Prisoner Rights and Discretion of the Prison Administration

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The old notion that prison is a place for punishment has now given way to the new idea that it should be a reformatory where prisoners get an opportunity to reform themselves enabling them to take up active social life on release. In the process of rehabilitation it is necessary, that the jail life should cause the least demoralising effect on the prisoner and that the jail administration adopts an attitude rather of sympathy and compassion with a reformatory zeal than of revenge and retribution. The old thinking was that the courts had no right to interfere in the jail administration if it fails to carry out the objectives of reformation and instead takes to a policy of retribution. The recent unearthing of many cruel and shocking instances of maltreatment of prisoners by jail authorities all over the country has opened the eyes of not only the reformists and active politicians but also enterprising lawyers and activist judges.

The voice of the prisoners for vindication of their rights was heard throughout the years after India became an independent and full-fledged democracy with a written Constitution guaranteeing certain fundamental rights. In A. K. Gopalan v. State of Madras,¹ the Supreme Court turned down the demand for freedom of an old revolutionary kept under preventive detention. It held that if a citizen lost the freedom of a person by reason of lawful detention he could not claim the rights under article 19 of Constitution as the rights enshrined therein are

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only the attributes of a free man. Article 21 guarantees that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. This provision has been interpreted as one standing apart from article 19. It was held that the safeguards for a reasonable, fair and just action envisaged in the provisions of article 19 are not available to the prisoners within prison walls where the actions of discipline and confinement are governed by the laws relating to prison and preventive detention. The Court interpreted the expression 'law' in article 21 as meaning only enacted law and not principles of natural justice and gave a red signal to the import of the concept of 'due process into the expression. This dubious stand has been criticized later and has undergone a change.

The Maneka Gandhi case struck the last nail into the coffin of the exclusiveness theory which, in Gopalan, kept the article 21 and article 19 apart. It became necessary that executive action taken under an enacted law should be just, fair and reasonable under article 19 and non-discriminatory under article 14. An action without hearing and without stating reasons will be in gross violation of article 19 and article 21 even

2. *Id.*, at p. 108 *per* Das, J.

3. *Id.*, at pp. 72, 102.

4. In his memorable dissent in *Kharak Singh v. State of U.P.*, (A.I.R. 1963 S.C. 1295 at 1305), Justice Subba Rao remarked that it is not correct to say the expression 'personal liberty' in article 21 excludes the attributes of freedom specified in article 19. The fundamental right to life and liberty has many attributes some of which are found in article 19. When a fundamental right under the article is infringed by a law, such law should stand the test laid down in article 19. In *State of Madras v. Prabham Paurang* (A.I.R. 1966 S.C. 424 at 427) the same judge remarked that *Gopalan view* (*ibid*) is not the final word on the subject and allowed the publication of scientific value written by a detainee. Even though exclusion between article 19 and article 21 was not set at naught the exclusion between article 19 and article 31 (right to property) was departed by the Supreme Court in *K. K. Kochunni v. State of Madras* (A.I.R. 1960 S.C. 1080) and in *R. C. Cooper v. Union of India* (A.I.R. 1971 S.C. 1380).

if the statute under which the action is taken is silent over the principles of natural justice.

*Maneka* signifies the recognition of individual rights against arbitrary exercise of discretion by the State and other public authorities. It built a fortress against the excess or misuse or improper exercise of discretion. Should not there be safeguards against the unchecked and unreviewed acts of the jail authorities that infringe the human dignity of the thousands of prisoners living in different jails all over the country? Treating prisoners not as human beings but as animals and chattels does not help reformation and rehabilitation. The tragic stories, revealed by the press and other agencies of public relations, on the brutal and savage actions of the prison authorities on the helpless human beings within prison walls inspired many attempts for vindication of prisoner’s rights against arbitrariness. By a catena of judgements the highest court of the land applied *Maneka* doctrine to the prison administration and emphasized that the prisoner has a fundamental right to get decent treatment by the jail authorities within the limits imposed by the punishment. *Sunil Batra v. Delhi Administration*6 and *Charles Sobraj v. Superintendent, Central Prison, Tihar,*7 are the significant milestones in the path towards prison justice.

In *Sunil Batra*, two events — the unauthorised confinement of a prisoner condemned for death in a solitary cell and putting bar fetters on another, an under-trial prisoner, for security reasons — were successfully challenged as excessive exercise of discretion by the jail authorities. Justice Desai pointed out that though there are provisions under the prison law8 for separate confinement and iron fetters, the powers are intended to be exercised when they are found absolutely necessary and are to be exer-

8. Section 30 of the Prisons Act 1894 provides for separate confinement, day and night under the charge of guard, of persons sentenced to death. Section 56 of the Act provides for safe custody of prisoners and if necessary they may be put in iron fetters for security reasons subject to the instructions of the Inspector General of Prisons with the sanction of State Government.
exercised solely for reasons and considerations which are germane to the objective of the statute. Though Justice Krishna Iyear found these provisions as constitutionally valid, he made an attempt to read them with humanistic interpretation and held that the provisions are out of tune with correctional penological values and human rights. He called for a revision of the provisions by fresh legislation. The Superintendent’s power in both cases of ‘separate confinement’ and ‘bar fetters,’ according to him, are excessive and have to be pruned.

Charles Sobraj related to the plea of a foreigner with the record of one escape and one attempt at suicide and of Interpol reports of many crimes abroad. The petitioner asked for more relaxations in the jail and for finer foreigners as his companions. The court found that the classification between the dangerous prisoners, of the type as the petitioner was, and ordinary citizens was valid. However, Justice Krishna Iyer instead of closing the judgement at this point, went extensively into the question whether in genuine cases the court’s writ will break through the stone walls and iron bars to right the wrong and restore the rule of law. He said,

“Fair procedure is the soul of article 21, reasonableness of the restriction is the essence of article 19(5) and sweeping discretion degenerating into arbitrary discrimination is anathema of article 14.”

According to Justice Krishna Iyer, where a prison practice or instruction places harsh restrictions on the inmates of the jail breaching fundamental rights the court directly comes in. The following observation is an indication how the jail

10. Id., at p. 1722.
11. Id., at p. 1723
authorities should treat the prisoners with a reformative and correctional inclination,

"Compassion wherever possible and cruelty only where inevitable, is the art of correctional confinement. When prison policy advances such a valid goal, the court will not interfere officiously.... but undue harshness and avoidable tantrums under the guise of discipline and security, gain no immunity from court writs. The reason is, prisoners retain all rights enjoyed by free citizens except those lost necessarily as incident of confinement. Moreover, the rights enjoyed by prisoners under article 14, 19 and 21 though limited are not static and will rise to human heights when challenging situations arise."13

Read with the doctrine of fair procedure expounded in Maneka the pronouncements in Sunil Batra and Charles Sobraj, evolve a new prison jurisprudence striking a balance between the dignity of the human beings ruled within the walls and the powers of the jail authorities that rule them.

With the judicial awakening to the woes of the prisoners new dimensions were reached in the prison justice administration. Many undertrial prisoners kept in custody for periods longer than the one for which they would be convicted,14 men, women and children detained for years in custody for production as witnesses15 and prisoners detained due to inability to produce bail bonds16 were all released. The judicial revelation emphasized on the need for legal aid to poor prisoners and to declare that procedure is not reasonable, fair and just if it does

13. Id., at p. 1517.
16 Hussainara Khatoon v. Home Secretary, State of Bihar, A.I.R. 1979 S.C. 1360. Justice Pathak emphasized the need for a clear provision enabling the release in appropriate cases of an undertrial prisoner on his bond. at 1366.
not help for providing them with legal service. Finding in the dark cells of the prison the abominable practice of putting young offenders with hardened criminals the Court issued orders for separating the two with an eye on correctional treatment and rehabilitative orientation saving the younger ones from any sex starved lepers who may make them for ‘homo-sexual offerings with nocturnal dog-fights.’ Handcuffs were removed, bar fetters broken and third degree methods within prison walls deprecated by extending the hands of the judiciary to protect the prisoner. It was particularly emphasized in all these cases that the discretion vested in the prison authorities is to be exercised in a reasonable and fair manner, without any harm to the rights of the prisoners. Thus for the first time the Supreme Court abandoned the old doctrine of non-interference in the matters of jail administration but went deeper into bad practices in jail and made an attempt to set them aright. The increasing intervention of courts in prison administration reflects a view that prisoners have been denied the basic human rights and that prison administrators have been making decisions which place a greater value on coercive methods of maintaining security and institutional order than on the quality of the lives of prisoners.

It is necessary that by prescribing meaningful standards in the law, providing adequate machinery for review and engi-

17. Hussainara Khatoon v. Home Secretary, State of Bihar, A.I.R. 1979 S.C. 1377. If free legal services are not provided to undertrial prisoner, the trial itself may run the risk of being vitiated under article 21. at 1380.


19. Prem Shankar Shukla v. Delhi Administration, 1980 Cri. L.J. 930 (S.C.). Pointing out that the nature of the offence is not the criterion but clear and immediate danger of escape is the determinant, the court held that in extreme cases of the need to handcuff the prisoners taken out of prison the escorting authority should record his reasons. If it does not do so the procedure will be unfair and bad under article 21. at 940.


neering a process in which self-imposed limitations are evolved, the discretion of the jail administration should be confined, structured and checked in order to adopt those choices of action that will assimilate maintenance of prison discipline with the objective of reformation and rehabilitation. This leads one to examine the existing law.

Much concentration of power in the hands of the Superintendent is the chief characteristic of prison administration. The intention may well be that strict discipline be maintained within the jail under the thumb of his administration. Power corrupts, absolute power corrupts absolutely. On examination it is found that prison law contains some provisions which do not really help confining the discretion of the Superintendent and other jail authorities. Under the Kerala Prison law the Superintendent can withhold a document from a visitor when the latter visits the prison to see that the law and rules are duly carried out. True that the Superintendent has to record his reasons for doing so. Still the power to withhold the document seems to be unnecessary. There should never be a situation when a visitor, of the rank of a Sessions Judge, the District Collector, the Judicial District Magistrate or the District Educational Officer, is not to be taken into confidence of the jail administration.

There is another example where a visitor is put into more humiliating situation. His remark on the visit of the prison may include those on prisoners' complaints. Here again the Superintendent comes in. He can say that the complaint is groundless. He can propose punishment for 'making groundless complaints.' If the visitor dissents to the proposed punishment he has to request the Superintendent to submit the case to the Inspector General for orders. If the Inspector General endorses the Superintendent the visitor has no other way except addressing the Government. The provision that visitors can hear complaints of prisoners and make remarks has a built-in safeguard. It gives these important and responsible officers and citizens

23. Id., RR. 16, 17.
24. Id., R. 287 (5).
an opportunity to examine and review the actions of prison administration. On the one hand the Rules enable confining and structuring the discretion of the administration and on the other hand they give the administration, the power to punish the prisoner who are to be benefited by these safeguards. Manifestly this position destroys the safeguards and defeats the purpose behind the provision for Visitors to the prison. If the decision rests with prison administration against the opinion of a Visitor on the question that a complaint is or not to be believed prisoners may fear even to make genuine complaints as the position exposes to possible punishment any prisoner who raises a complaint.

Wilfully bringing a false accusation against any officer or prisoner is made a prison offence under the State and Central laws in addition to the provision for a similar offence in the Rules. The Superintendent is authorised to decide punishment for this offence. The impact of such offences on the complainant mechanism is severe. A recent study on similar offences in English Prison Rules points out:

“A prisoner alleges misconduct on the part of an officer at his peril, even if he is giving evidence at an adjudication on behalf of another prisoner charged with a disciplinary offence.”

What is needed is that administration should behave in such a way as to instil in the minds of the inmates the confidence and courage to meet the challenges of social life outside on release. On the contrary the present mechanism works in the opposite direction. Prisoners are put in humiliating situations. Their self-confidence is lost.

There are a few more instances where the exercise of discretion by the prison administration, unless it is confined, struc-

27. Supra, n. 24.
28. Graham Zellick, “Prison Offences,” 20 British Journal of Crimino-
logy 377 at 380 (October 1980).
turmed and checked, may jeopardise the minimum human rights of the inmates instead of achieving the objectives of reformation and rehabilitation. Transfer of one prisoner from one prison to another is such an instance. During the sordid solitary days of confinement it is only natural that a prisoner will long for a moment’s chat with his friends and relations. Suppose the administration transfers him for one reason or other to a distant prison which is not within the reach of his kith and kin. The only solace he gets in the dreary dull dryasdust life in prison is lost. In a recent case, Mohan Singh v. State of U.P 29 the Madhya Pradesh High Court cancelled a transfer obviously made on the reason that the prisoner had challenged a discriminatory remission by filing a writ petition.

The law provides for transfer only on specified grounds, such as excess number of prisoners, epedemics or sickness.30 It empowers the Government to make rules for the purpose of transferring prisoners whose terms of imprisonment are about to expire.31 These provisions aims at structuring the discretion for transfer in a proper manner. The Rules cannot exceed the limited powers thus conferred on the State Government32 and the prison administration can in no circumstance effect a transfer on grounds other than those covered by the Rules.

Surprisingly the Superintendent is vested with the power to disagree with the expert medical opinion on the fitness of a prisoner to perform a particular class of labour,33 ie., hard, medium or light, and to refer the matter to the Inspector General of Prisons for decision. The ipse dexit of the non-medical officials on matters which require expert medical opinion denotes an un-

30. The Prison Act, 1894, S. 7 (Central Act); The Travancore-Cochin Prison Act, S. 7.
32. It seems that R. 499 of the Kerala Prison Rules 1958 authorising the transfer of prisoners convicted in the same offence to different jails on grounds of discipline is ultra-vires the parental legislation.
happy position. In addition to his various powers mentioned above the Superintendent decides who is well behaved for the purpose of doling out benefits to the prisoners. He can control the distribution of work among the prisoners. When discretion is vested in higher authorities there is a presumption of an inherent safeguard against arbitrariness because they are expected to possess self-restraints on exercising their own discretion and to make decisions on objective criteria. In spite of this, too much concentration of power on an authority without a machinery for external control will be a dangerous phenomenon.

Law often lags behind mores of the day. A new jurisprudence of correctional reform based not on the penal and retributive aspects but on reformative and rehabilitative aspects has now set in. The judiciary is playing its role well in bridging the gap between the current trends and the law. Its hands are to be strengthened by bringing about the necessary changes in the law — substantive and procedural. Prisoners should not go out to society with a feeling that the rule of law is a casualty within prison walls. The purpose of prison life, namely, to train the inmates for a proper social living where the rule of law is respected, will remain illusory and impaired if the scheme of prison regulation is afflicted by arbitrariness and injustice. The new law should provide for adequate control mechanism from both within and without the prison administration with a view to improving standards of discretionary justice in prison.

34. Id., For instance R. 276(b) (Writing facilities), R. 276(c) (Participation in games) and R. 452-B (Parole).
35. Id., R. 255.
36. Steven Gifis observes:
"If persons, who by their antisocial acts have indicated a lack of faith in the rule of law, are forced to live in a community in which the rule of law is adhered to and enjoyed there may be reason to hope that they may live under the rule of law upon release. The chances that they will do so must at least be improved; such chances are surely impaired by an involuntary scheme of regulation that is perceived as arbitrary or unjust."

The control mechanism should be tailored to the needs of reconciling the conflicting concepts of prison discipline and reformation. It may be a desirable experiment to have the system of prisoners' courts consisting of prisoners as judges and counsels providing opportunities to the prisoners to attune themselves to the rule of law. There should be a programme of periodical assessment in order to identify those prisoners attempered to rehabilitation. Schemes for rehabilitation have to be monitored and executed. These functions may well be carried out by a Board consisting of the Superintendent, the medical officer and experts on human behaviour and social relations. The external Board of Visitors, with more investigatory powers, should examine and decide complaints from the prisoners. Finally, justice in the form of judicial review should reach and correct the wrongs within prison walls.