

INDIVIDUALIZATION OF PRISONERS: A NEW ERA OF CORRECTIONAL INSTITUTION FOR PRISONERS IN INDIA.

¹Atrayee Dutta, ²Dr. Kusum Pal

¹Student (LL.M), Chandigarh University, Gharuan, Mohali, India.

²Associate Professor, UILS, Chandigarh University, Gharuan, Mohali, India.

Abstract.

In this study, the researcher focuses on the topic of the individualization of prisoners. It further includes a general overview of the study along with study material as well. India is considered as the biggest democracy in the world that makes her people proud that a human must be treated with humanity and nobility as well. India is a believer of reformatory punishment that a prisoner needs to get an opportunity to correct him and make himself stable in all possible way so as to fit in the society at large. A prisoner is too a human and no matter what; his Fundamental Rights cannot be taken away.

Gandhi, Buddha, Subhash Chandra Bose were the personalities who believed in peace and justice. The Universal Declaration of Human Rights ensures Individualization to its prisoners. In the Indian Constitution, there are some specific rights stating about the individualizing like no handcuffing, expeditiously trial, no prisoner can be tortured when he is confessing. It's on the judiciary that no innocent should be punished.

Introduction.

There are two complete codes dealing with the substantive and procedural way of criminal science. The Indian Penal Code, 1860 deals with the offences and also states the proper punishment for those criminals as well as to recognize several other punishments that are pronounced by the courts on trial. Along with IPC there are exclusive and domestic laws stating the crimes that are not specified in the Code. These especial laws may have their separate rules and reference to arrest, bail etc. Still it basically the IPC that have the sufficient structure for doing a proper criminal conduct. The Criminal Procedure Code, 1973 talks about the procedural enumeration of the criminal justice management framework.

Rights conferred upon prisoners under Indian Constitution.

Nowadays, the prisoners rights are the most neglected area of the research. There is no specific meaning of a prisoner under the Indian law. According to Justice Iyer, 'prisoner' defines 'convicts are not by mere reason of the conviction denuded of all the Fundamental Rights which they otherwise possess'. In a generalized way, the word develops an idea of an individual who is in a member of a luckless crew. Unfortunately, this is the actual scenario of India. In the most impactful part of our Constitution, it is specified that India is a Democratic Country which constitutes the Fundamental Rights of the citizens, wherein the citizens are included as well. The authenticity of democracy brings justice, liberty, equality, not only for the citizens outside the prison but also inside the prison. Being a believer of reformatory form of punishment, the responsibility lies onto the legislative and judicial wing so as to give them sufficient opportunities so that they reform themselves and stay in the society in a proper way after being released from the prison.

There are certain rights ensuring the prisoners' rights under the Indian Constitution. Speaking about the International offenders, there is treaties and has been signed amongst the countries about their health and rights. Constitution is the source of all the law of a territorial jurisdiction then it is a legal responsibility to serve the legal rights to the prisoners. It ensures several rights which is specified both in the Fundamental Rights and Directive Principles of State Policy.

Article 14. Equality before law. "The State shall not deny to any person equality before the law."¹ This states that every individual living within the territory of India, has the equal right before the law. The dentition of this all are equal in the same line. No discrimination based on caste, creed, gender, religion. It states that every human will be treated equally. There would

¹ Indiakanoon.org visited on 31st May, 2020.

be no differentiation made on the basis of social strata. A state cannot repudiate any individual the uniform safeguard of laws within the region of India. "Equal protection of law" has been provided in the said article which means that each person within the Indian territory will be under the uniform safeguard of law.

In Stephen's College v. University of Delhi², the Court stated "Equal protection of the laws" is said to be a constructive responsibility. On the state to guarantee uniform safeguard of laws by conducting in required social and financial alterations so that everybody may enjoy alike shielding and nobody is refused from getting so. If the state leaves the present inequity untouched laws, it does not live up to the duties of the state. State will give identical safeguard to all the individual of India who are citizen of India and the non citizens of India.

In the case of Indra Sawhney, this right had been constituted with one of the main features. It is also upon the people who are non citizens. A corporation which is a juristic person is also sanctioned to the profit of this article. This notion suggested equality for equals and objective at putting down hostile in differentiation or opposition of equality. It is to be noted that objective of both the conception, ' Equality before law' and 'Equal protection of law' is the alike justice.³ The principle of equality is not the conformity of treatment to all in aspects. It only states that every individual same situation shall be treated like both in privileges conferred and accountability put upon by the laws. Equal law should be put in to all in same condition, and there should be no differentiation between one individual to the other.

Article 19.

John Milton said, "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."⁴ The quintessence of free speech is the potential to think and speak freely and to gain information from others through publications and public discourse without fear of penalty, diminution, suppression by the Government. It is through free speech, people could come all together to attain political impact, to build up their ethics and to aid others to set off moral and informed citizens. The freedom of speech is about first condition of liberty. It holds a significant place in the hierarchy of the liberty, amongst which freedom of speech is the most important one. By this it gives them the authority to speak about the views they hold by words by mouth, writing, printing, pictures or any other ways. In contemporary days, it is broadly accepted that this right is the spirit of open society and it must be protected all the time.⁵ The first rule of a open society is a rampant flow of words in an open platform. Liberty to express views without troubles, and terror of punishment have an important role in the up gradation of that certain society and then finally for the state. It is one of the most significant fundamental liberties assured against state oppression.⁶

In a case, the entry and circulation of the English journal "Cross Road", printed and published in Bombay, was forbidden by the Madras Government. The Apex Court then said that unless a law limiting the freedom of speech and expression were controlled solely against the eroding of the safety of the state or its downfall, the law could not be held a rational limitations through it sought to inflict a limitation for the conservation of public order.⁷

Article 20.

This had taken care to protect the Rights of individual's charged of offences. People, precisely the citizens, non citizens and the corporations too. This article cannot be taken away even when there is an emergency in operation under Article 359. This article puts a restriction on the legislative powers of the centre and the state legislatures.

Article 20(1).

No individual can be convicted of any crime other than the violation of a law in force at the time of the commission of the Act accused as a crime, nor be subjected to a punishment greater than that which might have been imposed under the law in

² AIR 1968 SC 662

³ Ramesh Prasad v. State of Bihar, AIR 1978 SC 327.

⁴ www.Goodreads.com visited on 31st May, 2020.

⁵ Lawoctopus.com visited on 31st May, 2020.

⁶ Treaties.un.org visited on 31st May, 2020.

⁷ Romesh Thappar v. State of Madras AIR 1950 SC 124

action at the time when the crime was committed. This is termed as ex post facto law. This states that legislature is not permitted to frame a law which gives punishments to acts which were committed before the date when it was enacted. This certainly means that a new legislation cannot punish an old crime.

Article 20(2).

No individual shall be tried and penalized for a same offence more than once. This is called Doctrine of Double Jeopardy. The aim of this article is to prevent harassment, which must be caused for consequential criminal ways, where the individual has committed only one crime. There is a law maxim concerned to this- nemo debet bis vexari. This means that no individual shall be put twice in peril for the same crime.

Article 20(3).

Self Incrimination Law states that no individual charged of any crime shall be forced to be a witness against himself. This is based upon the legal maxim which means that no individual is bound to accuse himself. The charged is assumed to be guiltless till his guilt is proved beyond any reasonable doubt. It is upon the prosecution to prove it.⁸

Article 21.

The aim of this article is to stop intrusion upon personal liberty and impoverishment of life other than the processes instituted by law. This defines that this Fundamental Right is available against the state only. If an act of private person amounts to encroachment into the personal liberty. Such violation would not fall under the standards set for this Article. The state cannot be defined in a limited scope. It involves Government Departments, Legislature, Management, municipal bodies having statutory powers.

The law laid down by the Court in the conclusions depended on either being misread or read divorced of the context. The exam of rationality is not entirely subjective test and its contours are uniformly depicted in the Constitution. The necessity of rationality runs like a golden thread through the entire fabric of Fundamental Rights. The principles of social and economic justice, the evolution of the country entirely and the concept of distributive justice, cannot be given by a go, by in the name of excessive emphasis on fundamental rights and personal liberty. Rationality and legal perspective provide actual essence and definition to the fundamental rights and these ideologies are traceable from those very resolutions which have been depended on by the prosecution.⁹

Article 22(1).

The Article states that if an individual has been arrested cannot be detained without letting him know the ground of his arrest; he cannot be denied the right to consult and be defended by a legal practitioner which he or she chooses and if he does not have sufficient finance to do so, it will be given by the State to defend him. It is the responsibility of the judge to make the person arrested fully aware of his rights¹⁰

In a case it was seen that the essence and sense of the specified Article is that the Fundamental to the rule of law that the duties of a legal practitioner shall be there for discussion to any charged individual under situations of near custodial questioning. Though the court cleared that the law expert cannot tirade the police, but may aid his client and complain on his behalf.¹¹

Article 22(4 to 7).

It provides such information of an arrest to the individual to whom the arrested person wants to inform. It is considered so as to protect the arrested person.

⁸ Gktoday.in visited on 31st of May,2020.

⁹ Javed and Others v. State of Haryana AIR 2003 SC 3057.

¹⁰ www.legodesk.com visited on 31st of May, 2020.

¹¹ Nandini Sathpathy v. P.L Dhani AIR 1978 SC 424.

Article 32.

Right to constitutional remedies sourced from a Latin term “Ubi jus ibi remedium” it defines there is no right without a solution. So, Fundamental Rights would be not useful, there are enough provisions to enact them. It can be thus said, “The Constitution ensures the right to move the apex court for the enactment of the Fundamental Rights. The Supreme Court has the power to pass resolutions wrts involving the nature of habeas corpus, mandamus, prohibition, certiorari, quo warranto, whichever perhaps suitable for the enactment of any of the Fundamental Rights specified. The powers specified in the Article can be worked by any other court empowered by Parliament. Habeas Corpus is perhaps concerned as one of the most significant protection of personal liberty. This is for all cases of impoverishment of personal liberty or immoral detention. This phase states, “bring the body”, it is to be noted that the aim of the writ is corrective and not disciplinary. This means that the wrts define to decide the legality or illegitimacy of detention and its aim is not to penalize an individual for any crime. Thus, when an individual was arrested and abused in prison but then released. It was held that a petitioner would not be lies after it was released.

It was usually passed:

- Illegal detention.
- Examining the period of detention.
- Custody of a juvenile or a lunatic.

In a case, a letter was sent by an inmate in Tihar Jail to a Magistrate of the Apex Court stating that the jail warden had pierced a stick straight into the anus of an co inmate so as to obtain money from the victim's visiting relatives. This was a that specified writ and there after whatever was needed to be done was done.¹²

Article 39a.

This Article is available to all the citizens of the nation. For substantive equality guaranteeing legal aid to every human being is required. It gives free legal aid to the economically deprived strata, to promote justice on the note of uniform chance. Accordingly, in 1987, the ‘Legal Services Authorities Act’ was enforced by the Parliament which came into force after 8years in 1995 to constitute a countrywide equal facility to provide free and just legal consultation to the backward section of the society. The former has been framed under the Legal Services Authorities Act, 1987 for aiding the same.

Individualized treatment of criminal offenders.

Since many years now, the country's criminologists and penologists have given up on the existing process of treatment of criminals as they do not believe to have a good outcome. Discontented with legislative framework to improve at the edge of the issue, they have thought of extensive re test of the basic process which seem indefensible in the context of contemporary mental consciousness.¹³ Previously, the main aim of the society in its treatment of offenders were retributive; presently, it had decreased a lot. Deterrence from criminal conduct and segregation of hardened individuals are the main motive of criminal justice. Furthermore, the underlying objective had always been to rehabilitate criminals mentally and spiritually for the post prison life in the society. The post duration after sentencing firstly must be calculated on the note of its triumph in its achievement of rehabilitation and then deterrence of offence and separation of those who can be rehabilitated. The general process of treatment starts after the accused had been held convicted. The Judge is an expert in law but isn't really well informed about sociology and psychology. The ruling law gives a variation in span of sentence to account for the mental requirements of the inmate. There are several types of corrective measures provided by certain institutions, it is upon the need of the inmate on which he will be taken and treated. Thus it is more on the Magistrate and his psychological knowledge in accordance to which he frames his verdict. Once the verdict of imprisonment is awarded to the guilty, he is confined. Days after it is decided whether he is fit to be released evaluated on good conduct by the Parole Board which is apparently constituted by individuals who are not skilled enough. This process does not include to ascertain the actual development of the psychological stability. Several researches has made the country's criminologist realize that it does not give favorable

¹² Sunil Batra v. Delhi Administration AIR SC

¹³ MacCormick, The Prison's Role in Crime Prevention, 41 J. Crim. L. 36, 40(1950).

outcome but evil ones.¹⁴ Treatments must not be made in a generalized way but in an individualized way so as to get desired result. Deterrent form of punishment isn't the only way to stop criminal mentality people to commit crime or to create a fear in their mind. One of the famous instances for this is that pick pocketing was at its peak and its punishment was to execute the offender publicly in England back then. But still this could not deter the minds of the actual hardened criminals.

Cases.

Bachan Singh v. State of Punjab.¹⁵

He was tried, convicted and sentenced to death under Section 302, IPC. He murdered Desa Singh, Durga Bai and Veeran Bai by the Sessions Court of the specified State. On an heated argument, he lost the control upon himself and had made several cuts on those 3 with a dangerous weapon, and eventually they died. This was considered to be one of the most grave way of killing someone. On further appeal to the High Court, the verdict remained the same and the plea was dismissed. Moving the plea further to the Apex Court it was seen, the way in which the murder was committed, reason behind the murder, intensity of the murder and the character of the person who was murdered.

Jagmohan Singh v. State of UP.¹⁶

The Court observed that death punishment serves as a disincentive against criminal behavior. The court then added that it ruled that while viewing the question of sentence to be inflicted for the crime of murder, the court must be considered to every similar condition concerning to the offence as well as the offender. That, Parliament has given a wider and unambiguous guideline under 354(3) which is to provide the reason of loadstar to the court in the working of its verdict. Further, to rank the rules for sentencing, the court again mentioned to Jagmohan case indicating unknown, unforeseeable changes even within a sole classification offence. It went on to value the still zones made to left open by the Parliament in its legislative arrangement for uniform role of judicial preference to take care of the changing unforeseen situation of each cases, similar to individualized sentencing.

Macchi Singh v. State of Punjab.¹⁷

Previously the cases had a much broadened judgment, thus this case gave a very précis and comprehensive guidelines. To be specific, the former case resulted in the death of 17 people in five different incidents. The appellant and his associates were tried in the lower courts. This individual was amongst those who were sentenced to death. His death punishment was affirmed by the High Court of Punjab of requiring an appeal to the Apex Court. During the hearing of the appeal, the Highest Court stated what would amount to usual guidelines to be directed so as to elucidate the 'rarest of rare' cases formula, for imposing death sentence.¹⁸

To begin with, the court held that the hardest punishment of death require not be imposed other than gravest cases of extreme culpability.¹⁹ The dare facing the lower courts, the academicians and analyst is how to exactly regulate the elements of or what leads to the heinous cases of radical guilt. The Supreme Court defined that before choosing for the death punishment, the situations of the "criminal" also needs to be considered along with the conditions of the 'crime'. These rules are controlled by the word, 'discretion' of the judges. Henceforth, talking about "custodial sentence of Life Imprisonment as the death sentence is an deviation to the rule", imperiling the hardest forms of penalizing. Giving preference to the reintegration and refurbishment should be the points which should be followed when to award punishment to an offender.²⁰

¹⁴ Barnes and Teeters, *New Horizons in Criminology* c.31 (1947).

¹⁵ AIR 1980 SC 898.

¹⁶ (1973) 1 SCC 20.

¹⁷ (1983) 3 SCC 470.

¹⁸ Supra note 19.

¹⁹ Id., para 38(i).

²⁰ Anju Vali Tikoo, *From Punishment to Restoration: A Quest for Real Justice*(Pragati Publications, New Delhi, 2017).

Santosh Kumar Singh v. State.²¹

The accused was an advocate and senior of the victim Priyadarshini Mattoo who was a law student of Delhi University, was raped and then brutally murdered at her place when she was having no one in the house. It was instituted by the prosecution that before that unfortunate day, the accused son of a powerful police officer, had been following her for more than two years and had even filed a complaint against this offence and had been provided with a constable for her safety. Even after submitting all the evidences' against him, he was held acquitted in the Lower court, with further appeal to Delhi High Court the court changed the decision of the prior court and gave him death sentence as punishment. There after the accused further had moved to the Apex Court where there was a dilemma prevailing. It was when the Court interpreted that if there arises a question whether to give death sentence or life time imprisonment, the former should always be chosen because this is how the principle of 'rarest of the rare cases' work.²² The court again explains the reason of doing so is because he has got a full fledged family, forgetting and forgiving his past wrong doings and the demise of his father might aid him to become person after the release from the prison.

Conclusion.

There are certain aims to a structure of the individualized treatment which are as follows;

- The widen powers imposed in such a framework would become a apparatus for political, financial, or other preferences;
- The way is too extreme departure from existing process of offenders therapy.
- Common men would not accept the differentiation of therapy done to the people committing like crimes based upon the complexity of mental and emotional sphere.

The basic of the failure of the existing way lie on the notion which suppresses the delegation of character to be build of the convicted. The punishment should fit in the crime. Concept of the way of constitution of convicted individuals from a pattern evolving about a certain offence committed to a way about to the necessities of a certain offender will need innovative ways as follows:

- In sentencing, both as the period of the custody and place of the sentencing.
- The nature of activity to be practices in the span of the sentencing.
- Evaluating the time to be released.

From this study, it can be understood that a person's right of the inmate nowadays, is a notion that people are bothered about. It can also be stated that the legal complexity and judicial process in India at times works steadily to provide rights and at a slow pace as well. This involves a generalized view over the topic which gives a basic idea about the present and past scenarios about the Constitutional rights. It aids to observe the gap among the existing scene and execution of legal system. Because of such constitutional rights inmates have the basic life lead they are inside the jail but with nobility. It is henceforth stated that the judicial system has all the steps to safeguard and prevent the complication a prisoner faces. It can also sum up the Human Rights Commission always plays a significant role to safeguard the prisoners right. For instance, Nijel Akkara is the biggest of all example. A student of Kolkata's best colleges later on became a dacoit and ended up being in the jail. It took him time and finally got over this became a recognized actor in the glamour world.

²¹ (2010) 9 SCC 747.

²² Id., para 38.