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# Supreme Court on Prison Administration

Authored By -Anjali Bhatt

President Nelson Mandela commented during his time of incarceration:

*“Prison not only deprives you of your freedom, it endeavors to take away your distinctiveness. It is by meaning a purely dictatorial State that endures no liberation and individuality. As a freedom fighter and as a man, one must fight against the prison's efforts to rob one of these qualities.”*<sup>1</sup>

Prisons constitute a critical area of human rights. The sentence of detention not only implies denial of liberty which is the most elementary of all human rights but also imposes restrictions on the life and personal independence and autonomy of the individual involved. Once a person is incarcerated and his/her life is regulated by the State, he/she is endangered to suffer human rights abuses. Apart from the stigma associated with imprisonment, there is a general attitude of prisoners not being considered fit for the same protection as other members of society. As the poor are over-represented in prison population, with little advocacy to protect their human rights, they are particularly vulnerable to maltreatment.<sup>2</sup>

Expressively, the human rights personified in the United Nations Instruments<sup>3</sup> are wholly in tune with the spirit behind the Fundamental Rights and Directive Principles of State Policy and in the Constitution of India. Human Rights of detainees have been deciphered inside the system of the key rights known as fundamental rights as set down in the Constitution of India. In the course of 30 years, the Supreme Court of India has

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<sup>1</sup> S Singh, *The historical development of prisons in South Africa: A penological perspective*, NWU Institutional Repository, 2005, <http://dspace.nwu.ac.za/handle/10394/5312>.

<sup>2</sup> National Human Rights Commission, New Delhi, *Improving Prison conditions in India—A Human Rights Perspective*. (unpublished manuscript)

<sup>3</sup> Some of the United Nations Instruments are as follows:

- i. Standard Minimum Rules for the Treatment of Prisoners (1955).
- ii. Principles of Medical Ethics relevant to the Role of Health Personnel, particularly physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1982).
- iii. Convention against Torture (1984).
- iv. Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (1988).
- v. Basic Principles for the Treatment of Prisoners (1990).
- vi. United Nations Standard Minimum Rules for non-custodial measures (The Tokyo Rules) (1990).

repeated the Principle "detainment does not spell goodbye to basic rights"<sup>4</sup>. Therefore, the Court has amiably expressed that for a detainee the fundamental rights are enforceable authenticity, however constrained by the actuality of imprisonment. This viewpoint has more than once been accentuated by the Apex Court and has prompted the enunciation of three fundamental principles for the jail organization to follow:

1. An individual in detention does not become a non- person;
1. An imprisoned entity is permitted to delight in all human rights within the constraints of confinement; and
2. A criminal is imprisoned as punishment and not for punishment i.e the prison personnel's has no authority to exaggerate his/her misery supplementary to imprisonment.

In recent years, the advocacy for the protection of human rights of persons in prison custody has stirred the Court to intervene in all such areas where the prison management is likely to exercise its power arbitrarily or indiscriminately.

Discarding its erstwhile "hands-off" doctrine towards prisons in favor of a judicial intervention when the rights of prisoners are found in jeopardy, the Supreme Court has issued a number of directives to the prison administration. Accordingly, the Court has held that prisoners must be allowed to study, workout, perform leisure activities for pastime, concentration and yoga activities, live in suitable environment as per weather conditions, absolute freedom from torturous activities like compulsory nudism, involuntary homosexuality and other intolerable alacrity, movement of detainees inside the grounds of jail subject to necessities of order and security, the base satisfaction or presentation toward oneself to procure abilities and strategies and all other essential rights as customized to the impediment of detainment.

As indicated by the Supreme Court, while physical ambushes are to be completely disposed of actually, also pushing the detainees into a singular cell, dissent and essential facilities, exchanging detainees to a removed jail, allotment of debasing work, appointing him/her to edgy or intense gang, and so forth must fulfill Articles 21, 11 and 19 of the Constitution. The youthful detainees must be divided and liberated from misuse by grown-ups. Any unforgiving disconnection from society for long or extensive cell detainment can be

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<sup>4</sup> *Charles Sobraj v. Supt., Central Jail*, (1978) 4 SCC 104 : AIR 1978 SC 1514

delivered just reliably with reasonable strategy. Subject to discipline and security, detainees must be given their entitlement to meet his fellowmen/individual ladies, meetings, visits and classified correspondence with legal counselors assigned by the competent authorities.

In a comprehensive judgment delivered in *Rama Murthy v. State of Karnataka*<sup>5</sup> on December, 1996, the Supreme Court observed that there were 9 basic difficulties that posed to the prison system in India and required prompt deliberation. These take account of:

- i. Overcrowding,
- ii. Delay in trial,
- iii. Torture and ill-treatment,
- iv. Neglect of health hygiene,
- v. Insubstantial food and adequate clothing,
- vi. Prison vices,
- vii. Deficiency in communication,
- viii. Streamlining of jail visits and
- ix. Management of open air prisons.

While issuing show cause notices to central and State Governments on the relevant points, the Court has emphasized, inter alia the need to consider the enactment of a new prison law on the lines suggested by the National Human Rights Commission, and the formulation of a new Model Jail Manual for the country as whole. A reference has also been made to the recommendations of the All India Committee on Jail Reforms (1980-83) commonly known as Mulla Committee, in regard to the systems of remission, parole and premature release, facilities for health and hygiene, food and clothing and streamlining of the jail visits.

The Supreme Court further observed that “A sound prison system is a critical necessity of our age”. The Supreme Court of India laid weightage on the following cases and stated that *Charles Sobraj*<sup>6</sup> and *Sunil Batra*<sup>7</sup> should be deliberated as “beacon lights in so far as management of jails and rights of prisoners are concerned.”

Broadly, the following rights of prisoners have been recognized under the various Indian

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<sup>5</sup> (1997) 2 SCC 642 : AIR 1997 SC 1739.

<sup>6</sup> *Charles Sobraj v. Supt., Central Jail*, (1978) 4 SCC 104 : AIR 1978 SC 1514;

<sup>7</sup> *Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494 : AIR 1978 SC 1675; *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488 : AIR 1980 SC 1579

laws governing prisons<sup>8</sup>, Supreme Court and High Court rulings as well as those recommended by Expert Committees. Each category lists the corresponding duties of the prison staff and other officers of the criminal justice system<sup>9</sup>:

- Rights of women prisoners<sup>10</sup>
- Right to healthy environment and timely medical services<sup>11</sup>
- Right to be lodged appropriately based on proper classification<sup>12</sup>
- Special right of young prisoners to be segregated from adult prisoners<sup>13</sup>
- Right to bail<sup>14</sup>
- Right to speedy trial<sup>15</sup>
- Right to free legal services<sup>16</sup>
- Right to have interviews with one's lawyer<sup>17</sup>

<sup>8</sup> These are Prisoners Act (1894), Prisons Act (1900), Identification of Prisoners Act (1920), Transfer of Prisoners Act (1950) Prisoners (Attendance in Courts) Act (1955), Civil Jails Act (1874), Borstal School Act, Habitual Offenders Act, and Mental Health Act, 1987. Other than these, the Jail Manuals of each State govern the day to day administration of prisons in the States.

<sup>9</sup> SREEKUMAR. R, HANDBOOK FOR PRISON VISITORS, New Delhi: Commonwealth Human Rights Initiative, (2003).

<sup>10</sup> *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96: AIR 1983 SC 378; and also refer Section 24(3) of Prisons Act, 1894.]

<sup>11</sup> Refer various sections of Prisons Act, 1894: such as Sections 24(3); 13, 26(3), 26(2), 29, 35(2), and 39-A. Also refer *Rama Murthy v. State of Karnataka*, (1997) 2 SCC 642 : AIR 1997 SC 1739; and NHRC letter DO No. 4/3/99-PRP and P dated 11-2-1999 addressed to all Chief Secretaries/Administrators of all States/UTs.

<sup>12</sup> Section 27(3), Prisons Act, 1894: and *Rakesh Kaushik v. B.L. Vig.*, 1980 Supp SCC 183: AIR 1981 SC 1767.

<sup>13</sup> Section 27(3) Prisons Act, 1894. Also refers to the Right to Protection against Being Force into Sexual Activities.

<sup>14</sup> Section 436-A CrPC lays down the right of an under trial to apply for bail once he/she has served one-half of the maximum term of sentence he/she would have served had he/she been convicted. On a bail application filed under this section, the Court shall hear the Public Prosecutor and may order the:(i) release such person on a personal bond with or without surety; or(ii) release of such person on bail instead of personal bond; or(iii) continue detention of such person (in cases pertaining to (2) and (3). The Court is required to record reasons in writing. This section further prescribes the detention of an under trial beyond the maximum period of punishment prescribed for the offence he/she is alleged to have committed. (This provision is not applicable to persons who are accused of an offence which attracts death sentence as are of the punishment). This is noteworthy to maintain that Section 436-A was inserted in the Criminal Procedure Code by the Code of Criminal Procedure (Amendment) 2005 vide Act 25-9-2005, w.e.f. 23-6-2006. Please also refer Supreme Court rulings in *Motiram v. State of M.P.*, (1978) 4 SCC 47 : AIR 1978 SC 1594; *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 93 : AIR 1979 SC 1360; *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731; *Common cause v. Union of India*, (1996) 4 SCC 33.

<sup>15</sup> *Hussainara Khatoon (1) v. State of Bihar*, (1980) 1 SCC 93: AIR 1979 SC 1360. This aside, non-official visitors appointed under Jail Manual Rules should follow up with the officials concerned.

<sup>16</sup> *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544: AIR 1978 SC 1548. Also refer Section 383 CrPC *Sunil Batra (II) v. Delhi Administration*, (1980) 3 SCC 488 para 79(1) of p. 522.

- Right against being detained for more than the period of sentence imposed by the Court<sup>18</sup>
- Right to protection against being forced into sexual activities<sup>19</sup>
- Right against arbitrary use of handcuffs and fetters<sup>20</sup>
- Right against torture, cruel and degrading punishment<sup>21</sup>
- Right not be punished with solitary confinement for a prison offence<sup>22</sup>
- Right to air grievances to effective remedy<sup>23</sup>
- Right to evoke the writ Habeas Corpus against prison authorities for excesses<sup>24</sup>
- Right to be compensated for violation of human rights<sup>25</sup>
- Right against arbitrary prison punishment<sup>26</sup>
- Right to reformative programs<sup>27</sup>
- Right to information about prisons rules<sup>28</sup>
- Right to visit and access by family members of prisoners<sup>29</sup>
- Right to write letters to family and friends and to receive letters, magazines, etc.<sup>30</sup>
- Right in the context of enjoyment of prisoners and prison wages<sup>31</sup>

Besides, Supreme Court and High Court rulings on prisoners' rights, the problems of prison administration in India have been examined by expert bodies since independence. Their reports contain extensive recommendations for streamlining prison management. As early as 1951, Dr. W.C. Reckless was invited by the Government of India under the UN Technical

<sup>17</sup> Section 40 of Prisons Act, 1894. Also refer *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488 para 78 (3) of p. 521.

<sup>18</sup> *Veena Sethi v. State of Bihar*, (1982) 2 SCC 583: AIR 1983 SC 339. Also refer Section 12(2) of Prisons Act, 1894.

<sup>19</sup> *Munna v. State of U.P.*, (1982) 1 SCC 545: AIR 1982 SC 806. Also refer No escape: Male rape in US prisons, Human Rights Watch, New York, 2001.

<sup>20</sup> *Prem Shankar Shukla v. Delhi Admn.*, (1980) 3 SCC 526: AIR 1980 SC 1535. Also refer *Sunil Gupta v. State of M.P.*, (1990) 3 SCC 119 and *Citizens for Democracy v. State of Assam*, (1995) 3 SCC 743: AIR 1996 SC 2193.

<sup>21</sup> *Francis Coralie Mullin v. Union Territory of Delhi*, (1981) 1 SCC 608 : AIR 1981 SC 746

<sup>22</sup> *Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494 : AIR 1978 SC 1675

<sup>23</sup> *Sunil Batra (II) v. Delhi Admn.* (1980) 3 SCC 488 para 78(4) at p. 521.

<sup>24</sup> *Sunil Batra (II) v. Delhi Admn.* (1980) 3 SCC 488 at page 504.

<sup>25</sup> *Rudul Shah v. State of Bihar*, (1983) 4 SCC 141: AIR 1983 SC 1086, *Sebastian M. Hongray v. Union of India*, (1984) 3 SCC 82: AIR 1984 SC 1026 and *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416: AIR 1997 SC 614.

<sup>26</sup> Section 50 of Prisons Act of 1894.

<sup>27</sup> Ibid

<sup>28</sup> *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488 para 79 (1) of p. 522.

<sup>29</sup> *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488.

<sup>30</sup> Ibid.

<sup>31</sup> Various Sections 34 and 35 of Prisons Act, 1894 and also *State of Gujarat v. High Court of Gujarat*, (1998) 7 SCC 392.

Assistance Program to prepare a plan for the reorganization of prison system on modern lines. The All India Jail Manual Committee, 1957-59, formulated a model prison manual which was circulated among the State Governments as a guide for revising their respective prison manuals. Subsequently, the All India Committee on Jail Reforms 1980-83 (commonly known as Mulla Committee) presented detailed blueprint for the restructuring of prison administration in a progressive manner. Among its major recommendations, this Committee proposed a draft of a national policy and an outline of consolidated law on prisons in the country. However, the performance has yet to match the intent, as a result of which the cleavage between the objectives and the achievements has increased over the years, especially in the wake of a heightened advocacy for the protection of human rights in prisons and the judicial activism to see it happening.<sup>32</sup>

This aside, during last 25 years various committees Kapoor Committee (1986),<sup>33</sup> National Expert Committee on Women Prisoners (1987)<sup>34</sup>, All India Model Prison Manual Committee (2000), [Bureau of Police Research and Development (BPR and D), Ministry of Home Affairs, New Delhi.] Parliamentary Committee on Empowerment of Women 2001-02<sup>35</sup>, All India Committee on Reforms in Criminal Justice (2003)<sup>36</sup> (commonly known as Malimath Committee), All India Committee on National Draft Policy on Prison Reforms and Corrections (2007)<sup>37</sup>, and Committee on Draft Policy on Criminal Justice Reforms<sup>38</sup> headed by Dr. Madhav Menon were constituted by the Government of India to improve human rights situation to the extent as are conducive to the reformation and rehabilitation of prisoners in the changing scenario.

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<sup>32</sup> Singh, Hira, *Status of Human Rights in Prisons*, ACPF Sixth World Conference, New Delhi (December, 1999)

<sup>33</sup> A Group of Officers on Prison Administration headed by Shri R.K. Kapoor (1986) popularly known as Kapoor Committee, was constituted to examine and review various aspects such as prison administration and prison management, especially in the context of security and discipline in prisons and suggest measures for their improvement

<sup>34</sup> National Expert Committee on Women Prisoners of 1987 chaired by Justice V.R. Krishna Iyer.

<sup>35</sup> Third Report of the Parliamentary Committee on Empowerment on "Women in Detention" presented to the Parliament on 24-8-2001.

<sup>36</sup> Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, New Delhi, (2003).

<sup>37</sup> Constituted by Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, New Delhi.

<sup>38</sup> Constituted by Ministry of Home Affairs, 2007.

Besides Supreme Court and High Court rulings and recommendations made by various committees on prisons reforms, the National Human Rights Commission<sup>39</sup> has also issued guidelines and written letters to various authorities including the Judiciary, the prison departments and the State Governments to ensure that the right of prisoners are respected. The Commission has also recommended the payment of interim compensation to the prisoners/next of kin in violation of their human rights during incarceration period.

## Upholding the specific rights of prisoners

The Judicial activism in jail related matters had a constrained effect, subsequent to the Court could by and large give help in individual cases, the general administration of penitentiaries stayed more or the less unaffected. This is not amazing in view of the jail administration. The jail administration is most impervious to change and view outside intercessions as superfluous impedance. Mulla Committee (1983 p. 279) remarked on the misgivings:

*“The humanistic approach in the treatment of offenders being emphasized by the courts through their judgment seems to have generated an unfounded apprehension of security and personal risk among them. Staff has taken all such healthy directions in the wrong perspective and has interpreted them as leading to unbridled laxity in prison discipline.”*

Besides higher judiciary reforms initiated by various Commissions and Civil Society Organizations during last 15 year or so cannot show pouring effect on the basic level. The jail administration don't like bleeding heart liberal approach of the judiciary and Human Rights Commission because it has opened the floodgate of prison litigations many of which,

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<sup>39</sup> One of the important functions of the National Human Rights Commission as provided under Section 12(c) of the Protection of Human Rights Act, 1993 (as amended) by the Protection of Human Rights (Amendment) Act, 2006—No. 43 of 2006) is to “visit notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations there one to the Government”. The Commission during the last 16 years undertook visits to a large number of prisons all over the country, enquired into numerous complaints regarding violation of human rights from prisoners and highlighted the need for prison reform in its orders and reports. The Commission time and again reiterated that there is an urgent need for systematic reforms in prisons. (For details please refer proceeding of workshop on detention held on October 11-12-2008, at New Delhi, published by NHRC, New Delhi, 2008. Also refer Annual Reports and a recent publication “Human Rights Best Practices Relating to Criminal Justice in a Nutshell”. Besides above, for details refer “Rights Behind Bars” published by Commonwealth Human Rights Initiative, New Delhi, 2009, [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org) and Annual reports of National Human Rights Commission, New Delhi, [www.nhrc.nic.in](http://www.nhrc.nic.in)

they say, are based on false and frivolous ground. To explain their view point, they say that offenders charged for organized and political crime, etc. often forward false and malicious complaints against prison staff in order to brow-beat and demoralize them. Some prisoners, they say, are interested in lax administration so that they may violate the rules of jail control, concentrate benefits, get a prevailing position on other prisoners, carry booty and orchestrate continuous visits to outside healing centers. To accomplish these targets they need to cripple the jail staff by making false, unmerited and noxious affirmations.

Despite the impassive or antagonistic demeanor of most of the jail authorities with respect to court made jail changes, there are few amongst them who see a silver lining in the legal and semi legal intercessions in jail administration.

Judicial intervention in specific cases has been invited by the dynamic jail administrators who have since quite a while ago perceived the requirement for change, yet have did not have the valor to push the legislature and different authorities to do their obligation. Judicial activism, they contend, can help fulfill the changes that numerous jail authorities are holding up to perform. Their more vital contention is that under judicial risk of court activity the lawmakers and top level jail administration may quicken proper therapeutic measures for jail changes.

Scholastics in Criminology and Correctional Administration, social workforce and human rights activists take part in the field have broadly invited lobbyist mediation of the judiciary in the dinky business of jail administration. They feel that the judicial mediation has at any rate possessed the capacity to make the likelihood and appearance of detainees' rights. They see three net increases<sup>40</sup>.

- i. The alteration of convicts from non-persons to a jural body;
- ii. Prison administration are uncertainly starting to accept that unqualified powers over the lives of offenders is threatened; and
- iii. Jail litigations have required a small opening in a system surely in need of freshening.

**There is a far reaching mindfulness among the edified circles that regardless of court**

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<sup>40</sup> LNJN National Institute of Criminology and Forensic Science, *Special course on Human Rights in Prison Administration*, Ministry of Home Affairs, Government of India, New Delhi.

requested changes and the landmark work done by different expert committies at the national and State levels, jail organization has been ignored for long. The decisions of the Apex Court have expanded the gap between the treasured standards and real practices. Administered by the age-old laws, out mode structure and outdated systems and contraptions, the jail organization end up not able to adapt to the changed and changing requests of the general public experiencing significant change. It is along these lines, high time that a real push is given towards through rebuilding of the Indian jail framework.

