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COMPARATIVE ANALYSIS OF PRISONERS' RIGHTS TO SANITARY FACILITIES AND PERSONAL HYGIENE: BRIEF REVIEW ON INDIA AND BANGLADESH

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Introduction

Conditions related to public health, such as clean water to drink and sewage treatment, are referred to as sanitation. Sanitation encompasses all of the practical instruments and measures that contribute to maintaining a clean environment. According to the World Health Organisation, Hygiene is the term used to describe the circumstances and behaviors that support good health and stop the spread of illness.¹ While sanitation focuses on the proper disposal of human waste, which includes human waste, hygiene primarily addresses illnesses and health. This goes beyond simply maintaining our personal hygiene. This entails giving up any habits that impair one's health such as dumping trash within specified and covered areas, using the lavatory outdoors, and many other things. The purpose of both sanitation and hygiene is to create a society free from disease and populated by healthy individuals in accordance with public health. These two spectrum is not only important in public health rather are also very important goal under SDGs. The international community is working relentlessly to reduce poverty, establish inclusive and sustainable development solutions, safeguard human rights for everyone, and make sure that no one is left behind as part of the UN 2030 Agenda for Sustainable Development, which has 15 unique goals.² Sanitation, cleanliness, and access to clean drinking water are essential to human health and well-being and are also the cornerstones of sustainable development, which is vital to both human and environmental survival. This goal aims to guarantee not just drinking water, sanitation, and cleanliness, but also the quality and sustainability of water resources globally, as well as livelihoods. It also fosters the development of resilient communities that live in hygienic surroundings. Furthermore, human rights depend heavily on these two crucial health spectrums.

¹Sanitation, World Health Organization.

Available at: <https://www.who.int/news-room/fact-sheets/detail/sanitation> (Accessed: 28 October 2023).

²Sustainable development goals, International Partnerships.

Available at: https://international-partnerships.ec.europa.eu/policies/sustainable-development-goals_en (Accessed: 28 October 2023).

Human rights include not only the freedom of speech, the right to an unrestricted life, and the right to dignity, but also the right to good health and a clean, hygienic environment. In 2015, the UN General Assembly legally recognised the human right to sanitation as a distinct and autonomous right. However, the JMP report on the state of clean water, sanitation, and hygiene from 2000 to 2020 states that, as of 2020, one in four people worldwide lacked access to securely managed drinking water in their homes, and nearly half of the world's population lacked access to adequate sanitation.³ The position of neglected people in society in such rights is significantly low. But prisoners are also parallelly entitled like other civilians living in society. In 2009, 19 November, World Toilet Day, observed by the UN, emphasised that everyone has the human right to access clean toilets, with special emphasis on "forgotten" inmates and detainees housed in public institutions.⁴In a joint statement, three UN human rights experts on water and sanitation, health, and torture stated that about 1.8 million fatalities occur annually due to improper sanitation, and 2.5 billion people lack access to it globally whereas access to sanitation is unquestionably a human rights issue.⁵ States are required to guarantee that everyone has access to sanitary facilities, even those who are detained, without it, the fundamental human dignity that forms the foundation of all human rights is violated by cruel detention practices. But the question is if the persons detained, thus the prisoners are getting access to these vital human rights and what is the instance of the international community to ensure these rights of prisoners. States must ensure that everyone, including those in detention, has access to hygienic facilities; otherwise, harsh detention procedures would violate the basic human dignity, which is the cornerstone of all human rights. But the real question is whether those who are detained, and hence the prisoners, are able to exercise these fundamental human rights, and if so, what action is being taken to protect the rights of prisoners?

Prisoners' Rights to Sanitation and Personal Hygiene

A prison is a place of confinement for a number of people convicted of acts referred to as crimes to keep law and order of society in balance. In other words, it is a place of rehabilitation for people convicted of crimes. Generally, it is presumed or expected that such confinement will have two benefits, one for society to keep the balance of law and orders and another is for the persons kept in detention, thus prisoners to have another chance to rehabilitate themselves. So there exists no

³WHO/UNICEF joint monitoring program for water supply, sanitation and hygiene (JMP) ... Available at: <https://www.unwater.org/publications/who/unicef-joint-monitoring-program-water-supply-sanitation-and-hygiene-jmp-progress-0> (Accessed: 28 October 2023).

⁴Protecting the human rights of prisoners (2018) UNESCO.

Available at: <https://en.unesco.org/courier/2018-4/protecting-human-rights-prisoners> (Accessed: 31 October 2023).

⁵Ibid.

means to consider them as less than any normal person living in society.

The intention of protecting the rights of prisoners is not a new rather it has been under observation since the League of Nations and even before. The League of Nations in 1929, first tried to establish minimum rules relating to the treatment of prisoners.⁶The successor of the League of Nations, after the Second World War, had adopted 'Standard Minimum Rules for the treatment of Prisoners' on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955 and later approved by the Economic and Social Council in its resolutions 663 C (XXIV) 1957, and 2076 (LXII), 1977.⁷The basics of this resolution are to eliminate discrimination, and institute separate categories of prisoners, accommodation, personal hygiene, medical services, food, and other features of rehabilitation and the prisoners are so entitled to those rights. After almost three decades in 2010, the UN General Assembly asked the Commission on Crime Prevention and Criminal Justice to organize an open-ended intergovernmental expert group to produce rules or principles to reform the standard minimum rules, as long as any reformations to the regulations don't result in a reduction of the current requirements.⁸Later, the United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as The Mandela Rules, were adopted by the UN-General Assembly in December 2015.⁹ This resolution consists of 122 rules reflecting the primary human rights for prisoners including the rights of women prisoners. The Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, European Convention on Human Rights, The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, The European Prison Rules have also stated and provide rules for the treatments of prisoner and their rights during any such confinement.

Rights of Sanitary Facilities and Personal Hygiene of Prisoners

Several International Treaties and resolutions have provided rules reflecting the treatment of prisoner and their rights, such as the elimination of discrimination, and institution of separate

⁶ Standard minimum rules for the treatment of prisoners

Available

https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners
(Accessed: 28 October 2023).

at:

⁷Ibid.

⁸"UN General Assembly Resolution 65/230". United Nations. 21 December 2010. A/RES/65/230

Avail at: <https://undocs.org/A/RES/65/230>(Accessed on29 October 2023)

⁹"UN General Assembly Resolution 70/175". United Nations. A/RES/70/175

Available at: <https://undocs.org/A/RES/70/175>(Accessed on29 October 2023)

categories of prisoners, accommodation and sanitation, personal hygiene, medical services, food, and other features of rehabilitation. The Mandela Rules offer States comprehensive directives for safeguarding the rights of inmates. The foundation of the Rules is to treat every prisoner with decency and respect for their intrinsic worth as human beings and to forbid any kind of mistreatment. They provide thorough advice on a broad range of topics, from medical services to disciplinary actions. However, among those rights, the right to proper sanitation facilities and personal hygiene are often neglected whereas those rights are vital to maintain the good health of the prisoners. The Mandela Rules 2015 has emphasized the facilities of sanitation and personal hygiene. Rules 15 of this Resolution emphasized that lavatory facilities must be sufficient for each prisoner to be able to appropriately and cleanly satisfy their natural needs when they arise and Rule 18 emphasized that prisoners will be expected to maintain personal hygiene, and in order to help them with this, water and the personal hygiene products that they need, will be given and also have access for men to facilities for frequent shaving and for taking proper care of their hair and beard in order for convicts to retain a respectable appearance.¹⁰Besides men, women prisoners are more vulnerable in terms of diseases. They need more facilities during any such confinement. The supplement to the Mandela Rules, UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) in article 5 emphasized about personal hygiene of women and stipulated that the facilities and supplies needed to meet the unique hygiene needs of women who are incarcerated. These supplies and amenities include free sanitary towels, sanitary pads, and a consistent water supply for the hygiene of women, especially those who cook and those who are pregnant, nursing, or menstruating.¹¹Juvenile detention centers are very crucial rehabilitation centers for any country where juveniles are rather nurtured for good and ethical behaviors than giving them punishment. It is very important for such installations to have proper sanitary facilities which would affect the mental or psychological improvement of those juveniles. UN Rules for the Protection of Juveniles Deprived of their Liberty in its rule 34 emphasized that the sanitary facilities should be situated and maintained at a level that allows all minors to meet their bodily needs in a private, orderly, and respectable manner when necessary.¹² So regardless of sex and age, every detainee or prisoner is entitled to facilities relating to sanitation

¹⁰The United Nations Standard Minimum Rules for the treatment of prisoners.

Available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf (Accessed: 29 October 2023).

¹¹Bangkok Rules - United Nations Office on Drugs and Crime. Available at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf (Accessed: 29 October 2023).

¹²United Nations rules for the protection of juveniles deprived of their ...

Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-protection-juveniles-deprived-their-liberty> (Accessed: 29 October 2023).

and personal hygiene in time of need. This impression includes solitary confinement as well. Other regional instruments, such as European Prison Rights in its Rule 19 emphasized prisoner sanitary and hygiene facilities. However, water scarcity, polluted water, and inadequate sanitary facilities are common issues that prisons worldwide are facing, particularly in post-conflict and low and middle-income nations which pose a greater risk to those prisoners during any occasion of epidemic or pandemic. It has been seen in various reports that toilets are frequently non-functional in places like the Central African Republic, Malawi, Uganda, Ethiopia, and Senegal, and water points for toilets and showers are occasionally built near sanitation outflows and, in Lebanon, prisons also struggle with a lack of basic hygiene supplies and clean water for cooking, drinking, and other purposes for degrading political and economic situations.¹³ Additionally, a UN report from 2021 on Haiti described how inmates in small spaces had no access to water and were forced to use buckets because there were no latrines and in Colombia and Peru facilities relating to water, such as sanitation and hygiene depend on supplies from nearby towns.¹⁴ The developed countries, it is generally expected that their detention center or prisons will be facilitated by the minimum standard of sanitary facilities and hygiene maintenance. The European Committee for the Prevention of Torture discovered that when prisons were unable to provide their basic necessities, detainees were expected to use their minimum-earned resources to buy bottled water, added that water delivery might be erratic or stopped without sufficient notice or backup plans, and that access to restrooms and showers can be restricted which causes a great complication in accessing the facilities of sanitary and hygiene needs.¹⁵ Asian Countries such as Turkey, Tanzania, and Iran, and, low-income countries, such as Myanmar are no exceptions to the priors.¹⁶ Countries like Bangladesh, India, Pakistan, and other South Asian countries often face trouble in providing basic human rights e.g. sanitary facilities and facilities in relation to personal hygiene to the prisoners.

After the two world war, the international community felt the necessity of providing human rights to the prisoners which resulted creation of several resolution that upheld the human rights of prisoners including health facilities, e.g. sanitation and personal hygiene. However, countries worldwide have not attained satisfactory improvement or progress since the adoption of the Mandela Rules 2015.

¹³Water and sanitation (2022) Penal Reform International. Available at: <https://www.penalreform.org/global-prison-trends-2022/water-and-sanitation/> (Accessed: 29 October 2023).

¹⁴Ibid.

¹⁵Water and sanitation (2022) Penal Reform International.

Available at: <https://www.penalreform.org/global-prison-trends-2022/water-and-sanitation/> (Accessed: 29 October 2023).

¹⁶Ibid.

Prisoners' Access to The Sanitary Facilities and Personal Hygiene in Bangladesh & India

The majority of outmoded laws and repressive practices, many of which are remnants of the colonial past, are imposed upon the imprisoned in the South Asian country's jails. Prisons in South Asian countries have been transformed from places of reform and correction into places of eternal torture due to overcrowding, inadequate healthcare facilities, low-quality bedding, terrible sanitation and hygiene, and limited privacy. The prison population suffers excessively even in normal conditions since public health facilities are difficult to access and the COVID-19 pandemic has made conditions for inmates in jails and detention facilities throughout the region worse. India being the largest country, has the highest number of prison or detention cells. On the other hand, Bangladesh being highly populated, has overly crowded prisons and detention cells that struggle to provide facilities stated in the Mandela Rules 2015. The facilities relating to the rights of sanitation and personal hygiene are also very poor along with other principle rules. An overview of facilities in relation to sanitation and personal hygiene is given below.

1. INDIA

Of the Asian countries, China, India, and Thailand have the highest numbers of people in confinement and as the most populous country in South Asia. Among these India has the lowest rates of incarceration. The Constitution of India guarantees the primary rights of its people. In a case namely *States of A.P. vs. Challa Ramkrishna Reddy and Ors. (2000)*, the Honorable Supreme Court of India held that whether convicted or in the trial stage and in jail, he will enjoy every fundamental right guaranteed by the Constitution of India.¹⁷ These fundamental rights include protection of health which extends to proper sanitation facilities and personal hygiene. Further, the Prison Act, 1894 in its section 4 expressed that prisoners have the right to have proper accommodation constructed. Prison Manual 2016 provided rules about living conditions with dignity in all aspects of life, e.g. sanitation and hygiene. However, India is still struggling to provide the right to proper sanitation facilities and personal hygiene, especially in relation to women's hygiene facilities. From 1980 to 1983, *the Mulla Committee* focused on jail reforms, and after almost two decades submitted another report on sanitation and hygiene facilities with other aspects where it was expressed that in many states like Haryana and Uttar Pradesh, the number of lavatories was 50% lower than expected.¹⁸ There is also a significant reliance on open

¹⁷States of A.P. vs. Challa Ramkrishna Reddy and Ors. (2000) 5 SCC 712

¹⁸Implementation of the recommendations of All-India Committee.

Available at: <https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/Mulla%20Committee%20-implementation%20of%20recommendations%20-Vol%20I.pdf> (Accessed: 31 October 2023).

pan-based toilets; in fact, a significant portion of the jail toilets in Tamil Nadu, Uttar Pradesh, and Haryana are of this type.¹⁹The *CGA, comptroller of Auditor General* had published a report mentioning the lack of sanitation facilities in different states.²⁰ India is also lagging behind in providing facilities related to women's health and hygiene, e.g. menstrual hygiene facilities. The Mandela Rules and Bangkok Rules have stated that prisoners, especially women have the right to have sanitary facilities and personal hygiene facilities free of charge, women prisoners had to pay 10 rupees to get sanitary pads.²¹The infrastructure of prisons in India is also deficient in several areas, including sanitary restrooms, enough dustbins, and a location to dispose of sanitary napkins properly. There exist few programs in India that address the menstrual health and hygiene management of women for the general public, but none of them specifically target female prisoners. However, India is constantly trying to overcome the crisis relating to sanitation and hygiene in prison. In its model prison manual, the *Bureau of Police Research and Development* (BPRD) recommended a number of steps to enhance sanitation in Indian jails.²² In the 2011 National Seminar on Prison Reforms, the *National Human Rights Commission (NHRC)* provided recommendations.²³ In these two recommendations, both BPRD and NHRC show concern about the reformation and improvement of sanitary facilities and personal hygiene for men and women, and this suggestion extends to the improvement of sanitary facilities and personal hygiene for juveniles in detention.

2. BANGLADESH

In South Asia, Bangladesh is a small and highly populated country with a high crime rate. So it is obvious that all the prison cells are overcrowded in Bangladesh with about triple in a number from the prescribed number of inmates. The *South Asia Peace Action Network (SAPAN)*, a forum of South Asian human rights activists, convened a discussion on the rights of the incarcerated in South Asia in 2021 which claimed that Bangladesh's jails are among the worst in all of South Asia

¹⁹Ibid.

²⁰AnujaJaiswal / TNN / Jul 31, 2015 (no date) 1 toilet for 12 prisoners: CAG pulls up state for poor sanitation in jails: Raipur News - Times of India, The Times of India.

Available at: <https://timesofindia.indiatimes.com/city/raipur/1-toilet-for-12-prisoners-cag-pulls-up-state-for-poor-sanitation-in-jails/articleshow/48288672.cms> (Accessed: 29 October 2023).

²¹For most women in prisons, menstrual hygiene is still a dream (2020) Youth Ki Awaaz. Available at: <https://www.youthkiawaaz.com/2020/09/for-most-women-in-prisons-adequate-menstrual-hygiene-management-is-a-utopian-dream/> (Accessed: 30 October 2023).

²² The Indian Police Journal - Bureau of Police Research and Development. Available at: <https://bprd.nic.in/WriteReadData/userfiles/file/202301120450341100261Oct-Dec-2021.pdf> (Accessed: 30 October 2023).

²³MINUTES & RECOMMENDATIONS OF THE NATIONAL SEMINAR ON 'PRISON REFORMS', New Delhi, 2011

available at nhrc.nic.in/Documents/Minutes (Accessed on 30 October 2023)

and have the largest rate of jail occupancy among South Asian Nations.²⁴Such occupancy clearly posed a high risk on the availability of sanitation facilities and personal hygiene. However, Bangladesh pledges, to *ICCPR* to uphold the intrinsic dignity of every human being and to treat all those who are deprived of their freedom with humanity. Every person who is deprived of their freedom is entitled to compassion and respect for the intrinsic value of every human being, as stated in Article 10(1) of the *ICCPR*, and According to Article 10(3) of the *ICCPR*, reforming and socially rehabilitating prisoners should be the aim of the criminal justice system. Like India, Bangladesh has enacted the Prison Act, 1894 which provides rules to regulate the prison in a condition that the prisoners are living a safe and healthy life with proper sanitation and hygiene facilities. Regretfully, Bangladesh's jail system and conditions do not model any efforts towards reform and the social rehabilitation of inmates. Further, the Appellate Division of the Supreme Court of Bangladesh makes an important observation on the subject of a prisoner's human rights in the case of *Bazlul Huda v. The State (2000)* by stating that the prisoner's basic human rights should not be overlooked because his conviction for a crime does not make him a non-person.²⁵Those rights include sanitation and hygiene facilities and to enjoy those rights, a prisoner has to spend almost 30 thousand taka every month.²⁶The Jail Authority charged each prisoner Tk. 16,000 a month for the bare minimum of space needed to sleep comfortably, and sanitary and hygiene facilities, e.g. clean water for toiletries and bathing and additional Tk. 14,000 was charged for food that included protein.²⁷ According to the Bangladesh Jail Code and the Mandela Rules for the prisoners, each prisoner to which he or she is entitled without charge while incarcerated has to manage the money to enjoy the minimal rights. Further, due to a lack of sanitary facilities, e.g. unclean toilet, a damp environment, and inadequate lighting, heating, and ventilation inside the prisons, prisoners suffers from a variety of illnesses and due to the lack of facilities relating to personal hygiene such as clean bathing water, clean bedding, prisoners suffer from skin diseases.²⁸The most challenging inmates in these jails are female. Not only are there woefully insufficient cells for female inmates, but there are also appalling hygienic facilities and no designated spaces for children who accompany their moms to the jail. Despite the fact that many

²⁴November, F.B.S. and Siddique, F.B. (2021) We should be concerned about the prisoners' human rights in Bangladesh, The Business Standard. Available at: <https://www.tbsnews.net/thoughts/we-should-be-concerned-about-prisoners-human-rights-bangladesh-333892> (Accessed: 30 October 2023).

²⁵Major Md. Bazlul Huda (Artillery) Vs. State, 2009, 38 CLC (AD) https://ago.portal.gov.bd/sites/default/files/files/ago.portal.gov.bd/page/7f393557_475c_4317_b42a_5a850868beae/Bangbandhu%20Murder%20Case.pdf

²⁶Islam, S. (2023) Nothing free in prison, The Daily Star. Available at: <https://www.thedailystar.net/long-read/news/nothing-free-prison-1225216> (Accessed: 30 October 2023).

²⁷Ibid.

²⁸Development of prison administration in Bangladesh, part 5 The Lawyers & Jurists.

Available at: <https://www.lawyersjurists.com/article/development-of-prison-administration-in-bangladesh-part-5/> (Accessed: 30 October 2023).

jail facilities have reached the end of their useful lives, a subpar hygienic system has allowed many inmates, even those awaiting trial, to live inside, e.g. the 1840-built *Rajshahi Central Jail* is currently in extremely poor shape and there are only 2 bathrooms for female prisoners in the jail but in 2023, *Rajshahi central jail* established 8 women friendly toilet.²⁹ However, the approach of Bangladesh toward eliminating the problems regarding accommodation, sanitation, and personal hygiene is not satisfactory. Bangladesh has to walk a long road to overcome or partly overcome such a humanitarian crisis.

The right to personal hygiene, and sanitation is one of the prisoners' primary human rights but those facilities can roughly be accessed by prisoners in India and Bangladesh. Despite having enacted laws, both countries cannot provide the required amount of facilities relating to sanitation and hygiene. The main cause behind such failure is ignorance of the administrative body, continuous corruption in the regulation of prisons, lack of funding for a new installation of lavatories, and facilities relating to personal hygiene e.g. clean water supply for cooking, drinking, wash basin and women's sanitary facilities and hygiene facilities during menstruation. The juvenile detention centers are also neglected by both of these countries and they should get priority relating to any reformation.

Conclusion

Since prisoners are human, treating them with compassion may encourage them to undergo self-reformation. However, the primary barrier preventing inmates from reforming is the current jail system. The denial of the right to sanitation to imprisoned populations is not only a form of punishment, torture, and abuse, but it also occurs because there are inadequate and unhygienic sanitation facilities. Government intervention is required to guarantee that jails and prisons have sufficient and safe sanitary facilities, as well as that all inmates can use them on a regular basis and maintain their personal hygiene without fear by offering a clean, healthy atmosphere, cozy sleeping quarters, and wholesome food. Governmental organizations, non-governmental organizations, and civil society should take the lead in transforming the current prison system into a correctional facility. Women and juvenile offenders ought to receive the same treatment. Though sanitation and personal hygiene facilities are not vital for reforming prison cells into rehabilitation centers only, by improving those facilities, prisoners can start living with dignity which is their constitutional right.

²⁹04 May, 2023, Women-friendly toilets to be built in Rajshahi City, Daily Sun
Available at: <https://www.daily-sun.com/printversion/details/687452/Womenfriendly-toilets-to-be-built-in-Rajshahi-city> (Accessed: 30 October 2023).