Such actions are therefore subjected to the power of exercising of judicial review by the court of law. Moreover, in *Mafabhai Motibai Sagar v. State of Gujarat & Ors* ^[36], Supreme Court outlined the considerations in context to exercise of discretionary power of granting remission, as following:-

- a. Public Interest;
- b. The gravity and the nature of offences committed;
- c. The antecedents of convict.

Accordingly, the court observed that too difficult and ambiguous conditions shall not be enforced while granting remission. Furthermore, in *Sukanya Shantha v. Union of India & Ors* ^[37], Explanation put forth by Madras High Court in the case of *C. Arul v. The Secretary to Government* was overruled. Hereby, argument accepted by the high court was held to be invalid, since it stated that "the inmates belonging to different castes are housed in different blocks, in order to avoid any community clash that has commonly existed in Tirunelveli and Tuticorin districts." The top court held that prison administration is responsible for maintaining discipline inside the prisons without application or involvement of measures leading to caste based discrimination. Such caste based discriminatory practices inside the prisons are reflective of colonial ideology and violates Article 14 of the Indian Constitution. Classification within prisons should be regarding fulfilment of correctional objectives inside the prisons based on the concept of 'intelligible differentia'. Henceforth, the Supreme Court acknowledged different factors, such as:-

- a. There is still application of colonial mindset caste based discrimination in prisons of some states;
- b. Prison work granted to prisoners is based on caste is an unconstitutional practice based on untouchability;
- c. Classifying work within prison manuals of some states, by including terms as 'degrading or menial', 'scavenger class' and cooking of food by 'suitable caste' are different unconstitutional aspects linked to the caste system.
- d. Such caste based differentiation is not based on the concept of intelligible differentia, based on article 14 of the Indian Constitution;

- e. Vague definition of habitual offenders, even in Model Prisons and Correctional Services Act, 2023 often leads to unrefined classification of prisoners;
- f. Members of denotified tribes, based on stereotypical assumptions are often being categorised as habitual offenders according to Prison Manuals of some states;
- g. Some State Prison Manuals referred to meaning of term habitual offenders to include members of “denotified or wandering tribes.”

Therefore, based on above observations, Supreme Court gave directions, as hereunder:-

- a. All the states and union territories were directed to revise their Prison Manuals and rules according to the guidelines streamlined in this judgement within timeframe of three months;
- b. Union government was directed regarding resolving of caste based discrimination present in Model prison Manual 2016 and Model Prisons and Correctional Services Act, 2023 within three months;
- c. References to “habitual offenders” to be refined at the earliest;
- d. The column relating to ‘caste’ in under-trial or convict prisoners register must be removed;
- e. The police department is required to follow guidelines, so that members of denotified tribes are not being arbitrarily arrested;
- f. District Legal Services Authority and Board of visitors constituted under Model Prison Manual 2016 are required to conduct periodical visits, so that caste based discrimination is prevented within Indian prisons.

It could be delineated that judiciary has refined Indian prison jurisprudence so that rights of prisoners could be protected and objectives of prison discipline and reformation of prisoners are fulfilled. Judiciary, by way of judicial activism, pronouncements, directives and judicial activism has revolutionised functioning of Indian prison system in following aspects:-

- a. Under-trial prisoners have a right to speedy trial;
- b. Prisoners are also human being and thus are entitled for basic human rights;
- c. Prisons should work as correctional centres for treatment of offenders;
- d. Prison Manuals should be refined and classification need to be based on intelligible differentia;
- e. Prisons should enforce prison discipline in a humane manner;
- f. Incarceration does not spell farewell to all the fundamental rights;
- g. Prisons are required to function in such a manner, so that twin objectives of reformation and establishment of prison discipline are achieved;
- h. Prison infrastructure needs to be properly developed and facilities inside the prisons are to be increased;
- i. Individualised treatment based on proper classification should be implemented;

Parole, clemency jurisprudence, premature release and remission are required to be refined and liberalised for betterment of prisoners and reduction in burden on prison system.

Conclusion & Suggestions

It could be inferred that incarceration as a form of punishment is not new to Indian penological jurisprudence.

With the advancement of time, the punishment of imprisonment became as a main method of punishment, especially during the British rule. Thereafter, during the end of British rule, concept of human rights jurisprudence in prisons was recognised at national and international sphere. The objective of reformation of prisoners through incarceration was also stressed upon, alongside the existing concept of enforcement of prison discipline through harsh measures. The Indian government after the period of independence took consistent steps to modernise the working of Indian prison system by various Committees, legislations related to prison functioning. Moreover, after the Indian independence, judiciary started to liberalise prison jurisprudence in limelight with the fundamental rights provided under the Indian Constitution. Judiciary, mainly after the post emergency period started to recognise the rights of prisoners in its various judgements. Along with that, judiciary by way of judicial interpretation, pronouncements and judicial activism liberalised the prison jurisprudence to a great extent at par with global standards of penological jurisprudence. Judiciary has consistently outlined the rights of prisoners as a human being. Judiciary has recognised flaws in prison management and functioning. Hereby, judiciary has given various guidelines and directions to the concerned governments and authorities involved in justice dispensation in context to refinement of colonial era prison system. However, despite various measures adopted to reform the condition of prisons and prisoners, functioning of Indian prison system is still suffering of various flaws, such as, overpopulation of under-trial prisoners, overcrowding, lack of resources, less focus of the reformation of prisoners, more focus on enforcement of prison discipline, lack of clear segregation of prisoners, lack of unrefined approach towards women prisoners and various other drawbacks. Henceforth, there is a need for a pin pointed and comprehensive approach to be adopted in reformation of Indian prison system to strike a balance between the objectives of reformation and enforcement of prison discipline. There is requirement for uniformity in the working of prisons, as prisons is a State subject. Along with that, there is a need for stringent application of various directives of Indian Supreme Court related to reformation of prisons jurisprudence. There is also need for more liberal application of legal provisions of parole, remission and clemency jurisprudence, so that burden on Indian prison system is reduced to a certain extent. Moreover, there is requirement of a more streamlined approach towards recognition of various needs for different categories of prisoners and solving of problems of prisoners through individualised treatment based on pin-pointed scientific approach.

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