



PREVAILING CONDITIONS IN PRISONS OF INDIA

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Abstract- Prisons in India are plagued by various severe problems relating to overcrowding, decaying physical infrastructure, lack of medical care, discrimination, guard abuses, prison violence, delay in trial, torture and ill-treatment, neglect of health and hygiene, substantial food and inadequate clothing, prison vices, lack of privacy, deficiency in communication, streamlining of jail visit, and forced labor etc. By neglecting to supervise and control the inmate within their facilities, failing to respond to incidents of violence, by corruptly allowing the entry of weapons, mobile phones, drugs etc; into the prisons, and by allowing powerful inmates for holding "darbars", entry of unauthorized persons and providing five-star hotel comforts to privileged prisoners and by making no entry in the visitors' record of co-conspirators of the detent and by generally abetting the tyranny of powerful over the powerless, prison authorities are directly responsible for worst conditions prevailing in prisons. The most common cause of death is communicable diseases, which is the result of overcrowding, malnutrition, unhygienic conditions and lack of medical care and food shortage. Physical abuse of prisoners is another chronic problem. Torture and ill-treatment are widespread and unwarranted beating is so common as to be integral part of prison life. Somewhere prisoners are punished with electric shock and at some other places their ear, nose and lips are stapled even stick is pressed in the anus of prisoners only for extracting money. Conditions in many prisons are so deficient as to constitute cruel, inhuman and degrading treatment, violating much provision of the Constitution and international HR instrument. But unfortunately prisons are not a priority for any government because most of the inmate are typically poor illiterate and powerless and because of the prevailing attitude that prisoners deserve what they get. The easiest excuse is to say that there is no money for reforms or better facilities. The fact is that no one cares for those who are locked up. There is no difficulty in having imaginative and productive programmes for the prisoners or generating revenue from prisons, but one must have will to do so. Prisoners in many prisons resort to hunger-strike, self-mutilation, rioting and other form of protest. The following main problem area related to prisons shall be addressed separately.

Introduction- Overcrowding- Prisons are overcrowded, inefficient and degrading places, which usually make people and crime work, defeating the purpose of imprisonment. Overcrowding is root cause of a number of problem including food, clothing, medical care and poor living conditions and affects almost every branch of prison administration. Overcrowding affects prison discipline and entrails serious effect upon rehabilitation of prisoners. It brings overload of work on prison officers and make them unable to pay sufficient attention all their duties.

Delay in Trial- Delay in disposal of criminal cases causes enormous injury to persons in prison awaiting trial. No aspect of prison administration has affected the HR of prisoners as delays in trial, for which the police, judiciary and the legal profession are all to blame. Delay could only be avoided by the joint efforts of all these three links. Delay commences at the investigation stage itself. In many cases charge sheets are filed by the police very late leading to a long reaction. The next bottleneck occurs in the course

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of service of summons to the witness, often due to the collaboration between the process server, police and the witness. The legal requirement of giving coils of relevant documents to the accused also contributes delay due to old time consuming practice of making hand written copies which are often illegible. This practice needs to be replaced by the modern photocopying machines or another form. Defense and prosecution lawyers make their own contribution to the prolongation of trials. There are also lapses in producing under trials in courts on the date fixed for hearing. On many occasions they are either not produced or produced late, with the result that hearing gets adjourned. These are done in the name of non-availability of police escort or manpower. The courts are also not without any blame. Law required that the trial should be conducted from day to day till completed. In practice this rarely happened; cases were adjourned for a complete of month at a time which further aggravated delays, even though it has consistently been held by the apex court of the land that delay in trial violated fundamental right to life and liberty under Art. 21 of the Constitution of India. Production of accused before the court on remand dates was a statutory duty. The production gave an opportunity to the prisoners to bring to the notice of the court, who had ordered for his custody, if he was faced any ill-treatment or difficulty during the period of remand. The Supreme Court noted that for this reason the actual production of prisoner was required to be ensured by the trial court before ordering for further remand and opined that duty of producing under trial prisoner on remand date may be entrusted with the prison staff by providing them escort vehicles. The problem of under trials is plainly one HR specially the freedom of the poor, the lowliest and the lost. It is poor who generally suffer the pre-trial incarceration because they were unable to purchase justice. Bail is denied to them because they cannot afford sureties or stand personal bonds. There are various compelling reasons which call for avoiding detention on the private life as well as morale of the accused, the effect on the prison population.

The Supreme Court in Hussainara Khatun case noted that it was a "crying shame on the judicial system which permitted incarceration of men and women for such long periods of time without trial. We were shouting from the house tops about the protection and enforcement of HR. We are talking passionately and eloquently about the maintenance and preservation of basic freedoms. But we are denying HR to those nameless persons who are languishing in jails for years for the offence which perhaps they might ultimately be found not to have committed? Are we not withholding basic freedoms from these neglected and helpless human beings who have been condemned to life imprisonment and degraded for years and end? Many of these unfortunate men and women must not even be remembering when they entered the jail and. It should be a matter of shame for the society as well as the administration to detain a person in jail for over 16 years without authority of law". In this instant case, the Court ordered the release of petitioner from the jail and required the state to pay the cost of journey and one week maintenance.

Torture and III-treatment- Imprisonment of criminals was sanctioned as a measure of social defense and rehabilitation. To reform and deter the criminal and to work.

Physically assaulted by the prison staff for extracting money, transferred to a distant prison for making the visit of family members and friends uneasy, allotted to do degrading works and exposed to extreme cold and heat, denied to access to lawyer of their choice mentally-challenged prisoners were handcuffed and tied with ropes forced to sodomy, compulsory nudity and other unbearable vulgarity.

Prisoners were provided inferior diet by the brutal and corrupt prison management. Callousness prevails, prisoners were seen shackles, mentally disturbed are incarcerated with others. Positive experiences were the exceptions rather than the rule. Prisoners are tried to train for freedom under the conditions of captivity.

Health and Hygiene- In 19th Century, imprisonment was invented as a standard form of punishment. It replaced mutilation, corporal punishment and banishment. It was argued that prisons must meet some minimal level of human necessities, if not human decency. As physicians became able to



systematically heal the ills of the body. Access to medical care joined the list of necessities to be provided to prisoners.

But despite this ideal approach, health condition in prisons is worst. Due to overpopulation and inadequate medical staff, ill-equipped hospital coupled with negligent doctors made the conditions beyond comprehension. Medical care to women prisoners is improper and unsatisfactory due to non-availability of lady doctors and women staff in jail hospital. Medical examination and treatment of prisoners are not provided in time in hospital outside jail due to non-availability of police escort.

The extremely unhygienic conditions brought by overcrowding affects health and privacy of prisoners. Two or three times more prisoners are accommodated in the cells and barracks. Open and dirty toilets offended prisoners basic HR to privacy and dignity. Water shortage is rule rather than exception and the toilets proved to be the idle breeding grounds for health hazard and epidemics. Health care for prisoners should be treated as a special responsibility of prison authorities as the prisoners in fact were handicapped by the inability to choose the kind of medical treatment required. Prisoners were solely dependent on their custodians to provide them adequate medical facilities.

Physically crowded and uncomfortable prisons made prisoners to live in mental isolation and frustration and suffer from physical and mental ill health. Though, there was a time when the health and sanitation in Indian jails was considered good but the same was not true in present day situation as the medical and health care in prisons has considerably deteriorated, speaking honestly it was inadequate and in some places absent. In some prisons the Mulla Committee had found no hospital section at all. Sick prisoners were treated in barrack and seriously ill were transferred to government hospital. Prisons having separate hospital section were ill equipped and in many cases did not fulfill the basic requirements such as clean bed, adequate furniture, fulltime doctor, compounder and nurses. Availability of specialist service was a distant dream. The elaborate duties of medical officers detailed in jail manuals were words having no value for them. Most of the prison lacked lady medical officer for examining women prisoners. Mentally challenged persons, though not having committed any offence, were confined in prisons for years and were not given proper treatment. It was against this background, the Mulla Committee felt that every Central and District prison should have two or more medical officer and where the population of inmate was more than 1000 the facility should have three medical officers and they should be provided residence within jail premises. Where the population of women prisoners was more than 25, whole time lady doctor should be deputed. Every prison should have the services of a qualified psychiatrist assisted by a psychologist and a psychiatric social worker. Every jail hospital should be provided with an ambulance. Sick women prisoners should be treated in a separate enclosure.

Prison Building Condition- Generally Indian prisons were housed in old and dilapidated buildings, where crack and crevices, crusting and dinginess reflected the chronic neglect to which they were subject. The place where prisoners were required to live bore a forlorn, dismal and depressing look. Standard and norm prescribed for accommodation of prisoners were not followed; nor could they possibly be followed under the existing circumstances. Mechanical inspection did not care for filth and stink, dirt and darkness, and the coldness of dormitories. The common sights in jails were inadequate and badly made laboratories over flowing drains, open sewage, water lodgings, basket type dry latrines and insufficient overhead water tanks. The inevitable result of such unhygienic condition was the breeding of pests and vermin that injected infections and communicable diseases adversely affecting the health of the prisoners. Thus, prisons building were functionally most inappropriate and inadequate. The bard fact is this that most of the buildings were oriented basically to custodial and security requirements where proper classification, individualized treatment, education, training and reformation were generally lacking.

Problem of Undertrials- The crisis of prisons in India was not a crisis solely created by the



convict prisoners. The story is somewhat different. The conviction rate in this country is 6%. The statistics available clearly suggested that all India percentage of under trials was 75% that means that the average of all India convict prisoners' population was 25%. Prisons were not overcrowded by the convicts for whom they were primarily built except convicts there were following other categories of persons confined in prisons and commonly referred to as prisoners. These later class peoples were-

- * Remand Prisoners: accused persons apprehended and remanded to judicial custody but not served with charge sheet to enable commencement of trial;
- * Non-criminal lunatics: lodged in prisons for observation under provisions of the Indian Lunacy Act;
- * Persons under Protective Custody : such as stray children and victims of rape lodged in prisons in violation of or circumventing the provision of special enactments to deal with them;
- * Persons confined under preventive sections of the Cr. P.C.; and
- * Prisoners detained under executive orders under provisions of special legislation.

Prisons system has traditionally been arbitrary, brutal and shielded from public attention. Lack of professionalism and good judgment on the part of prison personnel is a reality. Court's decision leads to the conclusion that unless prison reformers can exploit doctrinal weaknesses of the courts recent holdings they can no longer look to the judicial system to accomplish change within prisons.

The fundamental principle is that fundamental freedoms do not bid farewell to prisoners merely because of a court sentence that is why the SMR relating to the prisoners dealt with prison ethos and physical and psychological milieu.

Conceptions of open prisons, sufficient budgetary outlays for administrative, medical, educational and after-care services, and continuing social audit of progress and problems of the regimes of open prison.

In respect of private prisons it will be a hurried judgment to suggest handing over the operation of the system in the private hands. But certain services must, without delay, need to be given in private hands. There is a need to enter into contract with private bodies for providing certain basic necessities such as medical, escort, food, etc. along with it as an experiment the government may also look risk prisons. But before allowing such privatization, the following should be ensured that (a) a significant cost saving from the privatization be demonstrated; (b) HR applies to private prisons in order to protect the rights of offenders; (c) the government remains ultimately responsible for custody, care, control and conditional release etc.

REFERENCES

1. The India jail Committee Report 1919-20, paras 326 and 334 referred in *ibidem*, at 114-115.
2. Human rights Abuses Against Prisoners, *Supra*, n. 2, Prisons and Human Rights, http://www.humanrightsinitiative.org/publications/prs/bhopal_98_workshop_report.doc, see also AIJRC Report, 1980-83, Vol.1 Ch.3 paras 17 and 18, at 21.
3. P. RamchandraRao v. State of Karnataka, (2002) 4 SCC 578-607, at 597-98, paras 19 and 20.
4. As per an unpublished Report of the NHRC (2002) there were 31.19% excess prisoners against the sanctioned capacity of jail.
5. Human Rights Watch World Report 2002, "Special Issues and campaigns: Prisons", <http://www.hrw.org>, accessed on date 09.04.03. This is further seconded by the fact that despite the recommendations of various committee and commissions and order of the courts, the medical conditions of prisoners has not seen any change or improvement.
6. Shaman LalDaswani, "Indian jails Reforms Long Overdue", (1979)26 Social Welfare 27-29, at 27.
