
INTERNATIONAL OBLIGATIONS AND GUIDELINES TOWARDS PRISON REFORMATION

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Introduction

The International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice. The International Covenant on Economic, Social and Cultural Rights (ICESR) states that prisoners have a right to the highest attainable standard of physical and mental health. Apart from civil and political rights, the so called second generation economic and social human rights as set down in the ICESR also apply to the prisoners.

The earlier United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 consists of five parts and ninety-five rules. Part one provides rules for general applications. It declares that there shall be no 'discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. At the same time there is a strong need for respecting the religious belief and moral precepts of the group to which a prisoner belongs. Prisoners' rights have become an important item in the agenda for prison reforms. The essentially to the recognition of two important principles. Firstly, the prisoner "is no longer regarded as an object, a ward, or a 'slave of the state', who the law would leave at the prison entrance and who would be condemned to 'civil death'."¹

The standard rules give due consideration to the separation of the different categories of prisoners. It indicates that men and women be detained in separate institutions. The under- trial prisoners are to be kept separate from convicted prisoners. Further, it advocates complete

¹ 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, 1991.

separation between the prisoners detained under civil law and criminal offences.

The UN standard Minimum Rule also made it mandatory to provide separate residence for young and child prisoners from the adult prisoners. Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners (United Nations 1990) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations 1988). On the issue of prison offences and punishment, the standard minimum rules are very clear. The rules state that „no prisoner shall be punished unless he or she has been informed of the offences alleged against him/her and given a proper opportunity of presenting his/her defense“. It recommends that corporal punishment, by placing in a dark cell and all „cruel, in-human or degrading punishments shall be completely prohibited as a mode of punishment and disciplinary action“ in the jails. It is increasingly been recognised that a citizen does not cease to be a citizen just because he has become a prisoner.

The Supreme Court has made it very clear in many judgements that except for the fact that the compulsion to live in a prison entails by its own force the deprivation of certain rights, like the right to move freely or to practice a profession of ones choice, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution.² Secondly, the convicted persons go to prisons as punishment and not for punishment.³ Prison sentence has to be carried out as per court's orders and no additional punishment can be inflicted by the prison authorities without sanction. Prison authorities have to be, therefore, accountable for the manner in which they exercise their custody over persons in their care, specially as regards their wide discretionary powers.

International Laws Recognising and Protecting Prisoner's Rights

There are some international documents or soft laws which are very much concerned with prison justice and recognition of the inherent quality of prisoner as human being and their inalienable rights as members of human family and protective rights against tyranny and oppression. Some of the important provision of those international instruments is discussed hereunder:

² Charles Shobraj vs. Superintendent, Tihar Jail, AIR 1978, SC 1514

³ Jon Vagg. Prison System- A Comparative Study of Accountability in England, France, Germany and the Netherlands, Clarendon Press, Oxford 1994

Universal Declaration of Human Rights

In the year 1948, a movement was started in the United Nations in the form of Universal Declaration of Human Rights which was adopted in the General Assembly of the United

Nations. This document is commonly known as human rights and the document provided some basic principles of administration of justice.

These principles embodied some universal concepts like equality of treatment, right to life, liberty and security of person, freedom from torture, and freedom from inhuman cruel or degrading treatment. Among the important provisions in the said Universal Declaration of Human Right, 1948, following are the relevant provisions:

1. Article 1. No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
2. Article 3. Everyone has the right to life, liberty and security of person.
3. Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
4. Article 6. Everyone has the right to recognition everywhere as a person before the law.
Article 9. No one shall be subjected to arbitrary arrest, detention or exile.
5. Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him.
6. Article 11. Everyone charged with penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

Declaration on Protection from Torture, 1975

On 9th December, 1975, the United Nations General Assembly by consensus adopted it. The main objective of the declaration is protection of all persons from being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

1. Article 2. Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the charter of United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.
2. Article 3. No state may permit or tolerate torture or other cruel, inhuman, degrading treatment or punishment. Exceptional circumstances such as a State of war or a threat of war; internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.⁴

Standard Minimum Rule for the Treatment of Prisoners

The Standard Minimum Rule for the Treatment of Prisoners were adopted on 30th August 1955 by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The treatment of prisoners is also addressed in the United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although not legally binding, the Minimum Standards provide guidelines for international and domestic law for citizens held in prisons and other forms of custody. The basic principle described in the standards is that, there shall be no discrimination on grounds of race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Part I contains Rules of General Application. It contains standards which set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of penal institutions.⁵

The European Convention on Human Rights

The European Convention of Human Rights is an international treaty to protect human right and fundamental freedoms in Europe. All Council of Europe members states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity. The Convention established the European Court of Human Rights. Any person, including prisoners who feel that his or her rights have been violated under the Convention by the State

⁴ The United Nations Convention Against Torture: A Handbook on the Convention Against Torture and Other Cruel, Inhuman, Or Degrading Treatment Or Punishment

⁵ United Nations and Prison Justice: The complete Revision of the Standard Minimum Rules for the Treatment of Prisoners, 1957

party to it can take the case to the court. Judgements finding violations are binding on the State concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors the execution of judgments, particularly to ensure payment of the amount awarded by the Court to the applicants in compensation for the damage they have sustained. The establishment of court to protect individuals from the human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on international arena. However, unfortunately like many other International Conventions, this convention also failed to attract the citizens of member⁶

Conclusion

The immediate need of research is to evaluate the existing methods of treatment and to suggest new approaches to the prevention of crime. The value of probation, open prisons, parole and home leave as reformatory measures need to be established. Prisoners constitute important institutions which protects the society from criminals. The obstacles in prison reforms are resource allocation, the deterrent functions of punishment, the notion of rehabilitation, and internal control with effect to International obligations.

⁶ Law of the European Convention on Human Rights Harris, O'Boyle & Warbrick