
HEALTHCARE AND HUMAN RIGHTS IN PRISONS

Yuvakeerthana K & Shanmuga Sundaram R & Aditi Shanmugam, Chettinad School of Law, CARE

ABSTRACT

In the recent years jail jurisprudence developed to secure inborn privileges of detainees and for the proper administration of penitentiaries. Accordingly, in the first place, the current legal structure of the penitentiaries organization must be changed, Criminal law should be altered, another Prisons Act ought to be instituted and all Jail Manuals should be updated. In particular Indian Judiciary must continue to assume its useful and dynamic part in jail justice. In end it should be never being failed to remember that the issue of jail equity and restoration of detainees is just a piece of the larger problem of social recovery. The jail organization alone cannot successfully restore the detainees. It can just make its humble efforts to put right the detainees, yet endeavours will succeed just if our economics, our training and our social foundations and qualities are appropriately integrated into a cognizant and agreeable entire dependent on the information on the human establishment.

KEYWORDS: Prisoners, Healthcare, Jurisprudence, Jail, Human Rights.

INTRODUCTION

A prison otherwise called gaol or jail is a spot where individuals are truly restricted and typically denied of a scope of individual flexibilities. The Online Oxford English word reference characterizes prison as, A structure to which individuals are legitimately carried out as a discipline for a wrongdoing or while anticipating preliminary. " In our nation "Prison" falls under state subject in List II of the Seventh Schedule to the Constitution of India. The organization of Prisons falls in the possession of the state Governments, and is administered by the Prisons Act, 1894 and the Prison Manual of the separate State Governments. Along these lines, States have the essential obligation and position to change the current prison laws, rules and guidelines. Prisons are the public establishments and accordingly they should play out the capacity allocated to them by law. The law announces just and correctly that in case people are indicted for wrongdoings, they will be put waiting on the post trial process, fine, or go through a sentence of imprisonment. Men are in this way shipped off a prison as discipline. Stringently talking, the law sends them not to be transformed however basically to be held in safe care. In this manner we can securely say that till the last century the thought has been to keep the prisoner in safe care alone. The new inclination currently is, obviously, that prison framework is intended for reorganization of the prisoners that they might get back to society as valuable individuals and this capacity of the prison is presently named as discipline.

ADMINISTRATION OF PRISONS:

The arrangement of prison administration in our nation is over 100 years of age. In the event that one thinks back one can't yet be dazzled with the immense change made during this period. The development, while as yet ending and utilized uniquely in a few and not in every one of the prisons of the nation, all things considered give guarantee of the arrangement of treating guilty parties. Gone are currently large numbers of the fierce techniques for treatment yielding spot to a few new strategies including open air work, offices for advanced education, sporting and revision plans, bunch work and instalment of wages. Endeavors are presently being made to treat the prisoners under less harsh discipline and with more noteworthy opportunity.

Administration of prisons and reconstruction of prisoners has involved exceptional discussion and sharp analysis at different public fora. Hon'ble Supreme Court of India in the new years has descended intensely on the cruel and debasing conditions in prisons. In many states, the issues of weather beaten prison structure, congestion and clog, expanding extent of under preliminary prisoners, insufficiency of prison staff, absence of appropriate consideration and

treatment of prisoners, and so forth, have been connecting with the consideration of the press and social activists. With a developing promotion for the assurance of common freedoms in the different strolls of lives, the situation of prisoners has arisen as a basic issue of public approach.

ROLE OF JUDICIARY IN THE ADMINISTRATION OF PRISON JUSTICE :

Indian judiciary generally Supreme Court assumes a vibrant and dynamic part in the transformation and administration of prisons. One can say that till eighties Indian judiciary embraced business as usual law and showed an absence of appreciation and worry by its "hand-off" way to deal with the tasks of prisons. It was in 1974 when Apex Court thought of new prison law. In a significant advancement Court in D.B.M. Patnaik's case¹, attested that the simple confinement doesn't deny the convicts of the multitude of key rights revered in our Constitution. Supreme Court again in 1977 for Hiralal's case² focused for the recovery of prisoners and reorganization of prisons. This legal wave proceeded. In Sunil Batra's case³ which is taken as an achievement in the field of prison equity and privileges of the prisoners in India, Court held that "the way that an individual legitimately in prison doesn't forestall the utilization of Habeas Corpus to secure his other intrinsic rights". In Prem Shankar Shukla's case⁴, Court saw that no individual will be cuffed, chained regularly for persuade of the overseer's escort. Supreme Court again in R.D. Upadhyay's case⁵ has held that right to reasonable treatment and right of legal cure are pre-necessities of administration of prison equity. In Hussain Ara Khatun's case⁶ Court embraced a dynamic and productive job concerning prison reforms. Court separated from different things focused on the upgrades of the states of the prisons in India. Therefore, this lively job of Indian Judiciary shows the difference in disposition towards the privileges of prisoners and renewal of prisons by regarding prisons as remedial rehabilitative establishments.

ISSUES OF PRISONS IN INDIA:

Prison administration in India being a significant piece of the criminal equity framework has endured disregard and absence of acknowledgment. A ton has been discussed the police, somewhat less about the courts and barely anything about prisons and prisoners. The issue of

¹ *D.B.M.Patnik v. State of A.P.*, AIR 1974 (SC 2092)

² *Hiralal Mallick v. State of Bihar.*, AIR 1977 (SC 2237)

³ *Sunil Batra v. Delhi Administration.*, AIR 1978 (SC 1675)

⁴ *Prem Shankar Shukla v. Delhi Administration.*, AIR 1980 (SC 1535)

⁵ *R.D. Upadhyay v. State of A.P and Ors.*, AIR 2001 (SCC 437)

⁶ *Hussain Ara Khatun v. State of Bihar*, AIR 1979 (SC 1377)

prison administration should be featured to concentrate on this exceptionally imperative circle of social concern. It is almost a long time since the accommodation of the report of the All India Committee on Jail Reforms (1980-83) headed by Justice A.N. Mulla. One might inquire as to why the proposals of the board have not been followed and carried out in letter and soul. There is minimal critical enhancement for an all India basis. The fundamental explanation frequently referred to by the middle not having the option to carry out the proposals of the Mulla Committee is that prison is a state subject. This possibly shows that in case there is political will, there will be no trouble at the middle taking a functioning and direct interest in prison administration. After investigating various elements of prison laws and prison administration, one can set out the accompanying serious pain points, which torment the prison framework and need consideration.

- (i) Delay in preliminaries in the courts has expected intense proportions. Even however issue has been featured by the Mulla Committee, National Police Commission and through Public Interest Litigation (in the Hussainara Khattun's case⁷) there has been no alleviation at all. Delays start at the examination stage itself. In numerous cases, charge sheets are documented by the police exceptionally late prompting a long chain response. Then again courts are additionally not without fault. Despite the fact that law necessitates that preliminaries ought to be led from one day to another till finished, by and by this infrequently occurs. Cases are deferred two or three months all at once, which further exasperates delay.
- (ii) Overcrowding itself prompts unsuitable everyday environments. Albeit a few prison reforms illustrated before have zeroed in on issues like diet, clothing and tidiness, unacceptable everyday environments proceed in numerous prisons around the country. A unique commission of inquiry, appointed after the 1995 passing of a noticeable money manager in India is high-security Tihar Central Jail, detailed in 1997 that 10,000 prisoners held in that organization persevered through genuine wellbeing risks, including stuffing, "shocking" sterile offices and a deficiency of clinical staff. The National Police Commission called attention to that 60% of all captures were either superfluous or inappropriate. This has brought about congestion and records for 43.20% of the consumption of prisons.

⁷ Hussainara Khatoon v. State of Bihar, AIR 1979 (SC 1377)

- (iii) Extortion by prison staff and its less forceful result monitor defilement is normal in prisons all throughout the planet. Given the significant force that watchmen practiced over prisoners these issues are unsurprising, however the low pay rates that gatekeepers are by and large paid seriously disturb them. In return for stash or some unique treatment detainees supplement watch pay rates with pay-offs.
- (iv) The plan for working with correspondence among prisoners and their family members, companions and lawful guides require consideration. A significant number of these angles have been drafted inside the Mulla Committee Report and merit quick execution.
- (v) Inadequate rehabilitative projects and professional preparing offices is one more issue of Indian prisons. Regardless of whether there are not many rehabilitative projects they are only outdated.
- (vi) Apart from previously mentioned issues of Indian prisons there are different issues likewise which incorporate absence of lawful guide, wellbeing problem, homosexual manhandles, substance addiction, and prison viciousness.

RIGHT TO HEALTHY LIVING:

According to the Medical dictionary⁸, health is defined as a “relative state in which one is able to function well physically, mentally, socially, and spiritually in order to express the full range of one's unique potentialities within the environment in which one is living.” As emphasised in the definition, health depends on the environment in which one is living in. Irrespective of whether the person is imprisoned or detained or is free, it is the right of every person to live a healthy life. The Supreme Court has reiterated the same in *Bandhua Mukti Morcha v. Union of India*⁹ while upholding that protection of health falls in the ambit of Article 21 of the Indian Constitution. In *State of Punjab v. Mohinder Singh Chawla*¹⁰ the Apex Court held that the right

⁸ “Healthy Living.” *The Free Dictionary*, Farlex, medical-dictionary.thefreedictionary.com/Healthy+Living.

⁹ *Bandhua Mukti Morcha v. Union of India* (AIR 1984 SC 802)

¹⁰ *State of Punjab v. Mohinder Singh Chawla* (1997) 2 SCC 83

to health is inextricably linked to the right to life, and the government has the duty to provide health services.

In *Parmanand Katara v. Union of India*¹¹ the Supreme Court held that it is the duty of those in-charge of the health of the people to maintain the health of an individual irrespective of whether they are guilty of committing a crime or not and that according to Article 21 of the Constitution, the State has the responsibility to preserve life. Though this Judgment was given for the protecting the victims of road accidents, it could also be interpreted in the light of providing protection of health to prisoners. Section 26 of the Prisons Act, 1894 states that an imprisoned person can only be transferred if the Medical Officer of the prison certifies to the health of the person and Section 39 states that a Hospital or a proper place for reception of prisoners should be provided. The Model Prison Manual, 2016 puts the responsibility for prisoners' medical treatment and health in the hands of prison medical staff. Further it states that medical workers must ensure the preservation of minimal requirements of hygienic conditions in the jail premises.

The Ministry of Home Affairs in a circular dated 20th April, 2021 gave various guidelines to be followed so as to control the spread of COVID-19 in the prison system. The importance of preserving the health of the prisoners and the role of the Judiciary in this regard has increased exponentially during the time of the COVID-19 pandemic. A report¹² stated the granting of bail has been done leniently by the Madras High Court. However, is this not the view that should be taken by everyone? Given the unprecedented situation wherein everything is uncertain, the Judiciary's course of action has been nothing but compassionate towards the plight of the people – it was done after a humane assessment of the situation. Similarly, in the case of *Suo Motu Writ Petition (C) No. 1/2020 in Re: Contagion of Covid 19 Virus in Prisons*, the Supreme Court addressed steps to de-congest prisons due to the potential of infection by COVID – 19. The Court citing *Arnesh Kumar v. State of Bihar*¹³ gave proper guidelines that needed to be followed while detaining a person and asserted that those who detained a person in contravention with the provisions stated will be liable for departmental action and for Contempt of Court. The Court further stated that transparency was vital during the Pandemic and that the

¹¹ *Parmanand Katara Vs Union of India* (1989 AIR 2039)

¹² S., Mohamed Imranullah. "It Has Been Raining BAIL Orders in Madras HC Due To Covid-19." *The Hindu*, The Hindu, 1 Apr. 2020, www.thehindu.com/news/cities/chennai/it-has-been-raining-bail-orders-in-madras-hc-due-to-covid-19/article31231537.ece.

¹³ *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273

model followed in Delhi to update prison occupancy should be followed. Further directions were given so as to stop the proliferation of the deadly virus.

Healthy living does not only mean right to physical health but also gives importance to mental health. According to the World Health Organisation, mental health is “an integral and essential component of health” and “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” Mental health, is overlooked by the majority of the Indian population and it not an aspect that is given much importance when it comes to the well-being of prisoners in India.¹⁴ The Ministry of Home Affairs issued a circular dated June 24, 2021 regarding the importance, need and procedures to take care of the mental health of both the prisoners and the prison official keeping in mind the COVID-19 pandemic. It is imperative that the guidelines be followed by the prison officials to ensure that the health of those detained is intact. Suicide rate among inmates was found to be more than twice of what is recorded in general India population.¹⁵ The medical officer of the jail is required to provide quarterly reports to Mental Health Review Boards (MHRBs) about the state of prisoners with mental illness under the Mental Healthcare Act (MHCA) of 2017. The Ministry of Health and Family Welfare, however, stated in an RTI response dated 12 October 2020 that only three states (Tripura, Uttarakhand, and Himachal Pradesh) have established MHRBs.¹⁶ The Indian Judiciary has also emphasised on the importance of mental health in various pronouncements, however the same has not been implemented. Despite the various Judicial assertions and the legislations being passed, the question does arise whether the recommended procedures and steps are being taken by those in-charge. The lack of obedience towards the statutes and Judgments and the apathy towards the conditions of inmates has made the prison structure hostile and dangerous.

SPECIAL CATEGORIES:-

JUVENILE IN DETENTION:-

Available statistics on juvenile delinquency in India reveal that the problem is not as tense as in the western world. “It may be due to variations in living conditions such as greater family

¹⁴ Goyal, Ritika, et al. “Prisoners Are Twice as Likely to Die by Suicide. Existing Laws Do Little to Help Them.” *ThePrint*, 29 July 2021, theprint.in/opinion/prisoners-are-twice-as-likely-to-die-by-suicide-existing-laws-do-little-to-help-them/705282/.

¹⁵ <https://humanrightsinitiative.org/download/Mental%20Health%20and%20Prisons.pdf>

¹⁶ *Supra* 7

affiliation and parental control, stronghold of religious convictions and due regard for moral precepts in Indian society.

The impact of western civilization and temptation for luxuries and pompous life has greatly disturbed the modern Indian youth. Consequently, there has been a considerable growth in crimes committed by juveniles. India like any other country, also seeks to tackle the problem of juvenile delinquency on the basis of three fundamental assumptions:—

- (i) Young offenders should not be tried; they should rather be corrected;
- (ii) They should not be punished but reformed
- (iii) Exclusion of delinquents i.e. children in conflict with law from the ambit of Court and stress on their non-penal treatment through community based social control agencies such as Juvenile Justice Board, Observation Homes, Special Homes

It is significant to note that the Juvenile Justice Act, 2000, lays down a separate procedure for dealing with the neglected and uncontrollable juveniles who have been termed as ‘children in need of care and protection’. The former are to be dealt with by the Juvenile Justice Board.

Sections 82 and 83 of the Indian Penal Code contain elaborate provisions regarding the extent of criminal liability of children belonging to different age groups. A child below the age of seven is incapable of committing a crime. Likewise, a child between seven and twelve years of age has only a limited criminal liability. The contention is to justify a lenient treatment to young offenders because they cannot appreciate the nature and consequences of their act due to lack of sufficient maturity and understanding.

Section 360 of the Code of Criminal Procedure, 1973 provides that when any person who is below twenty-one years of age or any woman, is convicted of an offence not being punishable with death or imprisonment for life, and no previous conviction is proved against such person, the court may, having regard to the age, character and antecedents of the offender, and to the circumstances in which the offence was committed, order release of the offender on probation of good conduct for a period not exceeding three years on entering into a bond with or without sureties, instead of sentencing him to any punishment.

While a juvenile usually has the same rights as an adult when facing potential criminal charges, he or she may have additional rights that are not usually offered to the adult in the criminal

justice system. These may include the right to expunged or sealed documents with his or her juvenile records. The minor is given the ability to stay separate from adult inmates through a detention center rather than a prison or jail. This is important because the goal is not to punish the minor but to try to rehabilitate him or her and help the individual avoid a life of crime.

The full defendant rights may depend on the state where the teen faces a court. In some areas, the use of a jury is not possible. Some judges will preside over the matter without the need to use a full jury. This could speed the case along quicker, but there are no others to support the individual if the judge has some bias. The lawyer may still engage in the matter and provide legal support or present the case in front of the judge. The use of a lawyer could increase the strength of the case, but the judge usually wants to hear from the minor to determine how best to proceed.

WOMEN IN A PRISON:-

A prison is a correctional facility meant to house individuals who break the law. The purpose of prisons is the reformation of inmates. Despite this, prison systems often hide violence and depravity behind their closed doors, which is detrimental to the reform of offenders. The problems related to imprisonment become even more pronounced in the context of women inmates. Prison systems are primarily designed to cater to men and are not well equipped to address the particular needs of women in prison. As per latest data available from the end of 2015, Indian prisons were home to 17,834 women. Only 17% of these women live in exclusively female prisons, while the majority are housed in female enclosures of general prisons. There is national and international agreement that the condition of prisons and of women living in them needs urgent improvement.

There are a number of provisions in the form of laws, rules and guidelines that protect women from exploitation in prison and guarantee them basic services. However, the implementation of these provisions is found to be largely lacking and women face a variety of problems while living in prison.

In 2016, over 3 lakh women were arrested for crimes under the Indian Penal Code (IPC) and Special and Local Laws (SLL) 7 . A large number of these women were arrested for crimes under the Prohibition Act, for cruelty by relatives of husband and rioting etc

MAJOR PROBLEMS FACED IN THE PRISON:-

- Prison Staff

- Accommodation
- Food and Hygiene
- Health
- Nutrition
- Education

METHODS IN IMPROVING:-

ADOPTION & IMPLEMENTATION OF NATIONAL MODEL PRISON MANUAL, 2016 BY STATES

The National Model Prison Manual 2016 is the most recent and contemporarily valid document pertaining to the correctional architecture of our country. It sets out some basic minimum standards for the treatment and welfare of prisoners, and must be adopted by all States as a minimum guideline. It also provides specific measures such as gender sensitive training for all staff dealing with women inmates, which can go a long way in improving the lives of women in prison.

ESTABLISHMENT OF A NATIONAL COMMISSION FOR PRISONS AND REGULAR & THOROUGH INSPECTION OF PRISONS

The National Policy on Prison Reforms and Correctional Administration states “Prisons are hitherto a closed world. It is necessary to open them to some kind of positive and constructive public discernment. Selected eminent public-men shall be authorized to visit prisons and give independent report on them to appropriate authorities.”

In 2015, a total of 41,542 jails inspections were done in the country by medical officials, judicial officials and executive officials.³³ Despite such inspections, the conditions reported from prisons remain dismal.

A fair and thorough inspection can itself be a very effective tool in improving conditions of prisons and the lives of women living in jail, and this must be carried out regularly and in its true spirit.

PREGNANCY & CHILDBIRTH IN PRISON

In case of pregnant prisoners, the provisions of the National Model Prison Manual must be followed strictly to make arrangements for temporary release for delivery of children in a

hospital outside the prison. Suspension of sentence may be considered in the case of casual offenders. Information about a woman's pregnant status should also be made to the Court that has ordered the detention, to enable the Court to grant bail (where appropriate) or modify the detention order as deemed necessary.

CHILDREN OF WOMEN PRISONERS

When deciding on the prison to which the woman is to be sent, regard should be had to her caretaking responsibilities if she has a child, and as far as possible, the woman must be given the choice of selecting the prison.

Children must be kept in the prison in a manner that they are not made to feel like offenders. Administration should ensure that the facilities provided are tailored towards children living under their care. NGOs, schools and paediatricians can be engaged to ensure that children in prisons have access to basic facilities of education, day care, recreation and a healthy lifestyle

SPECIAL CATEGORIES:-

Special jails are the ones in which there is high security and special arrangements are made for people convicted for violent crimes including terrorism and insurgency. There are a total of 43 special jails in India which have a capacity of accommodating 10915 prisoners. Kerala has 16 special jails which is the highest number of special jails in any state in India. Provision for keeping female prisoners is also available in special jails in states including Assam, Gujarat, Kerala, Maharashtra, Tamil Nadu, and West Bengal.

CONCLUSION:-

Prison welfare schemes should be introduced in prisons all around the world so that some productive work is done by the prisoners so that they do not indulge in other nefarious activities while they are in jail and utilize their time in doing some erstwhile activity. The jail authorities help the prisoners or inmates, as referred by jail authorities, to conduct themselves in a better way which helps them lead a better life after their release. The atmosphere provided by the jail authorities compels the prisoners to work which diverts their mind from other mischievous things. Prisoners can be made to work in various factories so they understand the importance of work and inculcate these principles in their life outside prison too. Job Placement should be provided to the prisoners so that they can earn their dignity back in the society which they lost when they were arrested. Equivalence of healthcare and the right to health is a principle that applies to all prisoners, who are entitled to receive the same quality of medical care that is

available in the community. However, this right is rarely realized in prisons, where usually healthcare services are extremely inadequate. Prison health services are almost always severely under-funded and understaffed and sometimes non-existent.