

UGC MINOR RESEARCH PROJECT

Rights of Prisoners with special reference to Right to Free Legal Aid for under trial prisoners and its implementation in the District of Satara

EXECUTIVE SUMMERY

All Human beings are entitled to some basic human rights by virtue of being as a member of human family. According to the Article of 25 of Universal Declaration of Human Rights “All Human beings are said to be born free and equal in dignity”. The provisions under Universal Declaration of Human Rights which states that: “No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment”, the United Nations Covenant on Civil and Political Rights also states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. The human rights are said to be the natural and basic birth rights of all human being without any discrimination and therefore everyone is equally liable for all these rights. Human rights are also available to persons under detention including convicted or under trial prisoners. Article 21 of the Constitution of India, recognizes that the right to life includes a right to live with human dignity and not mere animal existence, and strengthens this mandate. The provisions of Indian Constitution are applicable to every person whether he may be a citizen of India or not similarly these provisions are also applicable to those persons who are free as well as whose liberty has been sized in execution of law i.e. prisoners. Prisoners being one of the depressed classes of society need the protection under the law. Thus, a prison atmosphere can be accepted as civilized only if it recognizes the basic human rights and the constitutional rights of the prisoners and makes efforts for the effective and meaningful enjoyment of the same by means of prison reforms.

The conditions of the prison are worst day by day. According to Prison Statistics India 2011, in the Indian prisons 2, 41,200 under trial prisoners were kept for committing offences

under IPC, Special and local laws and civil offences. Out of these 2, 30,266 (95.5%) are male and 10,934 (4.5%) females. At the end of 2011 the share of under trial prisoners in the different jails can be seen as, in the central jails 77295 (47.5%), district jail 121520 (76.8%), sub jail 36248 (91.2%), women's jail 1652 (54.0%), brostal school 879 (76.8%), Special jails 3546 (67.5%), Others 60 (74.1%). From this we can see that in the sub jail, only below 9% were of other type of prisoners and also in most of other type of prisons majority are under trials.

While we are looking at the all India statistics on prison population we can see that the number of under trials is more than double, than that of convict prisoners (128592 convicts, 241200 under trials). The percentage of under trial prisoners to the total prisoners in prison is 64.7% in the country and the share of convicted prisoners is 34.5%. Their number has increased as in 2011(2, 4, 1200) over 2005(2, 3, 7076). It has also increased marginally by 0.5% in 2011 (2, 41,200) over 2010 (2, 40,098). From this we can see that the number of under trial prisoners in the prison is increasing.

The constitution of India confers number of fundamental rights upon citizens which are also available to prisoners. The criminal justice system in India also is basically based on three principles. such as presumption of innocence unless guilt is proved, Burdon of proving guilt is always on prosecution that prosecution must prove guilt beyond reasonable doubt & benefit of doubt is always given to the accused. These three principles are said to be principles of fair trial.

So as to develop the conditions of Jails govt. of India had appointed different commissions to study the condition in jail and to suggest reforms. Government of India had set up in 1980 a Committee on jail reforms under the Chairmanship of Mr. Justice A.N. Mulla, a retired judge of the Allahabad High Court. The report submitted by the said Committee is known as 'Mulla Committee Report'. It contains a lot of very valuable suggestions.

These committees made a number of recommendations to improve the conditions of prisons, prisoners and prison personnel all over the country. In its judgments on various aspects of prison administration, the Supreme Court of India has laid down three broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person; secondly, a person in prison is entitled to all human rights within the limitations of imprisonment; and, lastly there is no justification for aggravating the suffering already inherent in the process of incarceration. The main purpose of establishing the Prisons is to confine offenders committing offences under the existing laws and previous laws enacted from time to

time. It is further implied that offenders are to be isolated for a certain period from general community with a view to ensuring security, peace and tranquility and further to plan a programme of treatment of offenders. The components of treatment may be counseling, guidance, re-education, training. The period of imprisonment, therefore need to be utilized for the treatment.

The provisions under different Acts such as Criminal Procedure Code, Indian Penal Code, Indian Evidence Act etc. which made provisions for protection of rights of prisoners. Prisons Act, of 1894 is the first legislation regarding prison regulation in India. Under Prisons Act 1894 the provisions relating to accommodation and sanitary conditions for prisoners, Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison, Provisions relating mental and physical state of prisoners, Provisions relating to the examination of prisoners by qualified Medical Officer, Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and under trail prisoners, Provisions relating to treatment of under trials, civil prisoners, parole and temporary release of prisoners.

The Prisoners Act, 1990 also made provisions for reformation of prisons and prison justice, it provides that all reference to prisons or the imprisonment or confinement shall be construed as referring also to reformatory schools to detention therein, it is the duty of Government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment, that any court which is a High Court may in case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognizance.

The role of the Supreme Court in the past few years in introducing jail reforms has been commendable. Supreme Court in its various judgments tries to protect the rights and freedoms of citizens of India including rights and freedoms of prisoners. Supreme Court while extending the horizons of constructional rights has given wide interpretation to constitutional provisions.

As per the jail manual the prisoners are provided off with different amenities such as canteen for prisoners, provisions for writing and receiving of letters, a separate library in prison premises, books for reading, supply of daily news papers, display of films in a week, sport and cultural activities, provisions for radio and television, celebration of different programmes such as independence day, republic day, Gandhi jayanti, etc., facilities for interaction with lawyers,

family members and friends, relatives, etc., programmes of yoga and vipassana are also be carried out for the purpose of correctional method. Provisions are also made to provide vocational training to prisoners such as carpenter, smithy, tailors, leather work, bakery, power looms, agriculture etc. Most of the prisons of Maharashtra have Agricultural land attached to them. It is being used for producing food grains, vegetables, fodder crops and other crops. The main aim of agriculture in prison is to rehabilitate inmates (criminals) by giving them works in fields and have a source of income through the labour charges paid to them. This training of doing various agricultural operations in field during crop growth will help the prisoners to implement that experience in his own field after his release.

In Maharashtra, correctional work is being viewed in an integrated manner, commencing from prevention control, care, training and treatment and ending in after care. Through a phased programme, the mass approach in prisons is being replaced by an individual approach through a system of diversified institutions, classification of prisoners on scientific basis and development of work training, educational and cultural programmes.

Satara consists of a sub jail classified as Class II jail. The administration of prisoners in satara was administrated in sub jails and subsidiary jails. The habitual prisoners convicted and sentenced for a term exceeding three months are sent to Sangli District Prison and to Nasik Road Central Prison. Central prisoners sentenced over two years are sent to Yeravda Central Prison; and short term prisoner of the district with sentences ranging from one week to a month are accommodated in the taluka subsidiary jails which are located at Dahiwadi, Karad, Khandala, Koregaon, Mahabaleshwar, Medha, Patan, Vaduj and Wai. These sub-jails are classified as class III sub-jails and are administered by the Revenue Department. The sub-jails at Phaltan and Satara are class II Head-quarter sub-jails. The Satara sub-jail is in charge of a Jailor-cum-Superintendent. The Phaltan sub-jail is in charge of a revenue officer. The police lock-ups in the district are under the direct control of the Inspector-General of Police.

The Supreme Court of India has been active in responding human rights of prisoners. They have given different category of rights to the prisoners during detention which are specifically recognized under Indian laws as well as under principles of international covenants. There are some assumptions based upon which supreme court has given the basic rights even to the prisoners. In the eyes of Court "Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess". It provides that prisoners are also

human beings. Hence, all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner. These include rights that are related to the protection of basic human dignity as well as those for the development of the prisoner into a better human being. The convicted persons go to prisons as punishment and not for punishment. Prison sentence has to be carried out as per the courts orders and no additional punishment can be inflicted by the prison authorities without sanction. Prisoners depend on prison authorities for almost all of their day to day needs, and the state possesses control over their life and liberty, the mechanism of rights springs up to prevent the authorities from abusing their power. Prison authorities have to be, therefore, accountable for the manner in which they exercise their custody over persons in their care, especially as regards their wide discretionary powers. Imprisonment as punishment is now rethought of as rehabilitative punishment. This involves a philosophy that individuals are incarcerated so that they have an opportunity to learn alternative behaviors to curb their deviant lifestyles. Correction, therefore, is a system designed to correct those traits that result in criminal behavior. The rehabilitative model argues that the purpose of incarceration is to reform inmates through educational, training, and counseling programmes. This development and growth requires certain human rights without which no reformation takes place. Overcrowded prisons, prolonged detention of under trial prisoners, unsatisfactory living condition and allegations of indifferent and even inhuman behavior by prison staff has repeatedly attracted the attention of critics over the years. Unfortunately, little has changed. There have been no worthwhile reforms affecting the basic issues of relevance to prison administration in India.

The judiciary has been playing a role of rescuer in situations where the executive and legislature have failed to address the problems of the people. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature. From the perusal of the above contribution it is evident that the Indian Judiciary has been very sensitive and alive to the protection of the Human Rights of the people. It has, through judicial activism forged new tools and devised new remedies for the purpose of vindicating the most precious of the precious Human Right of Prisoners.

The concept of Right to legal aid to under trial prisoners is very important, From the analysis of data collected and examined we can concludes that, Right to free legal aid which was enriched by including under article 21 of Indian Constitution as part and parcel of right to fair

trial by judiciary as well as legislators given its wide importance. This right is also available to trial awaiting prisoners. Supreme court in various cases recognized that right to representation in judicial tribunal is considered being an important part of right to access to justice. Unless, the person is allowed to approach to court for enforcement of his rights, the right to remedy is worthless. Right to representation includes right to be represented through legal practitioner of his own choice. Under law the provisions are made to provide this right of representation through proper advocate. However under certain circumstances this right cannot be effectively enforced due to various reasons such as poverty, illiteracy, indigence & other reasons. Person is not in a position to appoint lawyer for his defense or representation. In such a situation right to representation can be exercised through the process of legal aid. Right to legal aid is provided by the constitution of India as well as other legislations. Indian judiciary has also recognized this right as basic right for enforcement of fair, human & efficient criminal judicial system. It is considered to be the foundation of other rights

This right is protected and implemented in practice in Satara but it has to be advanced and justified in proper way. Rights of prisoners including constitutional as well as other rights are considered to be very much important for protection and rehabilitation of prisoners. Right to legal aid as provided by Art.39A of Indian Constitution is necessary for providing right to free access and for equal justice. These rights of under trial prisoners in Satara dist. are protected and implemented in practice but still proper man power, Funds and Awareness need to be considered. Different setup of penal of Advocates and trained people, with awareness about this right needs to be established. The directives issued by judiciary from time to time also need to be implemented in strict scene. The role of Dist. legal services authority is also important in achieving this objective. The problem of overcrowding is still present in prisons in Satara, the system of speedy trial needs to be implemented in effective manner. Right to bail may be granted where arrest is not strictly necessary. Overall from the findings, excluding common problems the rights of prisoners are protected in better manner in prisons in Satara District.

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¹ Asst Prof. Yogesh Narayan Desai, Ismailsahab Mulla Law College, Satara, Executive Summary of MRP on “Rights of Prisoners with special reference to Right to Free Legal Aid for under trial prisoners and its implementation in the District of Satara”