

Prisoner's Right To Education: A Legal Analysis

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"Instead of making prisoners out of our students, we ought to make students out of our prisoners."
-Paul W. Silver

1. INTRODUCTION

The system of prison administration in our country is more than 100 years old. If one looks back one can be impressed with the vast change made during this period. The innovation, while still halting and employed only in some and not in all the prisons of the country, nevertheless give promise of the system of treating offenders. Gone are now many of the brutal methods of treatment yielding place to several new methods including outdoor labour, facilities for higher education, recreational and correction plans, group work and payment of wages. Attempts are now being made to treat the prisoners under less repressive discipline and with greater freedom.¹

Moreover, the role of education has been widely recognized in the modern concept of prison reform. From the social point of view also, we cannot deny that prisoners are also a part and parcel of our society and so it is required to enable them to catch up with the rest of the society. Therefore, it is necessary to make them eligible to command respect in the society after release from the jails. Education can play a great role to upgrade their knowledge and enhance their competencies. Confucius² (551 -479 BC), also believed that everyone should benefit from learning. He said, "Without learning, the wise become foolish, by learning the foolish become wise." Therefore, education has been treated as a right of prisoners which has been incorporated in the various guidelines given by the United Nations, Supreme Court of India and National Human Rights Commission of India.

2. MEANING OF PRISONER

The word prisoner means any person who is kept under custody in jail or prison because he/she committed an act prohibited by law of the land. A prisoner also known as an inmate is anyone who against their will is deprived of liberty. This liberty can be deprived by forceful restraint or confinement.

A prisoner is a person who is confined in prison after getting proper and legitimate punishment from a court or person that is lawfully remanded by the court having committed an offence.³

ACCORDING TO PRISON ACT, 1894⁴

Section 3 (2) "criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial ;

Section 3 (3) "convicted criminal prisoner" means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882 (10 of 1882), or under the Prisoners Act, 1871 (5 of 1871) ;

Section 3 (4) "civil prisoner" means any prisoner who is not a criminal prisoner ;⁵

CLASSIFICATION OF PRISONERS

Prisoners can be categorized in the manners as under:-

- (i). Pre-trial prisoners,
- (ii). Under-trial prisoners, and
- (iii). Convicted prisoners.
- (iv). Detenues (under preventive detention)

¹ Vidya Bhushan, *Prison Administration in India* 246 (S. Chand & Co., 1970).

² Famous Chinese Philosopher.

³ Steve Foster, *Human Rights and Civil Liberties* 287 (Oxford University Press, 2nd ed., 2008).

⁴ Act No. 9 of 1894.

⁵ <http://legislative.gov.in/sites/default/files/A1894-9.pdf> (visited on June 10, 2017).

OBJECTIVE OF EDUCATIONAL PROGRAMMES IN PRISONS

The objective behind educational programmes in prisons should be to channelize prisoners' energies into constructive and creative pursuits, instilling in them a sense of confidence, developing amongst them social responsibility and consciousness, fostering amongst them habits and attitudes necessary for adjusting in the community, creating amongst them an awareness of the futility of leading a criminal life and uplifting them morally, mentally and socially. A comprehensive educational programme in a prison should aim at⁶:

- (1) providing opportunities to the illiterate inmates to achieve at least a certain minimum level of education,
- (2) extending facilities to literate inmates to advance their educational standards,
- (3) developing a better understanding of the duties and obligations of a citizen,
- (4) improving the attitude of inmates towards society and fostering a desire to live as good citizens,
- (5) assisting the development of good social and ethical habits and attitudes so that the inmates may properly adjust their lives in the community,
- (6) helping them to improve their personalities and ability for social adjustment through individual and group guidance in social living,
- (7) developing a point of view which will make the futility of a criminal way of life apparent to the inmates, making them aware of the advantages of a law abiding life.

NATURE OF AN EDUCATIONAL PROGRAMME

The educational programme should consist of⁷:

- (i) Physical and health education
- (ii) Academic education
- (iii) Social education
- (iv) Vocational education
- (v) Moral and spiritual education

SCOPE OF RIGHT TO EDUCATION FOR PRISONERS

According to various International Conventions and due to reformatory approach in India the trend is changing and now a detained and imprisoned person shall also have right to get the reasonable education which can be availed from public sources within the limitations of the State, subject to the maintenance of security and public order. Provision must be made for education facility of prisoner mainly woman and youth offenders so that they can improve their personality behind the bars. State must setup new educational institution along with the faculty so that when prisoner are released from prison they can pursue their further education. The Courts must take watch of this matter that fundamental right to education shall not be defeated by the prison administration of state. The education of young prisoner should be made compulsory.

3. EDUCATIONAL RIGHT OF PRISONERS AT INTERNATIONAL LEVEL

The issues related to prisoners are not only concerns of national but it has touched the international scenario also. Since First World War the issues of human rights began to rise at the international level, this journey started from Universal Declaration of Human Rights which was initial legislation concerning rights of prisoner as well.

UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

Article 26 of the Universal Declaration of Human Rights declares: 'Everyone has the right to education'⁸. Similarly, Article 2 of Protocol number 1 to the 1952 European Convention for the Protection of Human Rights and Fundamental Freedoms says, 'No person shall be denied the right to education.'⁹ Each implies that the right to education and training applies to all persons, including, therefore, all persons in prison.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 1976

The ICCPR is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and in force from 23 March. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of

⁶Government of India, "Model Prison Manual for the Superintendence and Management of Prisons in India Bureau of Police Research and Development" (Ministry of Home Affairs, 2003), Para 13.04.

⁷*Id*, Para 13.06.

⁸<https://www.un.org/en/universal-declaration-human-rights/> (visited on June 2, 2017).

⁹https://www.echr.coe.int/Documents/Convention_ENG.pdf (visited on June 2, 2017).

April 2014, the Covenant has 74 signatories and 168 parties. The Covenant follows the structure of the UDHR and ICESCR, with a preamble and fifty-three articles, divided into six parts.

Article 9 of ICCPR recognizes the rights to liberty and security of the person. It prohibits arbitrary arrest and detention, requires any deprivation of liberty to be according to law, and obliges parties to allow those deprived of their liberty to challenge their imprisonment through the courts. These provisions apply not just to those imprisoned as part of the criminal process, but also to those detained due to mental illness, drug addiction, or for educational or immigration purposes.

STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS, 1955

The Standard Minimum Rules for the Treatment of Prisoners was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions. Purpose of these rules was to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions relating thereto.

Emphasizing the need of education for the prisoners, Standard Minimum Rules say that provision should be made for the further education of all prisoners capable of profiting thereby, including religious instructions in the countries where this is possible. The education of illiterates and young prisoners should be made compulsory and special attention should be paid to it by the administration. So far as practicable, the education of prisoners should be integrated with the educational system of the country so that after their release they may continue their education without difficulty.¹⁰ All appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counseling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities.¹¹ Provision shall be made for the further education of all prisoners capable of pursuing their education further.¹²

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, 1984¹³

During the decade of 1980 -1990 many international discussions were held between various nations, United Nations and other international agencies. This Convention was outcome of those discussions. According to this Convention:-

Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials etc. and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.¹⁴

BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS, 1990

The Basic Principles for the Treatment of Prisoners was adopted and proclaimed by General Assembly resolution 45/111 of December 14, 1990. The aim of making these principles was to develop humanization approach towards the treatment of prisoners and for safeguarding their human rights throughout the globe. The principles are equally applied impartially. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY, 1990¹⁵

When United Nations shocked at the conditions and circumstances under which juveniles are being deprived of their liberty worldwide, and are highly vulnerable to abuse, victimization and the violation of their rights they decided to make rules regarding their safety and development. Every juvenile has right to compulsory education equivalent to his school status which can prepare him for returning to society. Diplomas or educational certificates awarded to juveniles while in Detention should not contain any sign which indicates that he was in prison.

¹⁰ Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 77

¹¹ Standard Minimum Rules for the Treatment of Prisoners, 1977, Rule 66.

¹² *Ibid*, Rule 77.

¹³ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Article 2.

¹⁴ *Ibid*, Article 10.

¹⁵ The General Assembly, 45/113, 14 December 1990.

THE PRISON ACT, 1992 OF ENGLAND

According to Prison Security Act, 1992 of England prisoner" means any person for the time being in a prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody.¹⁶

A Select Committee of British Parliament constituted in 2005 to study the status of Prisoners opined that Education for prisoners in England must be improved if they are to be prevented from re-offending. Its chairman, Barry Sheerman stated that although the government has increased resources for prison education, it has not fully met its manifesto commitment to 'dramatically increase the quality and quantity of education provision'. Re-offenders are costing the taxpayer an estimated £11bn a year. Education has a key role in rehabilitating prisoners into society and finding them secure employment. If prisoners are to find a real alternative to crime on their release, then prisons will have to dramatically improve their provision. The Committee further suggested the need of high-quality teaching for prisoners that is suited to their individual needs. The Committee was of consensus view that vocational training in prisons, that can prepare an inmate for a real job on their release, is vital to reduce reoffending.¹⁷

According to an American Scholar, education in prisons is directly linked with recidivism. Helping these inmates gain an education and start a new life has helped to reduce recidivism rates, thus saving a huge amount of money for local and state governments. After all, people in prisons are members of the larger American community, and it is a good idea to make sure they will be educated, productive, taxpaying citizens when they are released into free society. As prisoners do their time, education programs can provide constructive learning opportunities to help them turn their lives around.¹⁸

According to Vacca, prisoners who attend educational programmes while they are incarcerated are less likely to return to prison following their release. Studies in several states have indicated that recidivism rates have declined where inmates have received an appropriate education. Furthermore, the right kind of educational programmes leads to less violence by inmates involved in the programs and a more positive prison environment. Effective Education Programmes are those that help prisoners with their social skills, artistic development and techniques and strategies to help them deal with their emotions. In addition, these programmes emphasize academic, vocational and social education.¹⁹

4. EDUCATIONAL RIGHT OF PRISONERS UNDER NATIONAL LAW

In India several steps have been initiated for the reformation of the prisoners in jail, but the most important of all is the empowerment and the rehabilitation of the prisoners by the tool of education. Numerous prisoners have been taking the courses via IGNOU and other correspondence methods in the jails which have helped them earn degree in education as well while in jail. Tihar jail, has taken an initiative to help the prisoners to outreach with their degrees by organizing placement programmes in the jail premises for those prisoners who have shown their good conduct. However, individual efforts have been made in this regard at places like Amritsar Central Jail where Education Centre was set up in collaboration with the local Guru Nanak Dev University.

PRISONERS RIGHT TO EDUCATION UNDER THE CONSTITUTION OF INDIA, 1950

The Constitution of India instituted equality, provides right to freedom of speech and expression, peaceful assembly, freedom from arbitrary arrest, protection of life and liberty right against exploitation, freedom of conscience and free profession, practice and propagation of religion and educational and cultural rights. It also provided teeth to those rights by making them enforceable by direct access to the Supreme Court of India.²⁰ In the comprehension of the Supreme Court the right to life and liberty includes, right to human dignity, right to privacy, right to speedy trial, right to free legal aid, right to be prisoner to be treated with dignity and humanity, right to bail, right to compensate for custodial death, right of workers to fair wage and human conditions of work, right to security, right to education and right to health environment.²¹ The Supreme Court of India interpreted Art 21 of the Constitution and shows much interest on prison reforms. The Supreme Court all the time balanced the reformatory theory and retributive theory of punishment, i.e., the Apex Court maintaining the severity of punishment wherever necessary and considering the gravity of crime and circumstances in which it is committed. The penological approach of the Indian Judiciary itself inhumane.

¹⁶ http://www.legislation.gov.uk/ukpga/1992/25/pdfs/ukpga_19920025_en.pdf (visited on July 2, 2017).

¹⁷ <http://news.bbc.co.uk/go/pr/fr/-/1/hi/education/4395349.stm> (visited on June 14, 2020).

¹⁸ Garmon, John, *Higher education for prisoners will lower rates for taxpayers*, An article in the Journal 'Black Issues in Higher Education', 17 January 2002 [http://findarticles.com/p/articles/mi_m0DXK/is_24_18/ai_82770923/]

¹⁹ Vacca, J.S.: *Educated Prisoners Are Less Likely to Return to Prison (Journal of Correctional Education, v55 n4 p297-305 Dec 2004)*, Dec 2004 [http://findarticles.com/p/articles/mi_qa4111/is_200412/ai_n9466371/?tag=rbxcra.2.a.11]

²⁰ Dr. Gurbax Singh, *Law relating to Protection of Human Rights and Human Values* 231 (Vinod Publications Ltd., 2008).

²¹ *Ibid.*

While extending the scope of right to life and personal liberty the emphasis is given on meaningful complete and worth living life of a man as narrated by D.D.Basu. it include, right to education as held in *L.I.C. of India v. Consumer Education & Research Centre*,²² it is Right to the appropriate life insurance policy within the paying capacity and means of the insured. In *Chameli Singh v. State of UP*²³ apex court held that right to guarantee in any civilized society implies the right to food, water, decent environment, education, medical care and shelter.

PRISONER'S RIGHT TO EDUCATION

Education is required for the growth and betterment of life and prison should not be bar for that in all cases. State should try to provide basic education to inmates within permitted limits. Himachal Pradesh High Court in *Gurdev Singh and others v. State of Himachal Pradesh*²⁴ gives emphasis on the provisions for education and vocational training of the prison inmates to improve their skills and capabilities.

MODEL PRISON MANUAL, 1960

This was outcome of Dr. Reckless Committee which was appointed in year 1957 and made its recommendation in year 1960 basically it was guideline to the Central Government and various State Governments to improve prison administration in India. Chapter 23 of the manual provides for health, education of prisoners and course curriculum for them.

MODEL PRISON MANUAL FOR THE SUPERINTENDENCE AND MANAGEMENT OF PRISONERS IN INDIA, 2003 (Formulated by Bureau of Police Research and Development, Ministry of Home Affairs Government of India, New Delhi).

This Committee involving higher officials related to prison administration in India after intensive discussions and deliberations on the subjects assigned to it, submitted the drafts for consideration of government. Chapter 13 and 14 of the manual mention rules regarding vocational training and educational programs. The purpose considered was proper development of mind through intelligent manual labour, spirit of fellowship and a cooperative way of living, and a sense of group adjustment and Developing capacity for sustained hard work, also Building habits of concentration, steadiness, regularity and exactness in work, Imparting and improving work-skills, Awakening the self-confidence and self-reliance of inmates. Training and preparing inmates for achieving lasting social readjustment and rehabilitation, Imparting an occupational status and thus creating a sense of economic security among inmates, Keeping inmates usefully employed in meaningful and productive work, Preventing idleness, indiscipline and disorder amongst them and at last Maintaining a good level of morale amongst them and thus promoting a sense of self-as well as institutional discipline among them.

Model Prison Manual says that "Education is vital for the overall development of prisoners. Through education their outlook, habits and total perspective of life can be changed. Education of prisoners benefits the society as well as it leads to their rehabilitation and self-sufficiency. Education reduces the tendency to crime. This would mean less crime, fewer victims, fewer prisoners, more socially productive people, and less expenditure on criminal justice and law enforcement. Education is harmonious and all-round development of human faculties-mental as well as physical. It is a tool by which the knowledge, character and behaviour of the inmate can be moulded. It helps a prisoner to adjust to the social environment and his ultimate resettlement in society."²⁵

Model Prison Manual further clarifies that life in prison is extremely monotonous, routinised and regimented. The educational activities offer opportunity to a prisoner to remove from his mind depressing thoughts leading to relaxation and joy. We must accept the reality that to confine offenders behind walls, without trying to change them through education and other activities, is an expensive folly.²⁶

Educational Policy for Inmates by Model Prison Manual

On admission to the prison, the criteria for initial classification of prisoners should be done on the basis of their educational background, their aptitude to follow further studies, their social background and vocational education.²⁷ The policy behind academic education should aim at:

- (i) Making every illiterate prisoner literate
- (ii) Developing educational qualifications of prisoners²⁸

²² (1995) 5 SCC 482.

²³ AIR 1996 SC 1051.

²⁴ 1992 Cr. L.J. 2542.

²⁵ Bureau of Police Research and Development of India, *Model Prison Manual, 2003, Para 13.01.*

²⁶ *Ibid*, Para 13.03.

²⁷ *Ibid*, Para 13.07.

²⁸ *Ibid*, Para 13.08.

If a prisoner, who was pursuing studies before his imprisonment, expresses his intention to continue his studies and appear for an examination of any Board/University or institution, he should be given due facilities for it. He should be allowed to receive books and writing material from his friends and relatives from outside and purchase books and such materials out of his personal cash kept in the custody of the prison, or at government expense. Such facilities should also be extended to a prisoner who has given up his studies before his imprisonment, but expresses his intention to proceed with it with a view to appear in an examination conducted by any university or other statutory body or a recognized institution.²⁹

Educational Planning for Prisoners in India

Educational plan for prisoners will be so that³⁰: (i) Each prisoner should be given a programme of education which will help the process of his socialization and rehabilitation. In order to achieve these objectives an adequately trained educational staff and minimum facilities like class rooms and library should be provided in every prison. (ii) Education of illiterate adolescents and adult prisoners shall be compulsory. Correctional Services will pay special attention to educational programmes. (iii) Because of wide variations in intelligence level and individual interests of inmates, it is essential to organize diverse educational programmes to suit the needs of the larger groups. (iv) Educational programmes should cover subjects which would help develop the inmate as affective members of social groups. The programmes should also help develop insight on the part of the inmates. (v) The nature of the educational programmes in an institution should be related to the size and type of the inmate population and the time earmarked for these programmes. Educational activities should be developed in conjunction with the overall programme of an institution. (vi) As far as practicable, the education of prisoners shall be integrated with the educational system of the State so that after their release they may continue their education without difficulty. These programmes should be related to after-care programmes also. (vii) The education policy should be formulated in a manner which is adjustable to social environment, leading to ultimate resettlement of a prisoner in the society.

Education should be organised at three levels:

- (a) For the beginners and illiterate inmates
- (b) For the intermediates
- (c) For advanced education.

Educational personnel should be oriented, through special training courses, to correctional policies, programmes and methods as far as practicable. Non-Governmental Organizations should be extensively involved in the educational programmes.

A prisoner should be encouraged and provided with facilities for enabling him to appear in competitive examinations conducted by various government departments. Classification of Prisoners.³¹ Prisoners should be classified on the basis of their academic/educational qualification and their aptitude for further learning at the time of admission in the prison. It should be made compulsory for each prisoner to sit in the educational classes, arranged as per their qualification, for at least two hours in the day, preferably in the morning hours.³² The classification committee and educational personnel should together decide the amount of time to be devoted for academic education, vocational education and work for each inmate. As there will be variations in the educational level, intelligence and interests, diverse educational programmes should be organised for different groups of inmates³³. The education of all adult prisoners shall be compulsory and a time-frame should be laid down under which an illiterate prisoner will be able to write his name at least.³⁴ The help of educated prisoners should be liberally obtained for carrying out educational programmes, in addition to the help taken from regularly employed teachers, and utilizing similar facilities offered by NGOs.³⁵

Language Classes

Language classes should be encouraged. These classes could be run by the educated prisoners, regular teachers and NGOs. This will help the prison administration in harmonising relations between prisoners of different cultures and communities and would improve discipline in the prison.³⁶ Every prison should have a regular school where adolescent prisoners can attend regular classes in shifts. This school could be a branch of any government school being run by the Education

²⁹ *Ibid*, Para 13.09.

³⁰ *Ibid*, Para 13.05.

³¹ *Ibid*, Para 13.10.

³² *Ibid*, Para 13.11.

³³ *Ibid*, Para 13.12.

³⁴ *Ibid*, Para 13.13.

³⁵ *Ibid*, Para 13.14.

³⁶ *Ibid*, Para 13.15.

Department of the State, with the Education Department providing teachers, equipment and material for teaching adolescent prisoners. The school should provide education for primary, secondary and senior secondary levels. It should be mandatory for each adolescent to attend classes. The staff posted in the prison should be paid special incentive for maintaining prisoners' interest in attending school.³⁷ The prisoners who pass various examinations should be given certificates as are given to students studying in regular schools. Care should be taken to ensure that there is no mention of the adolescent's imprisonment on such certificates.³⁸

Education for Short Term Prisoners

For Under-trial prisoners, and prisoners sentenced to short term imprisonment, educational classes could be organized in the yards/enclosures where such prisoners are kept. This would facilitate better organization of regular classes for prisoners who are required to undertake educational programmes on a short, medium or long term basis.³⁹

Personnel and Equipment

Following personnel and equipment for educational programme for prisoners are provided: (i) Teachers should be provided for running and guiding the adult educational programmes in prisons. Teachers from Education Department could be posted to the prison on transfer/deputation basis. Inmates, who are educated and whose conduct has been good, should be given training in imparting education to others. These trained inmates should assist the regular teachers in organizing diversified educational programmes. The services of retired teachers or NGOs could also be obtained in running the educational programmes. (ii) Necessary equipment for education like books, stationery, writing material, furniture, etc., should be provided at Government cost. In each prison, a building should be earmarked/constructed as a school for carrying out educational activities. Buildings and areas for educational programmes should be earmarked in accordance with the minimum standards as fixed by the Education Department for similar purposes. (iii) Study/examination centres of National Open School/Indira Gandhi National Open University should be established in every Central/District Prison. The strength of educational personnel should be fixed in accordance with the inmate population and the educational programmes to be organised. (iv) The educated prisoners, who help the prison administration in conducting educational programmes, should be given wages/honorarium by the Prison Authorities. (v) Audio-visual equipment should be used for educational purposes. (vi) The lodging arrangement of prisoners can also be done as per their educational requirements so that suitable environment is created in the barrack/cell to enable them to carry out the assignments given to them by their teachers.⁴⁰

Curriculum

Curriculum should be drawn up in accordance with the needs of each inmate group. It should be in line with the educational programmes conducted in other educational institutions in the state. It should be planned in such a way as to synchronize with the length of sentence of the inmates. Educational schedules and time tables should be drawn to fit the total programme of the prison.⁴¹

Tests and Examinations

Following concessions shall be given to prisoners for pursuing their higher education. (i) At the end of each educational project, inmates should be given tests and examinations. These tests/examinations should be conducted inside the prison by the Education Department/National Open School/Indira Gandhi National Open University. (ii) No fees, including examination fee, should be charged from students appearing in various examinations. Cases of brilliant students should be recommended to Education Department and other agencies for grant of scholarship.⁴²

Liaison

The institution should establish liaison with the Department of Education/ NOS/IGNOU and other approved educational institutions for obtaining educational material and other help.⁴³

Library

Following facilities in prison library should be provided: (i) Books in the library should cater to the needs of different educational standards, satisfaction of intellectual needs, and development of knowledge, of the inmates. (ii) The prison library shall be properly equipped with books, magazines, and newspapers. These shall be issued to the prisoners. Prisoners

³⁷ *Ibid*, Para 13.17.

³⁸ *Ibid*, Para 13.18.

³⁹ *Ibid*, Para 13.19.

⁴⁰ *Ibid*, Para 13.20.

⁴¹ *Ibid*, Para 13.21.

⁴² *Ibid*, Para 13.22.

⁴³ *Ibid*, Para 13.23.

should be encouraged to develop reading habits. (iii) A librarian should be employed for the management of books and other reading material. Help of educated prisoners could also be obtained, under the supervision of the librarian, to run the library. The librarian shall arrange for and make available books on various subjects for satisfying the needs of prisoners. The librarian should keep details of books and periodicals available in the library subject/title wise for use by prisoners and for the information of the Superintendent of Prison. (iv) Donation of books by NGOs should be encouraged and welcomed. Public and Government schools should be encouraged to adopt the educational programmes being run inside the prison for prisoners.⁴⁴

Prison Publication

There should be a monthly/quarterly publication for the inmates in select institutions for internal circulation. The publication may be printed or cyclostyled according to the facilities available.⁴⁵

Accountability of the Prison Superintendent

It should be one of the primary responsibilities of the prison Superintendent and other prison personnel that the programme of education is implemented in its proper spirit. The success or failure of the programme, and the extent of the educational activities in each institution, should be one of the principal factors on which the performance of these officers should be evaluated.⁴⁶

NATIONAL HUMAN RIGHTS COMMISSION OF INDIA

National Human Rights Commission of India (NHRC) highlights the role of NGOs to improve the educational and recreational facilities in the Prisons.⁴⁷ The Commission has issued broad guidelines to supply reading materials and other educational facilities to the prisoners to nurture their skills as well as for overall personality development. The guidelines are reproduced as under:

“ i) As prisoners have a right to a life with dignity even while in custody, they should be assisted to improve and nurture their skills with a view to promoting their rehabilitation in society and becoming productive citizens. Any restrictions imposed on a prisoner in respect of reading materials must therefore be reasonable.

ii) In the light of the foregoing, all prisoners should have access to such reading materials which are essential for their recreation or nurturing of their skills and personality, including their capacity to pursue their education while in prison.

(iii) Every prison should, accordingly, have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books and prisoners should be encouraged to make full use of it. The materials in the library should be commensurate with the size and nature of the prison population.

(iv) Further, diversified programmes should be organized by the prison authorities for different groups of inmates, special attention being paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate. The educational and cultural background of the inmates should also be kept in mind while developing such programmes.

(v) Prisoners should, in addition, generally be permitted to receive reading material from outside, provided such material is reasonable in quantity and is not prohibited for reasons of being obscene or tending to create a security risk. Quotas should not be set arbitrarily for reading materials. The quantity and nature of reading material provided to a prisoner should, to the maximum extent possible, take into account the individual needs of the prisoner.

vi) In assessing the content of reading materials, the Superintendent of the Jail should be guided by law; he should not exercise his discretion arbitrarily.”⁴⁸

5. JUDICIAL ATTITUDE TOWARDS EDUCATIONAL RIGHT OF PRISONERS IN INDIA

The Indian Supreme Court has been active in responding to human right violations in Indian jails and has, in the process, recognized a number of rights of prisoners by interpreting Articles 21, 19, 22, 32, 37 and 39 A of the Constitution in a

⁴⁴ *Ibid*, Para 13.24.

⁴⁵ *Ibid*, Para 13.26.

⁴⁶ *Ibid*, Para 13.27.

⁴⁷ National Human Rights Commission of India, Annual report 2004-05. Available at <https://nhrc.nic.in/annualreports/2004-2005> (visited on June 30, 2020).

⁴⁸ *Ibid*.

positive and humane way. The Supreme Court of India in the recent four decades has been very active against violation of the Human Rights of the prisoners. In this area an attempt is made to explain some of the provisions of the rights of prisoners under the International and National contexts and also as interpreted by the Supreme Court of India in the light of Fundamental Rights. Through its positive approach and the Activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights.

The Supreme Court in case of *D.B.M. Patnaik v. State of Andhra Pradesh*⁴⁹ asserted that the mere detention does not deprive the convicts of all the fundamental rights enshrined in our Constitution.

In *Hiralal Mallick v. State of Bihar*⁵⁰ 1977 the Supreme Court stressed for the rehabilitation of prisoners and reformation of prisons.

In *Parmanand Katara v. Union of India*⁵¹ the Court has also recognized access to free education as a justiciable right. This decision prompted a Constitutional amendment which inserted in Article 21-A into the Constitutional text, thereby guaranteeing the right to elementary education for children aged between 6-14 years. The Courts have also been pointed to the Directive principles in interpreting the prohibitions against forced labor and child labor. The enforcement of such rights leaves a lot to be desired, but the symbolic value of their constitutional status should not be underestimated.

The Apex Court showed great concern for the reformation in the prisons in India in the case of '*Gurdev Singh and others v. State of Himachal Pradesh*'⁵² and emphasised on the provisions for education and vocational training of the prison inmates to improve their skills and capabilities. Kerala High Court⁵³ has also emphasised the role of educational and recreational facilities as basic human rights of prisoners.

In case of *R.D. Upadhyay v. State of Andhra Pradesh (A.P.) & Ors*⁵⁴ the Supreme Court gave certain directives regarding women prisoners and their children. Some of them were:— A child of the women prisoner shall not be treated as an under trial convict while in jail with his mother. Such a child is entitled to food, shelter, medical care, clothing, and education as a matter of right.

Therefore, this vibrant role of Indian Judiciary shows the change of attitude towards the rights of prisoners and reformation of prisons by treating prisons as correctional rehabilitative institutions.

CONCLUSION AND SUGGESTIONS

Right of education has been recognized for the prisoners in various UN guidelines, NHRC recommendations and directions of the Supreme Court of India. However, there has been no institutionalized effort to streamline the same in the prisons. Education can play a fundamental role in the reformation of prisoners. Education in the prisons is helpful in the reformation of society as it reduces the chances of repetition of crime (recidivism). Vocational training is important for rehabilitation after release and to secure employment.

In the recent years all the world over prison jurisprudence developed in order to protect inherent rights of prisoners and for the proper administration of prisons. Therefore, to start with, the existing legal structure of the prisons administration has to be changed, Criminal law should be amended, a new Prisons Act should be enacted and all Jail Manuals need to be revised. Most importantly Indian Judiciary must continue to play its constructive and active role in prison justice. In conclusion it must be never being forgotten that the problem of prison justice and rehabilitation of prisoners is only a part of the larger problem of social regeneration. The prison administration alone cannot successfully rehabilitate the prisoners. It can only make its humble efforts to set right the prisoners, but efforts will succeed only if our economics, our education and our social institutions and values are properly integrated into a coherent and harmonious whole based on the knowledge of the human institution.⁵⁵

⁴⁹ AIR 1974 SC 2092.

⁵⁰ AIR 1977 SC 2237.

⁵¹ AIR 1989 SC 2039.

⁵² 1992 Cr. L.J. 2542.

⁵³ *Thiruvananthapuram v. State of Kerala*, 1993 Cr. L.J. 3242.

⁵⁴ Writ Petition (civil) 559 of 1994.

⁵⁵ *Supra* note 2 at 201.

SUGGESTIONS

- Education project in the prisons should be equated with the education projects of the country. It can be initiated with the help of NGOs and Universities. Projects like 'Sarva Siksha Abhiyan' should invariably be launched in the jails. Educated prisoners can be associated with the project as resource persons and it will save resources and expenditure. Amritsar Model of Education Project can be replicated in the other prisons also.
- Incorporation of prisoners right as new fundamental right in part III of constitution There is requirement for the new provision in the Constitution recognizing the fundamental rights of the prisoners thoroughly. This is because prisoners, being a part of society, need some rights to protect themselves from the adversities. The present provisions of the Constitution dealing with the prisoner rights are not substantial and are in the abstract form. So, there arises the need to incorporate the new provision in Constitution, incorporating the right of prisoners thoroughly.
- The continuing education of prisoners is yet another tool, that keeps them occupied and also would help their rehabilitation after release from jail. There should be greater emphasis on vocational training of inmates, which will provide them honourable means to earn their livelihood after release from jail. The facilities of lessons through correspondence courses should be extended liberally to the inmates, who are desirous of taking up advanced studies.
- Educated prisoners be registered with employment offices of State. State should draft a rehabilitation program for prisoners in systematic manner firstly it should develop a curriculum for different job oriented courses for prisoners and after completion of that they should be registered with employment exchange department of state which can make arrangements for prisoners in getting the employment after release.
- Regular cadre of teachers for different subjects be made The Education Department of State should appoint teachers of various disciplines like mathematics, general science, English; psychology etc. for temporary period to teach prisoners. If resources of State allows regular recruitment can also be made for such purpose.
- Prisoners could be taught art and craft in the jail. This could prove to be a sustainable source of income for them. They can organize their art and craft exhibition with the support of Prison administration. And can sell there are art at such exhibitions. Income generated from such exhibition could be used as a collective fund for the welfare of prisoners as well for promoting their art and craft. Adequate computer facility should be provided by the jail authorities for conducting computer teaching classes for the prisoners. This computer education classes could help prisoners in updating with the technology and might help them in generating income after their release from the prison.
- All prisons nationwide should be linked up with open universities: With the motive to engage the energy of prisoner for his betterment, he should be motivated to join the open universities like IGNOU or Vardhman Mahaveer Open University. For this purpose, Open Universities should be persuaded to open their education centres in every prison and run them on regular basis. Though some prisons in Rajasthan have already started such centres by open universities, there is immense need to open such centre in every prison so as to provide opportunity to every prisoner to educate himself.
- Need of Prison Commission on the verge of National Human Right Commission, National Women Commission, National Minority Commission, National SC and ST Commission, there is need of permanent Prison Commission in India which should headed by a retired Supreme Court or High Court Judge. The Commission will look after the problems and other issues related to prison system and will take care of socio legal problem of prison system and prisoners and should monitor prison rehabilitation schemes.