

Authors Affiliation

*Associate Professor
Dr. Harisingh Gour University,
Sagar, MP, Formerly at Banasthali
Vidyapith, Rajasthan. **Banasthali
Vidyapith, Rajasthan.

Reprints Requests

Anupma Kaushik, Associate
Professor, Department of Political
Science, Dr. Hari Singh Gour
Central University, Sagar - 470003
Madhya Pradesh.
E-mail:
kaushikanupma@gmail.com

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Human Rights of Prisoners: A Case Study of Sampurnanad Open Prison, Sanganer, Rajasthan

Anupma Kaushik*, Neetu Sharma**

Abstract

Condition of prisoners and prisons in a developing country like India is in need of a lot of improvement as they continue to suffer due to lack of facilities and funds. Normal prisons also have many restrictions on movement of prisoners which impairs their adjustment in society after release. Open prisons provide an alternative which makes prisoners self reliant and helps in their adjustment in the society.

Keywords: Open Prison; India; Rajasthan; Sanganer; Prisoners; Human Rights.

Introduction

Prison is a place where people are physically confined and deprived of a range of personal freedoms. For a long time in the western world imprisoning has not been a punishment in itself but rather a way to confine criminals until corporal or capital punishment was administered to them. (Crighton and Towl, 2008: 71) American Quakers of eighteenth century looked at imprisonment as a method for dealing with civil offenders. (Mahaworker, 2006:10) However whipping, beating and execution continued inside prison for a long time as governments adopted the substance of the Quaker idea without accepting the philosophy behind it. (Sommer, 1976: 3-6) Reformers like Dorothy Dix, Samuel June Barrow, John Howard, Jeremy Bentham, Jonas Hanway, Elizabeth Fry worked to shift the emphasis from deterrence to reform and rehabilitation. (Choudhary, 2002: 19) Today prisons are increasingly called correctional institutions and defined as places properly arranged and equipped to keep in safe custody those committed there by the courts and where they are treated with humanity and helped to lead a useful life as law abiding

citizens after their release. However the authoritarian environment of prisons gives rise to following problems: deprivation, (Ahuja, 2000: 308-309) inmate socialization, over punishment (Carter, Glaser, Wilkins, 1977: xii) and corruption. (Bedi, 1998: 155)

Prisons in India

Prisons were in existence in India since ancient times. (Paranjape, 2008: 384) Ancient law givers like Brahaspati, Manu, Yajnavalkya, Vishnu and Kautilya have discussed prisons in their writings. According to Kautilya prisons should provide separate accommodation for men and women. These accounts throw light on harsh treatment of prisoners. During medieval (Muslim) period too criminals were detained in fortresses pending trial and judgment. The 'quazis' were supposed to visit the prisons and inquire into the conditions there and release those who showed signs of repentance. Prisoners were also released on special occasions. (Mohanty and Hazary, 1990: 19-23).

Prisons on western model were established during the regime of the East India Company. Lord Macaulay explained in 1835 that imprisonment should strike a balance between terrorizing the wrong doer and not

shocking the humanity. From 1835 to 1919 six prison committees were set up to examine the issue of prison reforms. (Chandra, 1967: 197- 205) Meanwhile under Mahatma Gandhi's leadership large number of freedom fighters courted arrest and thousands of educated and public spirited men and women were thrown into prisons. They were embittered by their personal experiences and sufferings of other inmates. Gandhi too was critical of the bad condition of British prisons in India (Gandhi, 1964: 17).

After India gained independence in 1947 some model and open prisons were constructed. (Chandra, 1967: 212- 217) Many committees and agencies were constituted to suggest reforms such as: All India Jail Manual Committee 1951; (Chandra, 1967:217- 222) Central Bureau of Correction Services 1961; (Bhushan and Shah, 1970: 34) Conference of Chief Secretaries 1979; Justice Mullah Committee 1980; National Committee on Women Prisoners 1986; (Mohanty and Hazary, 1990: 28-29) Kapoor Committee on Jail Reforms 1986; Justice Leila Seth Commission of Inquiry 1997; Duggal Committee Report on Classification of Prisoners 1998. (Rajkumar, 1998: 41- 106)

Problems in Indian Prisons

Currently Indian prisons face following challenges: century old rules; too many and scattered rules; lack of simple and uniform rules; (Sharma, 1985: 153) organizational obsolescence (Srivastav, 2008: 1) lack of infrastructure and resources; (Sharma, 1998: 189) overcrowding; (Paranjape, 2008: 206) poorly paid and insecure prison staff; too many under trials; slow and expensive judicial process; lack of after release programme; low professionalism (Bedi, 1998: xi- xii); corruption; lack of discipline (Singh, 2010: 3); torture; inhuman condition; suicides; deaths; (Prasad, 2009: 2) lack of medical attention and treatment; (Sharma, 2009: 4) bad food; (Thomas, 2010: 5) lack of facilities for minimal hygiene; (Prakash, 2009: 4) lack of awareness about prisoners rights and poor public opinion (Kartikayan, 2007:1).

Prisoners Rights

The concept of prisoner's right is a rather new one. Earlier it was believed that prisoners do not have rights and were imprisoned in very poor condition in almost every country (Sharma, 1998: 44-50). Prisoners were kept under chains and heavy loads and whipped on the slightest pretext in ancient India (Sharma, 1998: 48). During medieval times and British rule too prisons and prisoners in India were in horrible condition (Ghosh, 1992: 7). Same was the

case in western countries during this period (Mahaworker, 2006: 23). The belief was that the prisoner has forfeited his liberty and all personal rights (Paranjape, 2008:196). Later a few rights were acknowledged for prisoners and the improved belief was that moral and social obligations exist on the part of the community to ensure that prisoners are not physically harmed and given proper care, so that they do not commit another crime when released from prison (William, 1975: 167). However, today the belief is that prisoners even though deprived of their liberty are still entitled to basic human rights (Srivastav, 2004: 587). In this process many people and organizations have made important contribution. Various conventions of UNO proclaim that prisoners should be treated with respect and dignity; not discriminated against; provided with healthy and hygienic environment, employment, educational and recreational facilities; not subjected to torture or other cruel, inhuman and degrading treatment or corporal punishment; and are to be treated humanely (Lakkaraju, 2008: 24- 58).

Prisoners Rights in India

India, a signatory of all UN instruments has accepted the concept of rights of prisoners. The Constitution of India also incorporates certain fundamental rights and there are laws to protect rights of prisoners (Gonsalves, 2001: 167). The courts have played a very important role in positive interpretation of following rights of prisoners: (Pachauri, 1999: 2-49) right to life; to be lodged appropriately (with cot, potable water and 40sq feet area to move around); proper classification (into male and female; civil and criminal; habitual and first time offenders); a healthy environment; timely medical service; sanitation and hygiene; safety and security; clean and sufficient food; contact with family and lawyer; bail; parole and temporary release; speedy trial; free legal service; proper calculation of sentence; protection against forced sexual activity and arbitrary use of handcuffs and fetters and torture, cruel and degrading punishment; opportunity to air grievances and effective remedy against excesses by prison authorities; compensation for violation of human rights; magazines and papers at own cost; reformatory program; carry trade with permission (for civil prisoners); wages for work; give interview; receive food, cloth and bedding from home and right to information about prison rules. These provisions are for both men and women however some facilities and rights have been provided especially for women prisoners (Kaushik and Sharma, 2009: 254-255).

Open Prison

Open prisons are also known as prisons without bars or minimum security prisons (Ghosh, 1992, 8). An open prison or open jail is an informal description applied to any penal establishment in which the prisoners are trusted to serve their sentences with minimal supervision and perimeter security and are not locked up in prison cells. Prisoners may be permitted to take up employment while serving their sentence. It is often part of a rehabilitation plan for prisoners moved from closed prisons. They may be designated "training prisons" and are only for prisoners considered a low risk to the public. However, prisoners do not have complete freedom and are only allowed to leave the premises for specific purposes, such as going to an outside job (Open prison, 2016). Open prisons differ from closed prisons in their philosophy of administration, discipline, enforcement of orders, assessment of problems and models of tackling them. Ideas of reformation and rehabilitation of prisoners are of prime importance. The positive outcomes are positivity, self worth, dignity and self help attitude among prisoners (Ghosh, 1992, 9-10).

The first open prison was established in Switzerland in 1891, in the United States in 1916, in Britain in 1930, and in the Netherlands in 1950. In India, the first open prison was started in 1905 in Bombay Presidency. The prisoners were selected from the special class prisoners of Thane Central Jail, Bombay. However, this open prison was closed in 1910. The state of Uttar Pradesh established the first open prison camp in 1953 for the construction of a dam over Chandraprabha River near Varanasi in UP. Uttar Pradesh was followed by many other states in establishing open prisons. In 1996, there were 24 open prisons (excluding semi-open camps) found in 12 states in India. The capacity of prisons varies from less than 100 to 1,000 prisoners. The nature of accommodation also differs from place to place. Assam, Kerala, and Himachal Pradesh prisons have permanent barracks; Mysore prison has pre-fabricated structure, and Andhra Pradesh and Maharashtra prisons provide dormitories with asbestos roofs. Some of these prisons provide work only in agriculture, some in industries, and some both in agriculture and industries (Bura, 2016).

Eligibility conditions for admission to open prisons vary from state to state. The main conditions are: prisoners should be willing to abide by the rules of open prisons; they should be physically and mentally fit to work; they should have been sentenced for terms of one year or more and must have spent at least one-fourth of the total term of imprisonment in

jail; they should have record of good behaviour in prisons; they should not be below 21 years or above 50 years as prescribed by the state; they should not have been convicted for certain types of crimes (like dacoity, forgery, counterfeiting, etc.); they should not have any case pending in the courts; they should not be habitual offenders; and they should not be class I (one) prisoners or women prisoners (Bura, 2016).

The procedure for selection of prisoners for open prisons is simple. The superintendents of prisons prepare lists of prisoners to be sent to open prisons on the basis of the eligibility conditions. These lists are sent to the selection committees which examine each case-history and make the final selection. Thus open prisons differ from the ordinary prisons in four respects: in structure (affecting organisation and administration), in role systems (affecting work and interaction in everyday life), in normative systems (affecting social restrictions and expectations guiding behaviour), and in value orientations (affecting conduct and training). Open prisons are characterised more by consensus among inmates. The main objectives of establishing open prisons are: to reduce overcrowding in jails, to reward good behaviour, to give training in self-reliance, to provide dependable permanent labour for public works, to prevent frustrations and create hope among long-termers, to provide training in agriculture and industry, to examine the suitability of releasing offenders from prisons, and to enable prisoners to live with their family members (in some states) (Bura, 2016).

An open prison, also called minimum-security prison, open camp, or prison without bars, is a prison which is open in four respects: open to prisoners, i.e., inmates can go to market at sweet will during the day but have to come back in the evening; open in security, i.e., there is absence of precautions against escape, such as walls, bars, locks and armed guards; open in organisation, i.e., working is based on inmates' sense of self-responsibility, self-discipline, and self-confidence; and open to public, i.e., people can visit the prison and meet prisoners. It is the kind of authority and the nature of management transferred to the inmates and the degree of freedom from physical restraints (to escape) that should be the real measure of openness of an open prison (Bura, 2016).

Sampurnanad Open Prison

Sampurnanad open prison at Sanganer near Jaipur in the state of Rajasthan was established in 1958. It is one of the 23 open prisons in Rajasthan

and 46 in India (Government letter, 1962).

At the time of its establishment it had a capacity of 20 prisoners but in housed only 11 prisoners. In 1962 it was closed but in 1963 the then Governor of Rajasthan Mr Sampurnanad started it once again and it was also named after him. The capacity was also increased to 50 and 47 prisoners were housed in it (Administrative Report, 2009-2010: 6). The prisoners did farming and made *dari* (thin mattress) in free time to earn three to eight rupees per day. It was intended to give prisoners an opportunity to be self sufficient and disciplined. As per Rajasthan open prison rules 1972 it can house prisoners who had completed one third of their sentence and who displayed good conduct and whose names are recommended by a committee formed for this purpose by the state government (Government letter, 1962). Prisoners living in the open prison earn their own money and utilize it for their own expenses.

Following prisoners are not qualified to go to open prison:

1. Prisoners whose normal residence is outside Rajasthan
2. Prisoners convicted by court martial.
3. Prisoners convicted under explosive Material Act 1908.
4. Prisoners who had run away from prisons or tried to run away from lawful confinement.
5. Prisoners convicted under following provisions of Indian Penal Code 1860: 121 to 130, 216(a), 224, 225, 231, 232, 303, 311, 328, 332, 333, 376, 377, 383, 392 to 402, 435 to 440 and 460.
6. Prisoners convicted of five year labour term.
7. Prisoners whose conduct was not good in prison.
8. Prisoners who are less than 25 and more than 60 years of age.
9. Prisoners who are mental patients or physically handicapped.
10. Civil and detained prisoners.
11. Unmarried prisoners.
12. Prisoners convicted of *awaragardi* (wandering).

Eligibility for Open Prison

1. Not falling in one of the above categories.
2. Performing proper work in prison factory and jail service assigned.

3. Completion of one third of jail term.

Case Study

In Sanganer open prison at the time of study from February 2009 to December 2012 there were 169 prisoners of which 154 were men and 15 were women. Prisoners built their own houses and paid their electricity and water bills. Their children go to nearby schools. There is a temple in the campus and an office for staff. There are two separate *panchayats* for men and women. *Sarpanch* is made with approval of all the prisoners. Meetings are held once every month. Prisoners' follow all the decisions of *panchayat*. There are 5-6 members in the *panchayat* to sort out mutual disputes; provide economic help; assist new inmates in making house; medical help in night; and ensure cleanliness of compound.

Personal Profile

27 percent women and 20 percent men were illiterate, 47 percent women and 50 percent men were literate, 13 percent women and 31 percent men had schooling, and 13 percent women and 16 percent men had higher education. 80 percent women and 98 percent men were married, 13 percent women and two percent men were widows or widowers and six percent women were deserted by their husband. Prisoners included doctors, teachers, drivers, lawyers, tailors, property dealers, labourers, farmers etc. Four percent did not earn, 10 percent earned up to Rs 1000 per month, 18 percent earned between Rs 1001 to 5000 per month, 54 percent earned between Rs 5001 to 15000 per month and 14 percent earned more than Rs 15000 per month. 40 percent women and 44 percent men knew about human rights while others did not. Most prisoners came to know about these from prison administration but some got information from other inmates.

Crime, Police and Judiciary: All men and all women were convicted for murder and all were arrested before sunset. All respondents said that police did not ask for money/ bribe. 80 percent women and 61 percent men replied that the attitude of judge was neutral while 20 percent women and 39 percent men believed that attitude of judge was sympathetic towards them. 21 percent men agreed with the punishment but 79 percent men and all women disagreed with the punishment meted out to them. All respondents had engaged their own lawyer. 27 percent women and 25 percent men could understand the proceedings of court but 73 percent women and 75 percent men could not.

Open prison: All respondents came to know about open prison from the prison administration. All prisoners had served for at least four years in regular prison before coming to open prison. All women and 60 percent men said that the administration at open prison was cooperative while 40 percent men believed that the administration was reformatory. All said that men and women are lodged separately in open prison. All said that the behaviour of prisoners towards other prisoners is either good or okay. Seven percent prisoners are living in brick houses, 83 percent in semi brick houses and 10 percent in mud houses. All said they are allowed to go outside between seven a m and seven p m. 60 percent women said they get professional training but all men and 40 percent women disagreed. All said that family members and people outside prison behave in a good or okay manner with them. All said they themselves find work to earn money and are responsible for their own food, clothing, bedding, entertainment, toilet, bathroom and cleanliness. All said they feel good when they go out of prison. All said they are not forced to do any immoral act by authorities. All said no facility for meditation, medical check up, pregnant women, education are available. Open prison does not have library or entertainment facility. All said attendance, security and discipline is okay or good and facilities for education of children are available. All said some cultural programmes are organized and panchayat system exists. All said people from judiciary, human rights commission etc visit for inspection.

Problems

1. Lack of proper buildings/ houses.
2. Lack of facilities for literacy/ education.
3. Lack of suggestion box and prison rule book.
4. Lack of entertainment facilities.
5. Lack of medical facilities.
6. Less number / percentage of women and lack of separate open prison for women.
7. Encroachment on prison land by outsiders.

Suggestions

1. Facilities for literacy, education and professional training.
2. Houses for prisoners should be constructed and provided by the government.
3. Suggestion box and prison rule book should be available to the inmates.

4. Separate open prison for women.
5. Number of women must be increased.
6. Medical and entertainment facilities should be provided.
7. Encroachment on prison land by outsiders should stop.

Conclusion

Open prison is a very noble concept and if adopted properly it could transform the prison system but there are so few open prisons and they lack basic facilities hence they need immense improvement in order to have a substantial impact on the system.

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