

THE ROLE OF CRIMINAL ADMINISTRATION IN PROTECTION OF HUMAN RIGHTS

Role of the police & law in protecting the human rights of prisoners

Devarajan G ¹

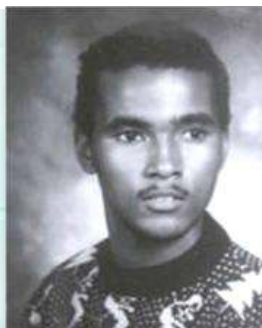
In law, If a commission of an act is a crime than if the same law commits a human rights violation, than it is also a crime – Devarajan G

Chapters

I	Introduction
II	A real story
III	Violations on Prisoners
IV	Reasons
V	Solution Suggestion
VI	Conclusion



Troy Davis ²



Reggie Clemons³



Perarivaalan⁴

¹ Devarajan G , studying III Year LL.B at Dr.Ambedkar Law College, Tirupathi. He holds a post graduation in Arts with specialization in Human Rights and Duties Education from University of Madras. Chennai

² **Troy Anthony Davis** (October 9, 1968 – September 21, 2011)¹ http://en.wikipedia.org/wiki/Troy_Davis_case

³ Reggie Clemons is facing execution <http://www.amnestyusa.org/our-work/cases/usa-reggie-clemons>

⁴ Perarivaalan facing execution on Rajiv Gandhi Assassination case. <http://perarivalan.wordpress.com/>

I. Introduction:

"Justice that love gives is a surrender,
Justice that law gives is a punishment." - Mahatma Gandhi."

World over, criminal administration has become the key factor that is violating the fundamental rights of the prisoners. Power, Race, Victimization & Delay in Justice are some key elements that add to the violation of human rights.

"Human Rights violation in custodial & lock up is more than the terrorist attacks"

Troy Davis, Reggie Clemons & Arivu (Perarivaalan) are few among thousands who faced & facing biased trials. Victimized by situations, undergoing tortures & facing execution orders by the same justice system, which is suppose to uphold the truth & fundamental rights of human beings. Some of the sentenced prisoners never even produced before the court, but still spending more period in congested jails than the actual punishment period.

Lack of effective laws, identification, under trial handling, infrastructure, legal remedy, prison environment, custodial deaths & tired police duties are some of the biggest evidences of failure in criminal administration system which is happening worldwide.

In 1955, First United Nations Congress met on the topic "Prevention of Crime and the Treatment of Offenders" held at Geneva. This congress made observations and proposed Basic Rules in administrating the trials and criminals.

Even after 56 Years, the most developed and developing nations under UN umbrella still not following these basic rules. It is very essential for law professionals & criminal administrating officials to understand these rules and uphold the Human Rights under Criminal administration system.

It is the duty of the nation to study the facts behind such violations, analyze reasons, frame solutions & implement efficient systems in place.

II. A real story

I am A.G..Perarivalan, an Indian national. A convict of Rajiv Gandhi assassination case, facing execution order by the judicial system along with other two convicts namely Murugan & Shanthan. I am standing here to face the Hanging rope any time soon, but I am still hoping & believing that the true verdict will come up, I would be set free.

I am humble to tell the world about my side of facts and the truth. The background of the charges, sentences & conviction.

When I was 17, In 1991, 11th June, at night 10.30, my parents have handed over me to CBI Officers at No.50, EVR Salai, Egmore. There were other members belonging to LTTE & Periyar Thidal group.

I was taken to a CBI office & I was told the next day I would be sent home. They took me to a room, where three Police officials Mr.Raju, Mr.Thiyagarajan & Mr.Salim Ali were present. They have enquired me about my study & family background. I said, I am an Electronics & Communication Engineer. All of sudden they have asked me..did you the one who prepare the bombs? I was shocked. They looked at my shirt and saw a hole, for which they asked, is this hole happened in Sriperumbudur blast?.

They told me that, you would tell all the truth by the way we treat you. I was beaten on naked body. They used their boots to crush my leg fingers and all of sudden I was hit on my testicles with knee. With severe pain I fell down on the floor. Still they have been asking me unrelated questions all through.

The next day, I was taken to sophisticated enquiry/torture room, there were 4 police officers to whom I was handed over. Then after I was refused food, water & even urinal.

They have asked me to stand like chair by bending my knees for hours. They used pipes those were filled with cement and hit on my leg muscles, hand & finger bones. All through I was called with abusive words.

Another police officer, used to insert pencils in between my fingers and squeeze the fingers. I was asked to sit by the wall and spread one leg stretching to the wall, he will stretch the other leg to 180 degree. One cannot imagine the pain these tortures gave.

I was called at anytime during midnights & morning at 3 a.m. and asked to talk something, this happened very often... these situations gave me mental and physical torture. They have used all kind abusive methods and words to handle me all through these days.

Till 19th June, I was never allowed to brush and bath, only after bad smell of my body, they let me to bath & that day I was supposed to be produced before the magistrate. 24X7 I was chained. Even during toilets & sleep, only to eat they let my handcuff free. On this date, the records were submitted as I was arrested on 18th June. This shows for 7 days I was in illegal detention.

Few more months..years, decades, from 1991 to 2011. I have been experiencing all types of Human Rights violations & I was tortured to become a convict.

Current status⁵ :-

Murugan, Santhan, and Arivu (alias Perarivalan), were sentenced to death in January 1998 by a Special Anti-Terrorist Court on grounds of involvement in the assassination of India's former Prime Minister Rajiv Gandhi. Their sentence was confirmed by the Supreme Court of India in May 1999. Their mercy petitions were reportedly rejected by the President in August 2011.

At a hearing on 30 August, the Madras High Court suspended the execution and sought a response from the Governments of India and Tamil Nadu state to explain the 11 years taken by the Government and the President to decide on the mercy petitions filed by the three prisoners.

1) ⁵ <http://www.amnesty.org/en/library/asset/ASA20/045/2011/en/7d9edc79-b5cd-45b7-ac2c-2fc6347e7cb6/asa200452011en.pdf>
<http://perarivalan.blogspot.com/>

III. Violations on Prisoners

- Illegal detention
- Custodial Torture
- Custodial Deaths
- Custodial Rape
- Prison living standards
- Lack of categorization
- Lack of rehabilitation

IV. Reasons

- Illegal detention
 - False FIR
 - Duty/urgency of police personal to close the case FIR
 - To force to accept/admit the crime
 - Power, Politics & Community support
 - Corruption
 - Never produced in court, before magistrate
 - Criminal procedure code, Sec 167 Bail linked to financial ability.
 - Political prisoners

Incarceration, even if the person has not been convicted, is damaging physically and mentally and may irreversibly change the life of the individual socially, financially and emotionally.

- Custodial Torture
 - Forces still using century old crime enquiry methods, mainly physical & body parts hurt methods.
 - Immature behavior of under trials/prisoners against officers. (Prisoners igniting EGO on police officers without self knowledge & intention).
 - Talking of Human Rights.
 - Abusive words used, to threat the custodial persons.
 - Ill/degrading treatment

- Custodial Death
 - Suicide by inmates, to get relieved from mental & physical torture
 - Use of weapons during interrogation & enquiry
 - Abusive words & insulting
 - Mentally & physically weak prisoners in same cell/group.

- Custodial Rape
 - Lack of women police stations and women constables.
 - Closed atmosphere
 - Weak representation by relatives, friends & lawyer during arrest
 - Unavailability of legal prostitution

- Prison living standards
 - Availability of cells & inmate population of cells, shortage by 50~60%
In average, where 2 inmates are suppose to stay, 3 ~ 4 inmates are staying.
 - Urinal smelling cells

- Lack of categorization
 - Not categorizing under trial & convicts
 - Not categorizing murder convicts & small crimes
 - Not categorizing by Age, physical & mental abilities
 - Not categorizing by attitude, jovialness & discipline
 - Not categorizing ill patient under trails & criminals

- Lack of rehabilitation
 - Jail life considered as a punishment rather than reformation, rehabilitation.
 - Lack of motivating mentors & police personals for rehabilitation.
 - Lack of measurement standards in Judicial system.
 - Lack of Education system inside prison environment.

V. Solution Suggestion

- Illegal detention
 - Judicial representatives should visit the police station/detention centers everyday including holidays.
 - Public lawyer offices inside every police station
- Custodial Torture
 - Educate Police officers to categorize under trials & prisoners
 - Interrogate based on the charges & degree of crime
 - Police officers think that torturing is the best way to get the truth out of mouth, many under trials may accept the crime to avoid such torture.
 - Use latest technologies than physical body parts and mental torture.
 - Don't allow police officers **to continue their duty on consecutive shifts** on the same day. (Replacing absentees)
- Custodial Death
 - **Install Cameras everywhere possible**
 - Allow lawyers and close relatives to discuss on problems/mental depression hold by the inmates.
 - To run **counseling centers** inside Jail by external counselors, specially by NGOs or Law professionals.
- Custodial Rape
 - To handle custody of women only in Women police station & women police.
 - No women should be in custody under men police supervision.
 - Strictly follow, no arrests of women during nights or transportation in nights
- Prison living standards
 - Jail infrastructure improvement, One cell maximum 2 persons
 - Good ventilation
 - Good lighting
 - Rehabilitation facilities, Class rooms, Freely accessible library
 - Motivational & conduct development Videos broadcastings.

- Lack of categorization
 - Strictly follow categorization of under trial & convicts
 - Strictly follow categorization murder convicts & small crime convicts
 - Strictly follow categorization by Age, physical & mental abilities
 - Strictly follow categorization by attitude, jovialness & discipline
 - categorization of ill/weak patient under trails & criminals

- Lack of rehabilitation
 - Give importance to rehabilitation than punishment.
 - Implement/allow motivating mentors to visit inmates
 - Rehabilitate police personals to get into more social approach
 - Improve measurement standards in Judicial system, specially analysis tools & behavioral attitudes between jail administrators and prisoners.
 - Education system as primary punishment, inside the prison environment.

VI. Conclusion

As of today, the atmosphere of the police personals, prisoners and judicial infrastructure are not up to the best of humanitarian standards.

Police personals are accustomed to extensive duty hours, also there is shortage of police officers. Maybe, this reason is leading to the authoritative behavior in implementing laws, specially the arrests, interrogations & detentions. The recent suicides of police personals while on duty is a great evidence on the lack of free environment, depression among service personals. Themselves under the effect of human rights violation.

Other social factor about police personal is that , modern children dare to talk to or look at a police officer, though it is one of a good reason to threat babies, to feed food.

Approaching an young adult needs a better relationship and communication methods. Indeed, there is a need to create a respect.

Finally the law, the judicial system which is suppose to revamp the criminal administration, by itself not well equipped to fulfill own requirements, specially the **infrastructure** and **deployment of sufficient officials** to deal custodial & prison locations. Judicial system should aim to get down the incarceration of unconvicted under trials to 0% which is now more than 70%.

Make provisions to have **physical presence/office** of law and judicial officials under police stations & prisons.

Good **working atmosphere** & consecutive days of handling the hearing and proceedings can drastically bring down the under trials to justice. By doing this, criminal administration can prove the efficiency, curtail the crime (Human Rights Violation) that is happening in criminal administration system.

Supporting contents

Supporting Statistics

1. The Indian criminal justice system is near to breaking point as 300,000 people or 70 per cent of India's prison population consists of those awaiting trial facing a morass of judicial delays, according to a research paper discussing the current state of the Indian criminal justice delivery system⁶.
2. Many Indian prisons are between 100% to 200% over capacity/crowded, where conditions are squalid and the weaker inmates face serious physical harm Inhuman conditions
3. The figures of Amnesty International in 1992 showed the number of deaths in police custody in India during the year 1985 to 1991 was 415.
4. National Crime Records Bureau show that during the year 1990-92, as many as 258 rapes and 197 deaths in police custody were reported from all over the country
5. Supreme court has emphasized that Art 14, 19 and 21 " are available to prisoners as well as freeman.⁷
6. Art. 142 empower the Supreme Court to 'make such order as is necessary for doing complete justice in any cause or matter pending before it'⁸
7. Chapter V of the Criminal Procedure Code 1973 deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person.⁹
8. President's assent to the Protection of Human Rights Act came in to force on September 28, 1993. Section 3 of the Act provides for the setting up of the National Human Rights Commission (NHRC) and Section 21 for the setting up of the various State Commissions (SHRC)
9. The National Human Rights Commission in its Annual Report of 1997-98 records that during the year 1996-97, 188 deaths in Police Custody were reported and during the year 1997-98, 193 deaths in Police Custody, and 700 deaths and 819 deaths respectively in judicial custody were reported to the Commission
10. Code of Criminal Procedure "436-A. states the maximum period for which an undertrial prisoner can be detained:-
Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

⁶ <http://www.legallyindia.com/201012291644/Analysis/indo-us-research-paper-judicial-delays-mean-70-of-indian-prisoners-yet-to-get-hearings-reform-research-and-pro-bono-vital>

⁷ <http://legalsutra.org/1396/expanding-role-of-article-21-looking-at-right-to-die-and-environment/>

⁸ <http://select75.org/13.html>

⁹ lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf

Provided that the court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bonds with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law:

Explanation.- In computing the period of detention under this section for granting bail the period of detention passed due to delay in providing caused by the accused shall be excluded.”

This section prescribes the upper limit to the time an under trial can be held in prison as half of the maximum punishment prescribed for the offence the accused has been charged under, then the accused shall be released on his personal bond without any sureties. The Public Prosecutor can, for good reasons shown can ask the court to continue such detention, awaiting trial.

This section was enacted in the year 2005, and progress, albeit small has definitely been made in the last half a decade in this area. However, as the next part of this paper will show, the real cause of trouble has been the tardy implementation of this provision, due to lack of proper legal aid facility and apathy of the Police and jail authorities.

More than sixty five per cent of the prison inmates in India are awaiting trial. Policy makers in India have recognized the magnitude of the problem, but the lack of implementation of the existing provisions and the proposed ones is the primary reason afflicting the prisons in India. Therefore, ensuring the implementation of Section 436/436A of the Code of Criminal Procedure, 1973 should be the primary aim

Tables^{10**}

Prison Numbers 2006 Report : -		
Central/State	Type of Prison/Purpose	Count
Central	Long sentences and high security prisoners, Under Trial	111
District	Prisoners on trial or with medium range of sentences	293
Sub	under-trial prisoners involved in petty offences and with small penal sentences	852
Womens	women prisoners exclusively	15
Borstal School	prisoners in the age group of 16-21 years	10
Open	prisoners who are reformed and to provide them with a semi-open access to outside society	27
Special	difficult, violent, dangerous, habitual, professional criminals	20

¹⁰ * http://humanrightsinitiative.org/index.php?option=com_content&view=article&id=110&Itemid=123

* http://nhrc.nic.in/PRISON_STATS_JUN_09_FOR_NIC.xls

Other jails	Only some states have it. The purpose is not very clear	8
	Total Prisons	1336

Inmate Population	
Available capacity	263911
Total inmate population	373271
Occupancy rate by %	141.4 %

Type of Prisoners		
Convicts	31.3	
Under Trials	65.7	Twice the % of convicts
Detainees	0.6	
Other	2.4	

Crime Heads	
Murder	58.0
Attempt to Murder	8.4
Robbery	2.0
Rape	6.4
Culpable Homicide not amounting to Murder	3.4
Dacoity	2.8
Others	19

Crime Heads under Special and local laws	
Drug Related	33.0
Railway offences	11.2
Arms	13.6
Dowry	2.9
Excise	7.6
Prohibition	5.0
Gambling	3.1
Others	23.6
Under-trial prisoners Crime Heads IPC	
Murder	28.0
Attempt to Murder	11.7
Thefts	12.2
Rape	5.6
Burglary	2.4
Dacoity	5.9
Others	34.2

Under trial Special and local laws	
Drug related	20.3
Railway offences	6.7
Arms	22.6

Dowry	7.8
Excise	10.8
Prohibition	3.7
Gambling	3.8
Period of detention	
Upto 3 Months	42.4
3-6 Months	21.6
6-12 Months	17.4
1-2 Years	11.0
2-3 Years	4.6
3-5 Years	2.3
Above 5 Years	0.6

Under trial & Education	
Undertrial people drastically increased by	50,000 people
Education status	80% of them are below 10 th Standard
Uttar Pradesh reported the highest overcrowding of prisons (201.3%) followed by Chhattisgarh (193.3%) and Delhi (185.7%).	

Deaths in Jails	
Death due to natural causes	1343
Death due to unnatural causes	80
Total	1423

Jail Staff, Report 2000	
Sanctioned strength	58963
Actual Strength	48602
Shortage Jail staff	18% approximately

UN Congress, Basic Rules¹¹

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 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

Part I

RULES OF GENERAL APPLICATION

Topics.

- *Register*
- *Separation of categories*
- *Accommodation*
- *Personal hygiene*
- *Clothing and bedding*
- *Food*
- *Exercise and sport*
- *Medical services*
- *Discipline and punishment*
- *Instruments of restraint*
- *Information to and complaints by prisoners*
- *Contact with the outside world*
- *Books*
- *Religion*
- *Retention of prisoners' property*
- *Notification of death, illness, transfer, etc.*
- *Removal of prisoners*
- *Institutional personnel*
- *Inspection*

¹¹ <http://www2.ohchr.org/english/law/treatmentprisoners.htm>

Part II

RULES APPLICABLE TO SPECIAL CATEGORIES

A. Prisoners under sentence

- *Guiding principles*
- *Treatment*
- *Classification and individualization*
- *Privileges*
- *Work*
- *Education and recreation*
- *Social relations and after-care*

B. Insane and mentally abnormal prisoners

C. Prisoners under arrest or awaiting trial

D. Civil prisoners

E. Persons arrested or detained without charge

More Links :

<http://www2.ohchr.org/english/law/victims.htm>

<http://www2.ohchr.org/english/law/lawyers.htm>