THE PRESENT RIGHTS OF PRISONERS IN BANGLADESH: DISPARITY BETWEEN LAW AND PRACTICE

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Abstract

The rights of the prisoners have become the most descriptive issue not only in Bangladesh but also in the whole world. This paper describes the existing rights of prisoners and narrates the points relating to prisoners’ rights that are indicated in the various Act. The rights and privileges mentioned in the law for the prisoners have not been made available for them which they can claim as a human being. Proper monitoring and effective measures for implementation of rights for the prisoners should be taken by the state as well as the consciousness of man may be awaken to raise the voice against the disrespect and neglecting attitude to the prisoners. The authors in this research have pointed out the real situation of prisoners and state the gap between the law and practice. In the modern civil societies the state should give emphasis to ensure the available rights to the prisoners for upholding the dignity of a person.

Keyword: Rights, prisoner, law, practice

INTRODUCTION

Prison is a place used for confinement of convicted criminals. Confinement in prison, also known as a penitentiary or correctional facility, is the punishment that courts most commonly impose for serious crimes, such as felonies. For lesser crimes, courts usually impose short-term incarceration in a jail, detention center, or similar facility. Confining criminals for long periods of time as the primary form of punishment is a relatively new concept. Throughout history, various countries have imprisoned criminal offenders, but imprisonment was usually reserved for pre-trial detention or punishment of petty criminals with a short term of confinement. The contemporary society reactions to crime are manifested in different forms with variety of objectives, all objectives all converging to the crime control. Society wants that criminal are changed so that they will not commit crime in future. And therefore there is a need for reformative methods to be enforced, rehabilitative programs launched and treatment of criminals are undertaken. The process of “reformation” can be conducted in prison. In as much as society wants protection from criminals. The prison serves this purpose by isolating the criminals from the society so that criminals do not have opportunity to commit crimes against the society.

Prisons play a vital role in the administration of criminal justice system by assisting the courts in the due execution of the sentences awarded by them. In prison individuals are physically confined or interned and usually deprived of a range of personal freedoms. Prisons are conventionally institutions which form part of the criminal’s justice system of a country such that imprisonment or incarceration is a legal penalty
DEFINITION OF PRISON

Prison is a place properly arranged and equipped for the reception of persons who by legal are committed to it for safe custody while waiting for or for punishment. The nomenclature prison identifies description of imprisonment, the graphic and realistic description of prison illustrates the society's acknowledged pessimism of penal process, authoritarian control and forced isolation from the society. In other words, prisonisation symbolizes a system of punishment and also a sort of institutional placement of under trials and suspects during the period of trial. Since there cannot be a society without crime and criminals, the institution of prison is indispensible for every country.

According to section 3(1) of the Prison Act, 1894, prison means any jail or place used permanently or temporarily under the general or special orders of government for the detention of prisoners and includes all lands and buildings appurtenant thereto.

ADMINISTRATION OF PRISON

The purpose of Prison as far as the administration of prison is concerned is to make the prisoners prepared as a reformed individual who will work as a reformed individuals, who will work as a functional member of a society after his/her release.

Three factors are important-
1. After release she/he must have an abode to live
2. Some legitimate means income and support from family member’s friends and relations
3. After release service plays a key role in rehabilitation of the prisons.

In April 1990, a dangerous riot took place in strange ways Prison in Manchester. At the same time riots took place in several other prisons of UK Government appointed Lord Justice Woolf to inquire into the commotions in the prisons. The report prepared by Woolf provided a guideline as to how prison should be administered. A stable prison system, Woolf concluded is founded on the three pillars: security, control and justice.

There are universal norms and guidelines as to how a prison should be an administered and how prisoners should be treated. These subsume the Universal Declaration of Human Rights, the international Covenant on Civil and Political Rights, the Declaration on the protection of all Persons from being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Standard Minimum Rules for the Treatment of the Prisoners, the basic Principles for the Protection of all persons. There are norms which refer specific groups like juvenile.

PRISONER’S RIGHTS UNDER INTERNATIONAL PERSPECTIVE

The nature and extent of the privileges afforded to individuals kept in custody or confinement against their will because they have been convicted of performing an unlawful act. Across the world, various institutions have evolved to confine or punish those who await trial or have been found to be convicted lawbreakers. Whether called prisons, correctional centers detention centers, penitentiaries or reformatories, they all ultimately serve to severely restrict that most fundamental of human physical needs – the need to move freely. It is organized that the restrictions of movement is a necessary evil in order to protect society from its dangerous criminals. Notwithstanding the criminality that puts people behind bars, there must be ensured at least basic standards of rights and human civility to prisoners.

1. Rights and Treatment of Prisoner’s under International Human Rights and Standards

Article 10 of International Covenant on Civil and Political Rights (ICCPR) states that-
1. All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human persons.
2. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation Juvenile offenders shall be segregated adults and be accorded treatment appropriate to their age and legal status.
Prisoners are entitled to enjoy the human rights as applicable for other people subjected to some restrictions imposed by the law. The reasons for ensuring human rights of prisoners are –
1. Human rights are inalienable and must apply to all human beings without exceptions.
2. A prisoner should get human rights in order to learn how to respect the human rights of others.
3. No person is a criminal by birth. Crime is the reflection of society and by restrains human rights of prisons the society corrects its own failure and ensures proper socialization of prisoners.
4. Curtailment of liberty is a punishment. So a prisoner cannot be punished more by debarring him from human rights.
5. Treatment of criminal is one of the tests of civilization of the country. So by maintaining human rights of prisoners we can contribute to the positive development of civilization.

2. Declaration of the Rights of Man and the citizen, (1789)
According to article 7 of the said declaration, no person shall be accessed, arrested or imprisoned except in the case and according to the forms described by law.
Any one soliciting, transmitting, executing, or causing to be executed, any arbitrary order shall be punished. But any citizen summoned or arrested in virtue of the law shall submit without develop as resistance constituted an offence. Under article 8, the law shall provide for search punishment only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offence.

3. The Universal Declaration of Human Rights, (1948)
Under Article 3, everyone has the right to life, liberty and security of person. According to article 7, all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement. Article 5 states, No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical.
According Article 10(1), all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONER’S THE
Standard Minimum Rules for the treatment of prisoners 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 663C of 31 July 1957 and 13 May 1977. The benefits of this rule are as follows –

1. Separate Prison
This Standard Minimum Rules enjoins the authority of every prison to keep a bound register where the detail particulars of the prisoners will be recorded according to sec 7 of the rules. Under sec 8, 10, it imposes an obligation to keep different types of prisoners in different parts of the prison taking account of their sex, age, and criminal record and requires the prison authority to keep untried prisoners separately from convicted prisoners, women from men and young prisoners from adults.
2. Living Status
All sleeping accommodation, as per the provision of the Standard Minimum Rules shall meet all the requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. The windows shall be large enough to enable the prisoners to read or work by natural light.\textsuperscript{xv}

3. Health and Hygiene
The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner. Prisoners shall be provided with water and with such toilet articles as are necessary for health and cleanliness. Every prisoner shall be provided with an outfit of clothing suitable for the climate and adequate to keep him/her in good health and shall be provided with a separate bed.\textsuperscript{xi}

4. Food Supply
Under sec 20 of the Standard Minimum Rules, every prisoner shall be provided at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.\textsuperscript{xii}

5. Communicate with Family
Standard minimum rules further provide that prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

6. Religious Activities
The Rules enjoins the prison authority to establish a library for the use of all categories of prisoners and ensure arrangements so that the prisoners can perform their religious prayers.

RIGHTS AND TREATMENT OF PRISONER’S UNDER NATIONAL LEGAL INSTRUMENTS
It is to be noted prisons still follow the outdated statute books of the British colonial rulers, which were framed in the 19\textsuperscript{th} century. According to these old statutes, the main objectives of the prison system were the confinement and safe custody of prisoners through suppressive and punitive measures. There has been no significant modification in the Jail Code nor have the vital recommendations of the Jail Reform Commission been implemented. A full transformation of this punitive system is required in order to stop violation of the legal rights and human security of prisoners, as guaranteed by the Constitution of the People’s Republic of Bangladesh.\textsuperscript{xvi}

RIGHTS UNDER PRISON ACT, 1894
An Act to amend the law relating to Prisons comes into force on the 1\textsuperscript{st} July, 1894. This Act provides the rights of the prisoners. Section 4 of the Act provides the sufficient accommodation for prisoners. In the case of female prisoners it clearly states that, female prisoners shall be searched and examined by the marton.\textsuperscript{xv}

According to section 27 of the Act, the female prisoners, male, unconvicted prisoners and civil prisoners shall be imprisoned in separate parts of the building. Moreover further that, every civil prisoner and unconvicted criminal prisoners unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent.\textsuperscript{xvi}

RIGHTS OF DETAINEES
A great number of persons are jailed before their trials. These persons known as pretrial detainees are ordinarily held because they are unable to satisfy the financial requirements for a bail bond. Important law concerning the rights of pretrial detainees emerged in the 1970s. In Bell v Wolfish\textsuperscript{xvii}, the Supreme Court rejected the theory that pretrial detainees cannot be deprived of any right except the right to come and go as they choose.\textsuperscript{xvii}

1. Expression and Communication
The right to speech and expression is extremely valuable right; essential not only rights for the democratic functioning of society but also for the development and protection of the creative faculties of human beings. An important aspect of the right to free speech and expression relates to the press. Quite often the press is interested in interviewing a prisoner as a part of investigative journalism and a prisoner on his part may also be...
keen for an interview for his own reasons. The situation therefore, involves the fundamental right of expression and information of both the parties to an interview.\textsuperscript{\textit{xxv}}

Prison is a part of community and the inmates must not feel that they are isolated from others. For this purpose –

- Prisoners should be located in prisons close to their homes.
- Prisoners should have ample facility to communicate with the family members, friends and other members of the community. Prisoners should have access to books, newspapers, radio and television.\textsuperscript{\textit{xxvi}}

2. Access to Courts

State cannot interfere with the right of a prisoner to petition a court for relief. Neither a state nor a prison official can refuse, for any reason to review a prisoner’s applications and submit them to court. If a prisoner is indigent, the state cannot require him to pay even a small fee to file legal papers with the court. The right to proceed as an indigent is allowed only for individual prisoners. Lastly it was established in the case of Johnson vs. Avery,\textsuperscript{\textit{xxvii}} that prisons cannot completely forbid inmate assistance unless there is an alternative for prisoners.\textsuperscript{\textit{xxvii}}

3. Health Rights of Prisoners

Health rights of prisoners include –

- Prisoners should be examined by Medical officer at the very first day of his admission and prison authority should supply all necessary things for a prisoner advised by the medical officer.
- Proper health care including specialist treatment should be provided on regular basis. Medical personnel should be available and well trained. There must have proper treatment for the sick person.

THE PRISON SYSTEM IN BANGLADESH

The rising number of imprisoned people in Bangladesh is exhausting the limited resources available at the prison facilities. The total prison population (including pre-trial detains/remand prisoners) at present is 83,136. The high level of official confidentiality cuts off information about the conditions of inmates in Bangladeshi prisoners. By baring human rights groups, the media, and other outside and independent observer access to the punitive facilities, government policy makers and prison officials shield prevailing substandard conditions from public comprehension and critical inquires.\textsuperscript{\textit{xxviii}}

1. Overcrowding Prison

In the recent past, overcrowding of prisons has worsened significantly. Although there are 80 jails in the country, 16 of these are not yet functioning. And whereas the official capacity in the remaining 64 jails is 21,581 prisoners, the actual prison population was about 46,444. Of these 31,020 were under trial i.e. detained prior to conviction, while only 13,178 (less than one third) were convicted prisoners. This is considered to be one of the main causes of human security violations in Bangladesh.\textsuperscript{\textit{xxix}}

Moreover, floor space allocation bears witness to the poor conditions in which prisoners are kept. Under dormitory rules, each prisoner is entitled to 36sq.ft. of floor space; however, overcrowding has reduced the space available per prisoner to 15 sq. ft. In certain wards, prisoners have to sleep in shifts owing to lack of space. Finally, life in prisons is made worse by the smell of carbon dioxide, nicotine, sweat and urine emerging from uncovered urinals, which create an unsanitary atmosphere inside the congested wards. These are painful examples of denial of the legal rights of inmates.\textsuperscript{\textit{xxx}}

2. Food, Health and Hygiene

Prisoners are served with so low quality of food that they fall sick after consuming those foods. Chronic blood – dysentery has been a common disease of the prisoners in all the jails of Bangladesh. Almost all of them suffer from malnutrition, obviously the inadequate quantity of food being the reasons. The overall condition has negative impact on the health and hygiene of the prisoners.\textsuperscript{\textit{xxxi}} Furthermore, the manner in which the prisoners are required to eat their meals sitting on the ground under the open sky, rain or shine is unacceptable.
3. Corruption of Jail Authority
Corruption has become a common phenomenon of all the Jails of Bangladesh. The food, clothing etc. allocated to every prisoner do not reach in their hands due to the misappropriation of the prison authority. They create artificial scarcity and turn prisoners' right and basic needs into rare commodities, which one can buy with cash payment. If anyone visits prison, s/he will find inadequacy of food, and other necessary elements, but financially capable prisoners enjoy all types of facilities remaining incarcerated within the boundary of the prison. All types of narcotics and deadly weapons are available within the prison and rich and influential prisoners can buy them in exchange for cash payment.

4. Prison Laws applied selectively
In the first of the year 2008, Odhikar expressed its concern about the use of judicial process for other purposes whereby the government orchestrated the release of high profile prisoners arrested as part of its campaign against corruption. Since the imposition of the State of emergency and launching of an anti-corruption campaign, the country's jail was quickly filled. According to reports 68 jails of the country contain 87,579 inmates, more than three times the combined capacity of 27,368 of these jails. But, the worrying report was surfaced regarding the discriminatory use of prison laws and provisions. In the recent past, the government has granted parole to a number of high profile prisoners, commonly known as 'VIP prisoners', on humanitarian grounds, mostly to attend funerals and last rituals of relatives. However the report finds that despite having such provisions in law, except the cases of 'VIP prisoners'. No 'ordinary' prisoner was granted such parole. This illustrates selective use of law, favored approach for politically important persons in prison and different treatment for others.

5. Death in Prison
A very predictable result of overcrowding, malnutrition, unhygienic conditions, and absence of medical care is the spread of contagious diseases, often leading to premature disability and deaths in prisons. Tuberculosis continues to devastate prison populations around the world, and there is no reason why its havoc should be any different in Bangladesh. Sick inmates carrying virulent pathogens, infect other new prisoners, and constitute a serious threat to public health when they are released. It is important to keep a prisoner with a contagious disease in quarantine, or in a separate cell. Lawmakers should introduce a bill to allow inmates in the late stages of terminal illnesses to return home to their families. Between 1 January and 30n June a total of 41 persons reportedly died in the jail custody. Among them 40 persons passed away due to illness. It is reported that a person was in remand under police custody for 3 days and during interrogation he claimed to be sick and was sent to jail where he died on the 3rd day in remand. The government should follow the Jail Code provisions on proper medical treatment. Because of this unfortunate and avoidable death and terrible sufferings, the prisoners often revolt against the prison authority. After the establishment of Bangladesh, from 1976 to till now the prisoners revolted 25 times against the prison authority. Prisoners want to be purged of abnormal death and sufferings. They want the Standard Minimum Rules should be implemented and the civic amenities required to sustain as a human being should be ensured for every prisoner.

6. Available Drugs
At the recent time which news were focused in the newspaper regarding the jail authority that prisoners easily get the drugs from the jail authority. In 16th December 2009 one of the main habildar of the jail has been arrested during the time of providing drugs to the prisoners. Two months ago, one jail authority also arrested with 20 'Yaba tablets'. In the Dhaka Central Jail, there are 9000 prisoners where 900 are women prisoners. From the source of prison, among the women prisoners half of them are engaged in the business of drugs or addicted drugs. Among the total prisoners 30 percent are totally engaged in carrying of drug business and also addicted.

7. Violence in Jail
Violence is common at the prisons. Inmate-on-inmate violence is an unsurprising result of
official slackness. By neglecting to take charge of the inmates within their facilities, by failing to act in response to incidences of violence, by wickedly allowing the entry of armaments into the prisons, by generally abetting the domination of the strongest prisoners over the weakest, prison authorities are directly liable for the violence. \textit{xxxiv}

8. The Problem of Discipline
The problem of prison discipline has always been engaging the attention of penologists throughout the world. The main object of prisonisation is undoubtedly negative insofar as it aims at generating a feeling of dislike for prison life among the members of society, the object being to dissuade people from doing acts which may lend them into prisons. \textit{xxxv}

Prisoners lead their life with rigid discipline, provision of bare necessities, strict security arrangements and monotonous routine life. Although with the modern facilities available to inmates, the rigorous of prison life are considerably mitigated nevertheless they are likely to become restive if not kept under proper discipline. This is yet another reason to justify the need for strict discipline in prison. \textit{xxxvi}

PRISON CONDITION
The prison condition is very bad in Bangladesh. The buildings of the prisons are old and some are not sufficiently secured. In the absence of proper maintenance the old buildings may collapse. Overcrowding, tiny cells for prisoners, insufficient ventilation and sewerage have created serious health problems for the prisoners. In a small cell eight persons can sleep and other eight can lean against the wall and wait for sleeping. \textit{xxxvii}

The current striped, coarse uniform worn by ordinary prisoners is considered most demoralizing. A bed consists of two blankets one to spread on the floor, and another to use as a pillow - this is both inadequate and degrading. Such conditions are detrimental to prisoner’s physical and mental health, and in violation of their human rights. \textit{xxxviii}

THE PROBLEM OF UNDER TRIAL PRISONER’S
The problem of under trial prisoners has assumed new proportions in recent years. Thousands of under trial prisoners are languishing in various jails in different States for periods much longer than the maximum term for which they could have been sentenced, if convicted. Many of them are innocent persons who are caught in the web of the eagerly waiting for trial date and several of them are even prepared to confess their crime and accept the sentence. There are several reasons for this miserable plight of under trials, some of them being , courts inability to take up the cases because of their busy calendar, the prolonged police investigation, unsatisfactory bail system and legal representation being beyond the emerge means of poor offenders. \textit{xxxix}

MENTALLY DISABLED IN PRISON
Mentally disabled prisoners are kept in different jails of Bangladesh in violation of existing laws, which provide for sending them to mental hospital or shelter home for treatment. Official sources confirmed that 25 such prisoners have been housed in Dhaka Central Jail while about 225 others are languishing in 18 other jails across the country.

Keeping the mentally disabled prisoners in the jails is clear violation of human rights and existing laws. Section 3 of the Lunatic Act, 1912 provides that the government is responsible for the shelter and treatment of the mentally disabled persons. Sections 14, 16 and 23 of the Act provide for their medical checkup and sending them to hospitals for treatment. A decision of sending need to be taken within one month after his or her mental disability is proved. In 2001, the Disability Welfare Act was enacted to protect the rights of the mentally disabled persons. In addition to this a National coordination Council was formed to ensure the wellbeing of the disabled. \textit{xl}

CONCEALMENT OF TRUE PICTURES
The high level of official’s confidentiality cuts off information about the conditions of inmates in Bangladeshi prisons. Non-existence of
pressure groups, indifferent attitude of lawmakers and bureaucrats, and inattention of public media keep the public unaware of the pervasive conditions inside the prisons.\textsuperscript{xli}

CONCLUSION

Undoubtedly, the condition of modern prisons is better than that in the past but still much remains to be done in the direction of prison reforms for humane treatment of prisoners. The treatment of prisoners should be in accordance with the constitutional mandates to secure them the basic rights. For the improvement and so that the modern purpose of punishment can be achieved that is the reformation of the prisoners, there is no alternative but serious attention has to be paid by the society.\textsuperscript{xlii}

It must be conceded that the great majority of individuals sentenced to imprisonment want to return to society as law-abiding citizens and only few are definitely anti-social and have no intention of changing their lawless ways after their discharge. Therefore, in order to make the prison life less abnormal and provide better opportunities for rehabilitation of those prisoners who behave well and who are not believed to be dangerous to their fellow-men, they should be granted regular furloughs in order to visit their families frequently. It must be realized that cure for crime lies not in incarceration of prisoners but only in speedy criminal justice by ensuring certainty of punishment rather than its severity.\textsuperscript{xliii}

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