

“Human Rights of Prisoners”

Is there actually such a thing?

Sidhant Vermani

Amity Law School, Noida, India

Deepali Sinha

Amity Law School, Noida, India

ABSTRACT:

Human rights is such a field which is gradually gaining the attention of many, but when it comes to such rights of prisoners the whole concept somehow vanishes and what remains is just the term “prisoners”. Even in this 21st century where we strive to grant equal rights to everyone and different nations giving eye catching statements about democracy and equal treatment, there is hardly any attention being diverted towards such basic human rights of prisoners. Everyone seems to have forgotten that these prisoners are still human beings like us and deserve to be treated equally. There are a number of laws and legislations emerging from both domestic and international organisations, yet why is that no one is actually getting any noticeable results from the same? In this paper we have critically analysed the conditions of these prisoners with reference to cases showing how their basic human rights are being violated. The information about the available provisions which are supposed to be followed are stated and the main focus of this paper is to somehow make people aware of the conditions these prisoners are living in and to educate people about why and how their rights must also be protected. We have adopted a structured approach stating what actually these rights mean, how they are violated and finally how these rights can be protected. The issue of human rights of prisoners is quite eye catching and is something which can attract different views from different people from all the spheres of life. Focus of this paper is to make every person whether a layman or an expert in this field aware of the importance of such rights.

I. WHY SHOULD ONE FOCUS ON THE RIGHTS OF CONVICT

It is not even a matter of debate that prisons are an important and integral part of every legal system of a country. It is the utmost source for providing justice for the serious crimes committed by the people of a country. Legal system of every country has an important duty to carefully resort to the practice of imprisonment to punish those who are accountable for the crimes committed against the state. It is a long-followed practice that has found its way into the judicial system of almost every country. But unfortunately, though it is much important for the judicial system of the countries, this practice is now being abused at a level no one can even think of. Once a person is convicted and sentenced to imprisonment for a certain period, he/she is supposed to let free after the completion of such term and also be provided with certain rights which is basic to every living person in this world. It is often seen that once a person is convicted and sentenced to imprisonment he is always perceived to be a criminal even after the completion of the said sentence. As they are labelled as criminals no heed is generally paid to the basic human rights which must be provided to them. Many a times they are not even released after the completion of their sentence. Inhumane living conditions is not something which is unusual for these people in the prisons. In India the prisons are overcrowded with prisoners that it is almost impossible to trace violation of these basic human rights. The main purpose for which prisons are established is for the protection of society against the crimes and it may serve such other functions like (a) rehabilitative (b)

reformatory etc. It is very difficult to make people aware of such problem of human rights violations of prisoners as all the sympathy and heed is towards the victims of such crimes and the ones who committed them are deemed to be demons. Because of this prime reason it is seen that such basic human rights are generally overlooked and ignored when it comes to the prisoners. The prison authorities have such an insensitive and inhumane attitude towards the prisoners that slowly and gradually the gravity of punishment for such crimes is becoming more imbalanced and more unfair than the actual crime committed. Although many international organisations are now actively performing towards safeguarding such basic human rights of prisoners but still no substantial changes or results have been achieved.

II. ARE THERE ANY SAFEGUARDS FOR PROTECTION OF PRISONER'S RIGHTS?

a) Indian law

In India the constitution provides for certain rights against arbitrary and unfair procedures but to what extent they are implemented and followed is a question that still remains unanswered. Article 21 which is the most important, wide and controversial fundamental right provided under the constitution of India states that “no person shall be deprived of his life and personal liberty except according to procedure established by law”. The number of deaths in judicial custody is increasing at an alarming rate, it is no rocket science to determine and conclude that most of the times it is a result of the harsh, insane and torturous treatment by the authorities. The court in *Ajab Singh & Anr v State of Uttar Pradesh & Ors* clearly stated that “we do not appreciate the deaths of person in judicial custody”. The court further ordered compensation for the same.¹ The Jurisprudence for protection of rights of prisoners needs to be developed so as to no arbitrariness exists and they are not treated to be any less of human. It is important to note that under Article 32 and 226 of the Indian Constitution the detainees can approach the relevant court for the compensation for the violation of their rights while in custody of the police. In the famous **SEBASTIAN HONGRAS CASE**² the matter related to the habeas corpus petition where it was alleged that the army entered into the premises of the school and had resort to certain atrocities and took away the petitioner along with several other persons. The court ordered that wives of each missing person were to be paid Rs 1 lakh. The principles of natural justice which are slowly finding its way into the judicial system of every country relates to such matter too. Other legislations which contain provisions for protection of such rights are

- ***The Prisons act 1894,***
- ***Prisoners act 1990,***

¹ AIR 2000 SC 3421, 2000

² 1984 AIR 1026, 1984 SCR (3) 544

- *The transfers of prisoners act 1950*

One of the most notable judgements in this regard has been given by the honourable Supreme Court of India in the case of **D.B.M Patnaik vs State of Andhra Pradesh**³ where it was said that mere detention does not deprive the convicts of all the fundamental rights enshrined in our constitution.

b) International Instruments

The United Nations standard minimum rules for the treatment of prisoners⁴ are the most important guidelines for the humane treatment of prisoners. It was adopted by United Nations Economic and Social Council in 1957. These rules are also known as Nelson Mandela rules. Such document clearly state that the prisoners retain certain fundamental human rights. The rules relating to hygiene, accommodation, food etc of prisoners are provided for in such documents. Such rules were revised in 2015 and it was a great step towards protection of human rights. Mr Lykketoft, the UN General Assembly President himself said that in the past the nations have failed to protect the human rights of prisoners, the driving principle behind prisoner treatment has been to see these individuals as entirely separate from our communities and our societies.⁵

Amnesty International in 1955 also laid down certain rules for treatment of prisoners. They focused on the equity between the prisoners. Elimination of discrimination on the basis of race, religion, sex, caste was their main concern. They also focused on elimination of cruel and inhumane punishments which are not something unusual in prisons.

European Convention on human rights has its own history of protection of human rights. They also focused more or less on the same inhumane treatment and protection of rights of prisoners and along with the equal treatment.

III. HOW ARE THE HUMAN RIGHTS OF PRISONERS VIOLATED?

In spite of having such sound and promising laws and various legislations there still remains many issues which are unaccounted for. Such issues being (footnote) –

- 80% of the prisoners are under trial
- Lack of medical aid to prisoners
- Prisoners are not released even after grant of bail
- Punishment given by jail authorities not coherent with the punishment given by the courts

³1974 AIR 2092, 1975 SCR (2) 24

⁴https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

⁵ <https://news.un.org/en/story/2015/10/511912-un-launches-nelson-mandela-rules-improving-treatment-prisoners>

- Inhumane treatment of prisoners
- Harsh and Mental torture⁶

On April 19, 2018 Ethiopia's attorney announced the dismissal of five top prison officials for alleged human rights violation. Ethiopia has been long criticised for its inhumane and cruel practices followed in the prison. The Human rights watch report has also criticised the Somalian practices followed in its prisons⁷. Mere conviction does not mean that the prisoners have to be treated inhumanely with their basic human rights withdrawn. It is surprising to notice that even in the 21st century there is a fight for the protection of basic human rights. Such above scenario clearly proves and very well gives us all an idea of the conditions prisoners are kept in. Only making certain treaties and legislations is not enough. Such legislations and international instruments have no use unless they are properly implemented. It is not uncommon to note that many a times the prisoners who have completed their sentence are not released in time. The Agra central jail has 100 prisoners over the age of 70 who are still not released even after the apex court's order. Such delay was brought to notice by the National human rights commission (NHRC)⁸. This is nothing else but the infringement of basic human rights of such prisoners. What else recourse do such prisoners have when they have reached the top tier of judiciary but are still not able to stop violation of their rights? Prisoners are treated like commodities or rather a subject of experimentation. Every second person when asked comes to the support of basic human rights for everyone, but why is that when such rights are demanded for prisoners everyone is hesitant about the same? The honourable Supreme Court of India in **Sunil Batra v Delhi Administration**⁹ has answered the question of whether the prisoners are persons? It stated "To answer in the negative is to convict the nation and the Constitution of dehumanization and to repudiate the world legal order, which now recognizes rights of prisoners in the International Covenant on Prisoners' Rights to which India has signed assent. Now let's talk about the so called speedy trials and bail system in India. With a large number of people living below the poverty line is it fair or rather is it justifiable to subject them to such high amount of bails/sureties which obviously they won't be able to afford? The answer is no. The Supreme Court has also expressed its concern on the said issue. In the case of **Hussainara Khatoon (II) v Home Secretary, State of Bihar**¹⁰ it was stated that a large number of people were kept in jail for years who were charged with only petty crimes and if convicted would only be sentenced to few months of prison. The Supreme Court itself said that one reason why our judicial system continuously denies justice to poor by keeping them in jail for so many years without trial is the

⁶<http://www.hrln.org/hrln/prisoners-rights.html>

⁷https://www.washingtonpost.com/world/africa/ethiopia-fires-prison-officials-for-human-rights-abuses/2018/07/05/aff0c180-801c-11e8-b0ef-ffffcabe946_story.html?noredirect=on&utm_term=.f33892bfb250

⁸https://m.timesofindia.com/city/agra/-Despite-SC-release-order-more-than-100-convicts-above-70-yrs-of-age-still-in-Agra-prison/amp_articleshow/53689443.cms

⁹1980 AIR 1579, 1980 SCR (2) 557

¹⁰1979 AIR 1369, 1979 SCR (3) 532

highly unsatisfactory bail system prevailing in our country. The amount fixed for bail is so high that such people are not able to afford it and as a result are not able to get released and ultimately it is nothing but a violation of their rights. If we talk about sureties then again it is an almost impossible task for the poor to find such solvent people who would stand as their sureties. This is only one of the examples about how the basic rights of prisoners are being violated. No heed is being paid to their standard of living or their conditions. This is where such violations of human rights start. It is the duty of the government to look after its citizens but how will its citizens trust their government when the only people whose rights are being protected are the ones having a substantial amount of money or who are not part of the so called lower class. Do the people living under the poverty line or whose financial conditions are not strong deserve no right to be recognised or to protect their rights? It is thus quite ironical that where on one side such laws/legislations are made to help people protect their rights but on the other hand because of such laws and their frivolous provisions such rights are violated. What can a normal citizen of a country expect from its government in these conditions? Will he/she be able to trust the government? The answer is no. The problem of people having served their sentence but not being released is gradually hitting the headlines. This is a serious issue as it is not a matter of shock to learn that their government many a times deny to recognise them as their citizens. As a result such people have nowhere to go and serve many long years if not lifetime in the jail only. In march 2018 the Central government told the supreme court that almost 56 people who have completed their term are still not released and are kept in jail simply because Pakistan government denies to recognise them as their citizens. These 56 people are divided into ones who have completed their sentence and others against whom no offence has been registered¹¹. One question which would normally pop up in a prudent man's mind is that what is the mistake of such people in such non recognition by their government? This is how basic rights of such people are being violated. It is a practice which is not getting solved anytime sooner. Another downside of such problem is the prisons in India are getting overcrowded. Such violation of rights is a part of traditional rivalry between the two countries. Many of such prisoners also consist of minors, women, deaf and dumb etc. Where is the humanity? Nations across the world are so indulged in their rivalries and their treaties that no one is talking about basic humanity and have lost the basic human touch. The sole reason for such international treaties regarding human rights is to protect the rights of such people. But what is the use of such treaties when they are not going to be implemented? And just used as a piece of decoration by those in power. The 2016 data of prisoners show that approximately 20-25 Pakistan nationals are held in Indian jails and on the other hand around 45 Indian

¹¹ <https://timesofindia.indiatimes.com/india/term-over-but-56-pakistani-prisoners-cant-return-home/articleshow/63338682.cms>

nationals are kept in Pakistan jail. Such censuses are rapidly hitting the headlines every other day but what good are these censuses when no step is going to be taken in this direction?¹²

This violation of human rights is not something exclusive to India. Internationally there have been many more incidents of such human rights violation of convicts. In Morocco twenty two prisoners were burned alive in 1997. The country's justice minister acknowledged that overcrowding might have a role to play in such incident. In the same year Russia's prosecutor general announced that almost 2000 prisoners have died because of tuberculosis in the previous year.¹³

IV. CONCLUSION

The incidents and facts stated above is not something new or something uncommon. Such practices are followed and such violation of human rights is the hard hitting reality. Many international organisations have tried their best and are still trying to protect and avert such situations. Every year one of many such cases hit the spotlight but after justice is served people tend to forget that there are plenty of other such cases which require attention and many such prisoners need to be saved. Be it India, Pakistan or any other country such human rights violation is not uncommon. The mindset of the society is such that a convict never really sees the light of freedom even after serving his sentence. People need to understand that these people are not mere subjects of experimentation or an outcast. If such mentality of people is not changed then there is no point of such highly applauded treaties until these actually get implemented and fulfil the purpose. Education can only impart a part of such information but what really drives one towards protection against such insanity is humanity rationality and awareness. Prisons are made to punish as well as perform the function of rehabilitation and reform the prisoners, to again become a part of the society. But when such inhumane practices are being followed how can one expect someone to be a better person? The only solution which is not something new is making people aware right from the early life. Teaching our children about the judicial systems including the prisoners, prison and how it works is important but equally important is for them to learn that once convicted these prisoners do not cease to be a human being. Basic human rights are still available to them. It should be a part of everyone's education and not only for those who opt to study about the same. This is the only way the mentality of our society could shape up to be something great. If one is successful in this aspect then such highly spoken treaties would no longer be needed and maybe even one can think that in the near future the crime rate may drop. Therefore only highlighting such issues is not enough, working towards such issues is equally important. We

¹² <https://www.thenews.com.pk/print/177167-More-Pakistani-prisoners-in-Indian-jails-await-Nisars-attention>

¹³ <https://www.hrw.org/legacy/advocacy/prison> People dying in judicial custody is something which is happening quite often nowadays. It is no rocket science that most of the times it is a result of the harsh and insane torturous treatment by the authorities. s/abuses.htm

must take certain steps towards protection of such atrocities. Some of the steps which can be helpful in this regard are:

- Making such provisions which are available in international agreements and also in domestic laws a part of early education.
- Making sure that the amount of bail/sureties are not something which is grossly outside the paying capacity of a person.
- Making prisons more than a centre of punishment for example a place for rehabilitation.
- Making regular checks of the attitude and methods used by the jail authorities.

These are only some of the steps that can be taken in this regard. For proper implementation such long followed hatred between the countries need to end and the human values need to be promoted. We are no longer living in the era where gas chambers are used for torturing the people and neither are we living in a time where inhumane treatment be it of the prisoners or anyone should be promoted. Certain fundamentals rights which are provided to us were given keeping something in mind. The spirit of our constitution should be upheld. Failure to provide justice to even a single person will lead to failure of overall judicial system of the country. Only a single organisation is not nearly enough to provide justice to such people. Therefore information and knowledge about laws of a country and such issues which are integral to every country's judicial system must be made part of mandatory education. Prisoners must be given a good chance to change and transform themselves otherwise the feeling of hatred will continue to assist and aid in such insanity. Prisons are slowly becoming a place of business where a hierarchy is being formed and the prisoners who are at the lowest level of so called hierarchy are suffering while those sitting at the top are enjoying all the luxuries of life. This needs to be stopped as soon as possible otherwise a time may come where the corruption and crime rate in a country will soon be rising at a rate never seen before. Societal norms and mentality including general perception needs to be transformed so as the whole nation can progress. There is a reason why the concept of parole and letting off on the basis of good behaviour is present. There are countless number of provisions, laws, legislations, norms etc present for the protection of such rights but we need to ultimately follow it rather than talk about it to get something fruitful out of such laws. Judicial system of every country is the base for its progress and improving such system will no doubt lead the country towards progress and nothing else. It is time that people start treating prisoners as human beings and help them to metamorphose into something better. In the end every human must be given a chance and the only way to make this happen is to protect and successfully provide basic rights to everyone whether a prisoner or a normal person.