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RESEARCH ON INDIAN PRISON

PROBLEM: A LEGAL ANALYSIS

AUTHORED BY - TEKCHAND

ABSTRACT:

An individual is no longer someone to be punished and reformed with harsh and intolerable punishment when they choose to stray from the path of ethical principles and moral behaviour traceable to a responsible citizen. To cleanse the accused's mind of the wrongdoing beliefs, a system must be developed that is tailored to his unique circumstances. This study aims to explain the many measures periodically taken by Indian governments to speed up the process. There has been discussion of the legislative provisions as well as the committees established to make recommendations. The main issues affecting the reform process have been emphasised in an effort to come up with a solution to decrease their impact.

Keywords: Prison, Prison problems, Prison administration etc.

1. INTRODUCTION:

A system of punishment is represented by the word prison. In most cases, the accused individual is placed in an institution along with the under-trials and suspects ¹. Correctional facilities must be established in order to rid offenders of their criminal intent to cause destruction because crime is inevitable in any community. It could be argued that we are led to believe that a society devoid of crime and criminals is impossible. Because of this, prisons are essential to every civilization. The guiding principle of India's criminal justice system has been "hate the crime, not the criminal." Every time an accused person is sentenced to prison time, a process of repentance and transformation also ensues. Too strict and demanding counselling drives offenders nuts, results in more terrible outcomes, and undermines the impartiality of the sentencing. Herein lies the need to transform prisons from a

¹ Sharma, P. D. (1998). Criminal Justice Administration. In P. D. Sharma, Criminal Justice Administration (p.145). Rajasthan: Rawat Publications

haven for lawbreakers to a setting that fosters character development. This study focuses especially on the areas of research pertaining to the current jail system in India and its potential restructuring.

2. HISTORICAL BACKGROUND

The British prison model, which was influenced by jail developments in America at the end of the eighteenth century², is the foundation of the present prison system in India. It is commonly known that India has had a well-organized prison system since the beginning of time. It is known that Brahaspati placed great emphasis on keeping criminals incarcerated in closed facilities. Manu, however, disagreed with this system. According to Arthashastra, Kautilya claimed that the kings of ancient India frequently housed their prisoners in forts. He believed that prisons should be built as close to the road as possible in order to greatly lessen the monotony of jail life. Because the spiritual sides of life were overemphasised in ancient India, jails were built to offer plenty of opportunities for repentance and penance. It was standard procedure to place the inmates in solitary confinement in order to provide them with the chance for contemplation.³

3. PRISONERS' CONSTITUTIONAL STATUS AND RIGHTS

The law would abandon convicts at the jail door and sentence them to "civil death," but prisoners are no longer viewed as objects or slaves of the country.⁴ It has gradually come to be accepted that just because someone committed a crime and was imprisoned, they are still people.

In **Charles Shobraj v. Superintendent, Tihar Jail**, the Supreme Court made it abundantly clear that prisoners are entitled to the fundamental liberties protected by the Constitution "except for the fact that the compulsion to live in a prison requires by its own force the lack of certain rights, like the right to move freely or to practise a profession of one's choice⁵."

² Gosh, P. (n.d.). Share Your Essays. Retrieved April 29, 2021, from [www.shareyouressays.com](https://www.shareyouressays.com/essays/essay-on-modern-prison-system-in-india-599-words/121436): <https://www.shareyouressays.com/essays/essay-on-modern-prison-system-in-india-599-words/121436>

³ Paranjape, N. V. (2017). Criminology, Penology, Victimology. Allahabad: Central Law Publications.

⁴ DR. KURT NEUDEK, THE UNITED NATIONS IN IMPRISONMENT TODAY AND TOMORROW- INTERNATIONAL PERSPECTIVES ON PRISONERS' RIGHTS AND PRISON CONDITIONS EDS., DIRK VAN ZYL SMIT AND FRIEDER DUNKEL; Kluwer Law and Taxation Publishers, Deventer, Netherlands, (1st ed. 1991)

⁵ Charles Shobraj vs. Superintendent, Tihar Jail, A.I.R. 1978 S.C. 1514.

The Indian Constitution offers certain constitutional rights (FR), but these rights are not unalienable and are subject to some fair limitations. A person who has been found guilty and imprisoned has a distinct status than free people. Prisoners are not entitled to the same fundamental rights that are guaranteed to men in the open.

STATUTORY PROVISIONS: Because a prisoner continues to be a "person" inside the prison, they are also offered certain rights that are listed in Part 3rd of the Indian Constitution. ⁶The Supreme Court has now provided a fairly thorough interpretation of the right to personal liberty. Not only are free men entitled to this fundamental right, but also people who are in legal trouble. the right to a prompt trial, free legal assistance, protection against torture, protection from inhumane treatment, and protection from being subjected to humiliating treatment while in custody.

Article 14, ⁷which states the equality principle. In Article 14, the concepts of "equal should be treated equally" and "reasonable classification" are mentioned. These concepts have proven to be highly helpful tools for courts when examining the category of inmates and the grounds for their classification in other groups.

Article 19, ⁸The residents of our country are granted six freedoms under Article 19 of the Constitution. Some of these freedoms, such as "freedom of movement," "freedom to reside and to settle," and "freedom of profession, occupation, trade, or business," cannot be exercised by prisoners because they infringe on the purpose of prisons and the government has the authority to impose reasonable restrictions on them. But those who have been found guilty of an offence can exercise other fundamental rights like "freedom of speech and expression," "freedom to join an association," etc. However, this will be regarded as the prison laws' restrictions.

Article 20(1), ⁹protects people from ex post facto legislation; this part of the constitution prevents a prisoner from being sentenced to any punishment.

⁶ Sunil Batra v. Delhi Administration, A.I.R 1980 S.C. 1579.

⁷ INDIAN Constitution Article 14

⁸ INDIAN Constitution Article 19

⁹ INDIAN Constitution Article 20(1)

Article 20 (2),¹⁰ which stands for the concept of "Double Jeopardy," cites the common law principle of "Nemo Debet Vis Vexari," which declares that no one should be imprisoned twice for the same conduct.

Article 20(3)¹¹ of the Indian Constitution mentions one of the crucial protections that are helpful for under-trials and "detenues," which states that the jail or police officials cannot force the prisoners to testify.

Article 21, A individual has the right to life under Article 21 of the Indian Constitution¹². It incorporates the idea of liberty. In the wake of the Maneka Gandhi case¹³, the Supreme Court provided a broad interpretation and a right that has been utilised to fight any action conducted arbitrarily by executive agencies, such as the police and prison authority. Following that ruling, a fair and reasonable method for robbing people of their life and personal liberty was established.

The court stated that "the ambit of Personal Liberty by Article 21 of the Constitution is wide and complete" in the case of A.K. Gopalan. It covers both the actual rights to personal liberty and the process for denying such rights.¹⁴

The Court also ruled that the right to life, which is guaranteed by Article 21 of the Indian Constitution, includes the idea of a speedy trial.

The "detenues" held under preventative detention statutes are given some specific protections under Article 22(4) to (7). According to Clause (4) of Article 22, a detainee may be held for a maximum of two months without seeking the Advisory Board's approval. A "detenue" is granted two rights under Article 22(4). According to Article 22(6), the authorities may withhold certain information from detenues if doing so would serve the public good. There is a provision for the creation of the Advisory Board, according to Article 22(7).

¹⁰ INDIAN Constitution Article 20(2)

¹¹ INDIAN Constitution Article 20(3)

¹² INDIAN Constitution Article 21

¹³ A.I.R. 1978 S.C. 579

¹⁴ A.K. Gopalan vs U.O.I., A.I.R. 1950 S.C. 27

The Indian Constitution's Article 39 A gives convicts the right to free legal representation.

"Just because someone has received an imprisonment sentence doesn't mean that their rights can be violated¹⁵."

"The Legal Assistance to a Poor or Accused, Arrested and Put in Danger of His Life or Personal Liberty, is a Constitutional Requirement Not Only by Article 39A but also by Articles 14 and Article 21 of the Constitution," ¹⁶the case court stated in its ruling. Articles 72 and 161 of the Indian Constitution allow the President and Governors of States exceptional authority to pardon or show mercy to inmates of the legal system.¹⁷

4. COMMITTEE REPORTS FOR GRANTING RIGHTS TO PRISONERS

PRISON ACT, 1894

Punishment's main goal was to stop criminals from committing the same crime again. The typical methods of India recognises the death penalty, imprisonment, fines, and asset seizures as forms of punishment. The jail enquiry committee expressed alarm in 1862 regarding the unhygienic conditions of jails that led to the deaths of a number of convicts. The Jail committee subsequently issued several recommendations in 1877. the Indian Prison Act of 1894 was passed as a result. The Act established prisoner classification and prohibited the use of the whip. Further improvements to the medical facilities, efforts to provide greater amenities, and elaborate accommodations for female prisoners were made. At this time, inmates' reform and rehabilitation are just as important as their secure confinement. The Act's prison policy has undergone a number of adjustments, but overall it has remained deterrent.¹⁸

The Mulla Committee

The Indian government establishes a Committee on Jail Reform in 1980 and names Justice A. N. Mulla as its chairman. The Committee's main goal was to assess laws, rules, and regulations while

¹⁵ Sheela Barse vs State of Maharashtra, AIR 1983 SC 378.

¹⁶ Sheela Barse vs State of Maharashtra, AIR 1983 SC 378.

¹⁷ Dr.Mukesh Garg & Narshelata Singla, Rights of Women In Prisoners: An Evaluation, 1 IJARMSS 134, 142(2012).

¹⁸ Bhusan, V. (1970). Prison Administration in India. Delhi : S Chand.

keeping in mind that society's protection and offenders' rehabilitation were the committee's overarching goals.¹⁹

The Krishna Iyer Committee

This group was established to begin an investigation of the circumstances facing women prisoners in India today²⁰. Given their unique role in regulating female and juvenile offenders, it has been argued that there be a possibility of more women joining the police force. "Due to their low population, women are subjected to harsher sanctions than men. Because there are so few jails where women can be imprisoned, they have experienced more family upheaval than men. They were misclassified or, in any case, were housed in a prison that was inappropriate for their detention level. For similar reasons, they have received fewer programmes than male inmates, especially in the case of women who are detained under protective custody, of which there are very few. They had no real prospects for seasonal training.

JUDICIARY'S PART IN PROTECTING PRISONERS' RIGHTS:

In India, the judicial system is crucial since it establishes the laws that all residents are required to follow. Every country's judicial system is required by its constitution to uphold its citizens' human rights. Every nation has a court system for the safety of its residents, thus it is required to establish jail rules and regulations for those who break the law. However, that does not imply that the convicts will not have any rights under the country's Constitution. The detainees are also entitled to their fundamental and legal rights. The Indian Apex Court defined the scope of Article 21 of the Indian Constitution and created human rights law to safeguard and uphold prisoners' human dignity. The provisions of Article 14 of the Constitution, which preserve the right to equality and equal protection of the law, will be broken if anyone or any authority violates the rights of inmates.

RIGHT TO LEGAL AID:

The idea of legal aid gives people a way to have their human rights protected when they are being tried or found guilty of any crime. In *M.H. Wadanrao Hoskot v. State of Maharashtra*, "the Court held that the right to legal aid is one of the components of fair procedure, and the Supreme Court reading Articles 21 and 39-A, read with Article 142 and section 304 of the Cr.PC together acknowledged that

¹⁹ The Mulla Committee submitted its report in 1983

²⁰ In 1987, the Government of India appointed the Justice Krishna Iyer.

the Government was under duty to provide legal services to the accused persons."²¹

RIGHT OF EXPRESSION:

The petition raises a concern about press freedom in relation to the citizens of this nation's right to privacy in the case of R. Rajagopal alias R.R. Gopal and Another v. State of Tamil Nadu and Others. The court decided that even without Auto Shankar's permission or agreement, the petitioners have the right to publish what they are claiming to be his life story or autobiography as it exists in the public records. Similarly, neither the State nor its representatives can stop nor limit the aforementioned publishing²².

RIGHT TO SPEEDY TRIAL:

The right to a quick trial is guaranteed to the prisoner as a basic right by Article 21 of the Indian Constitution. This clause ensures a just, equitable, and reasonable process. The right to a fast trial is crucial for the accused since it is a socio-legal requirement to protect the person. The swiftest feasible determination of the accused's guilt or innocence is in the best interests of everyone involved. The criminal justice system's main goal is to provide accused parties with a swift trial. Once the court has taken cognizance of the claim, a quick trial must be held to determine guilt or innocence and release the innocent. It is important to note that if there was a delay, it would immediately amount to a denial of justice, which is why the proverb "justice delayed is justice denied" is used. Section 309 of the Criminal Procedure Code contains the right to a quick trial.

RIGHT TO MEET FRIENDS AND RELATIVES, AS WELL AS TO CONSULT ATTORNEYS:

In addition to safeguarding them from direct physical harm or torture, prisoners' rights have also been recognised in order to protect them from psychological abuse. Animals cannot be excluded from the protections of the right to life and the right to personal freedom provided by Article 21. This concept encompasses more than just physical existence. When Dharmbir v. State of U.P. came before the court, "the court ordered the state government to permit family members to visit the prisoners and, under guarded conditions, to visit their families for the prisoners at least once a year."²³

²¹ M.H. Wadanrao Hoskot v. State of Maharashtra (1979) 1 S.C.R. 192.

²² R. Rajagopal alias R.R. Gopal and Another v. State of Tamil Nadu and Others, (1994) 6 S.C.C. 632.

²³ DHARBIR VS. STATE OF U.P., (1979) 3 S.C.C. 645. .

In the case of Jogindar Kumar v. State of U.P., "the court found that the scope of human rights is expanding while, concurrently, the crime rate is also increasing and that the court received complaints concerning human rights abuses due to indiscriminate arrests. Someone has a right to information, the court noted.²⁴ The right to notify a friend or relative who is familiar to him or who is likely to be concerned for his welfare that he has been arrested and is being held is guaranteed to anyone who is detained in custody, whether they are at a police station or another location. This right is not restricted by this section.

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IN PRISON, THE RIGHT TO REASONABLE PAY

That is what "remuneration" means in its purest sense. "A sum of money given to someone as compensation for work performed." The worker hired as state labour or service shall get compensation that is at least equal to the established minimum wage. There is no distinction between a prisoner serving his or her sentence and a free citizen of the world. The court directed the state to take into account the fair rate of payment of the wages in the case of Mahammad Giasuddin v. State of A.P. It shouldn't be less than the federal minimum wage²⁵.

In People's Union for Democratic Rights v. Union of India, "the court explained that: when an individual offers labour or services to another individual and remuneration which is paid to him is less than the minimum wage in comparison to the labour or services," according to the court's explanation. given by him explicitly fell within the purview and definition of "forced labour" as defined by Article 23 of the Indian Constitution. For inmates to reform, work must be provided inside the jails, and it must be work that is ethical and acceptable. The offered salaries should not be less than the minimum wage²⁶.

²⁴ JOGINDAR KUMAR VS. STATE OF U.P., A.I.R. 1994 S.C. 1349.

²⁵ MAHAMMAD GIASUDDIN V. STATE OF A.P., (1978) 1 S.C.R. 153.

²⁶ PEOPLE'S UNION FOR DEMOCRATIC RIGHTS V. UNION OF INDIA, (1982) 3 S.C.C. 235.

NARCO ANALYSIS/BRAIN MAPPING/POLYGRAPH

In order to get the truth from the convict, the concepts of narcoanalysis, polygraph testing, and brain mapping have become popular investigative tools for agencies around the world.

The Supreme Court ruled in *Selvi v. State of Karnataka*²⁷ that the methods of narcoanalysis, polygraph testing, and brain mapping are unlawful and infringe on human rights. The fact that this choice may obstruct future investigations and give many alleged criminals a way to avoid prosecution makes it less acceptable to different investigative bodies. But after much discussion, the Supreme Court stated that an accused could only be subjected to such tests if he granted his willful agreement. The results of the tests won't be considered, and they can't be used against him in court; they can only be used for future research. These techniques have been employed in a number of high-profile cases in the past for additional investigations, including the Pragya Thakur (Bomb Blast Case), Nithari Killings, Abdul Telagi, Abu Salem, and Nithari Killings cases.

5. INTERNATIONAL INSTRUMENTS FOR PRISONERS:

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR): In an effort to advance human rights throughout the world, the UN General Assembly adopted the UDHR on December 10, 1948. Below was mentioned,

According to Article 1 of the UDHR, "all human beings are born free and equal in dignity and rights." According to Article 2 of the UDHR, "everyone shall have the right to all the rights and freedoms provided for in this Declaration, without distinction of any kind, including but not limited to, race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status."

Every person has the right to life, freedom, and personal security, according to Article 3 of the UDHR. No one shall be "subjected to torture or cruel, inhuman or degrading treatment or punishment," according to Article 5 of the UDHR.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR):

Whether a prisoner or a liberator, the ICCPR guarantees everyone the right to life from birth. Nobody is stripped of their life forcibly, and the law safeguards this right. According to Article 7 of the ICCPR, "no one shall be tortured or subjected to cruel, inhuman, or degrading treatment or punishment." The most significant section of the ICCPR pertaining to prisoner treatment is Article 10. In it, it is stated that "all those deprived of their freedom are treated with humanity and respect for the inherent dignity of the human person."

THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS:

There are numerous regulations pertaining to prisoners' rights under the UN Standard Minimum regulations on the Treatment of Prisoners. This is what it is :

Rules governing the division of inmates into different groups.

Rules governing the accommodation.

Provisions for the meals;

Provisions for the clothing and bedding.

Rules pertaining to physical activity and sports.

Restrictions pertaining to medical services.

Restrictions on the use of a second trial to protect convicts.

Restrictions on the use of corporal punishment, dark-cell punishment, and any other form of inhumane or degrading punishment.

Dispositions pertaining to complaints from and information provided to prisoners.

Restrictions on prisoners' ability to contact their loved ones and trustworthy friends.

THE EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT:

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is created by the Convention. The convention justifies the committee's right to visit any location where people are being held in custody as "any place within its jurisdiction in which the public authority deprives persons of their freedom." Once a state government has been informed of the Committee's intent to visit, it is required to grant access to the area with the following rights: unrestricted free travel; access to all information regarding the facility in question; unrestricted access

to the facility and free movement within it; the ability to speak with any person detained in the facility; and the freedom to freely communicate with anyone who believes they can provide pertinent information. All information gathered is kept private.

UNITED NATIONS BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS:

All prisoners are to be treated equally and with regard for their inherent human dignity and value, according to the fundamental principles for the treatment of prisoners established by the United Nations. With the exception of freedom of movement, they shall be provided in compliance with all human rights and fundamental freedoms outlined in internationally acknowledged documents.

6. SUGGESTIONS AND RECOMMENDATIONS:

The concept of human rights is open-ended and everyone has an inherent right to it Apply human rights regardless of whether you are a prisoner or a free person. A prisoner is someone who: Contrary to existing laws that recognize human rights of all kinds, Limited Legal Rights. Therefore, there is no one to intercede to deprive prisoners of their rights. our country has it Rich history, culture and contemporary context of slavery and lack of slave rights Prisoners are almost like slaves. our government. And the judiciary needs to take serious action Protect the rights of prisoners in pretrial detention or convicted and on trial.

Our Authorities need to align the available jail management with the current Indian criminal provisions, sanctions, and justice system to optimise the efficient and effective use of the present mechanism in order to defend their rights. Authorities need to focus more on young offenders between the ages of 18 and 21 because they are the future of our country and go through a lot of mental change, so prison authorities need to work on their improvement. Our government needs to form more committees to audit all the management and use of resources provided to the management, and prison management needs to submit a yearly report to the committee to prepare a proper record.

Our Authorities need to align the available jail management with the current Indian criminal provisions, sanctions, and justice system to optimise the efficient and effective use of the present mechanism in order to defend their rights.

Inmates need to be organised and settled based on their crimes, charges, and punishment. The system of jail reform will be maintained, and the crime rate will decline. The majority of jails have a problem with overcrowding, which results in a lack of facilities and inadequate prisoner reform. Therefore, the government must build more prisons in various places, and it also needs to emphasise rehabilitation of inmates rather than keeping them behind bars and subjecting them to harsh treatment. Prisoners had a long waiting period while their appeals were being heard by higher courts. This usually occurs as a result of the lengthy wait times for appeals as well as a shortage of judges with the necessary qualifications. As a result, our judicial system requires more judges to hear and decide the higher appeals.

7. CONCLUSION:

It has been noted that a prisoner or convict is someone who is deprived of their liberty against their will. This may be accomplished through detention, capture, or forceful restriction, but he still violates both the rights of the prison and his own human rights. They have also provided all of the rights that a member of society enjoys, but with certain logical limitations. Even if they are in prison, they are not entitled to claim basic rights. He is still able to exercise all of his fundamental rights while incarcerated. When a person is found guilty of a crime and subsequently deprived of their freedom in line with the legal process, they nonetheless retain all of their fundamental rights. The Supreme Court has made corrections and offers crucial direction to the government's executive and legislative branches. Examining the aforementioned contribution makes it very evident that the Indian judiciary was extremely sensitive and eager to defend the rights of the populace. However, the goal of the training and accommodations is still the same: to ensure that the jail and police officials respect seriously the rights of prisoners.