

HUMAN RIGHTS ISSUES IN THE INDIAN AND NIGERIAN PRISONS

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ABSTRACT

Prison as a place of punishment after conviction, is an 18th century invention. This is a humanitarian alternative to harsh and brutal penal methods of the dark ages. It was also believed that loneliness of the criminals in a solitary confinement would make them repentance resulting in reformation and rehabilitation. Until 19th century that the reformatory movements took practical shape when for the first time classification, segregation, individualized treatment and vocational training etc. this paper studies and analyzed the prisons situations in India and Nigeria. And it's found out that prisons have turned into place of illegalities and fertile breeding places for offenders. This situation needs improvement in accordance with reforms introduced by the both countries and International Conventions/Regulations on Prisoners' Human Rights charted by United Nations.

Keywords: Prisons, Inmates, Human Rights, Prisoners.

INTRODUCTION

Incarceration and the prison system only became widely used in the 1800s. When society deemed it necessary to separate a criminal from the population before that time, he was usually exiled and often threatened with death if he returned home.

Prison otherwise known as correctional institutions in other jurisdictions is an integral part of criminal justice delivery. Criminal cases must be dealt with justly. Courts must acquit the innocent and convict the guilty. Court procedures in a criminal case are about how a court determines whether a person accused of breaking the law is guilty or not guilty of a misdemeanor or a felony.

The criminal justice system has its roots in the Roman Republic and medieval England, which is one of the reasons why Latin remains the basis of the language of the courts. Concepts such as restitution and execution are carried over from ancient times, although other ancient punishments such as mutilation, flogging and branding have largely been done away with in industrialized countries as our sensibilities and understanding of crime have changed.

Basically, for a criminal justice to be delivered, three major stages or steps are expected to be followed, which are:

Step 1: A person who is accused to have committed a crime may be *arrested* if the police have *probable cause* he or she did the crime. In most cases, this is the first stage of criminal justice delivery. In most cases, a nominal complainant approach police and file a complaint, which in turn results in the registration or filing of FIR by the police. Police are expected to carry out investigation at this stage and this may include but not limited to calling eye witnesses and taking down their statements, visiting the *locus criminis* and interrogating the accused. The accused may be sent to Jail (Judicial custody), released on bail by the police or move to the next stage.

Step 2: The case proceeds to an *Arraignment* where the probable cause is reviewed. A *lawyer* may be appointed for the accused, and a *plea* is entered. A subsequent date may be taken for commencement of trial.

Step 3: A guilty verdict may be entered against the accused and he may be discharged. In the event of guilty verdict, the accused person may be sentenced to a term of imprisonment in which case, he will be sent to jail. This bring us to the discussion of the present discussion.

What is important to understand about these procedures is that a criminal trial of a person accused of a crime must follow specific procedures to help guarantee a fair trial.

Three main components that make up the criminal justice system are law enforcement, courts, and prisons (corrections). They work together to prevent and punish deviant behavior, award a remedy for a violation of an individual rights and ensure maintenance of law and order in the society.

1. **Law Enforcement:** This function is perhaps the most visible. Police officers are typically the first contact a criminal has with the criminal justice system. Police patrol communities to help prevent crimes, to investigate incidences of crime and to arrest people suspected of committing crimes. Criminals enter the court system after they've been arrested.
2. **Courts System:** The court system consists of attorneys, judges and juries, as well as ancillary staff. The guilt or innocence of a suspect is determined in court. The suspect, now a defendant, is offered the opportunity to defend himself in court as evidence is presented. He is then either released or is found to have committed the alleged crime. If he's found guilty, the suspect receives a sentence or punishment based on criteria set by the judge and by statute. The defendant is turned over to the prison system after sentencing.
3. **Prisons:** The prisons system incorporates all forms of sentencing and punishment. It includes incarceration and probation. A convicted criminal is the responsibility of the prisons system until their full sentence is The Criminal Justice System is primarily comprised of five components that play a key role in the criminal justice process. Criminal justice components involve law-enforcement, prosecution, defense attorneys, courts, corrections.

THE NIGERIAN PRISONS

The Nigerian penal system is an extreme symptom of a chronic illness afflicting our criminal justice system: it suffers from a basic lack of humanity. Our prisons have over the years been a source of concern due to overcrowding, under staffing, lack of adequate medical care, inadequate conditions for female and juvenile detainees, poor administration, long detention of those awaiting trial and limited access to legal advice and representation. These have frequently led to poor health conditions including frequent jailbreaks.¹

A humane system of imprisonment would aim to imprison only those Individuals who could not be dealt with by any other means. It's care of staff and prisoners would aim to treat people with respect as individuals, help them to retain their human dignity, establish their rights and obligations, provide opportunities for self-employment, and assist them to maintain contact with the outside world and build a way back to the outside community.²

NIGERIAN PRISONS SERVICE

The vision of the NPS is “to create a Prison Service in Nigeria that is able to contribute to meeting the challenges of ensuring a secure and peaceful Nigerian society through the implementation of humane penal programmes. To establish a credible Prisons Service which through excellent penal practice, seek lasting change in offenders attitudes, values and behavior and ensure successful reintegration into society”

There are 240 prison facilities in Nigeria (138 main prisons, 85 satellites, 14 Farm Centres, 3 Borstal institutions). The staff strength of the NPS is 28,065. With the imminent retirement of many officers in the period 2014 - 2016 this number may drop by as much as 4,000.

¹ NBA Reports on Practical Steps to Reforms of the Administration of Justice in Nigeria 2016

² *ibid*

CHALLENGES FACED BY NIGERIAN PRISON SERVICE

Archaic Legislation

Prison law reform is the first step in the creation of a proper context for a humane prisons system. The Prisons Act 1972 is palpably outdated. The Act does not provide for the proper and efficient administration of prisons, protection of human rights and upholding of international standards. The need therefore for a new Prisons Act that would bring the prisons regime in line with constitutional and international human rights standards cannot be overemphasized.

The creation of States and Local Governments over the years did not reflect in the number of Prisons built even though it led to the multiplication of Police and Courts' jurisdictions. The Prison facilities did not multiply by same geometric proportions in which Police, Courts and Ministries of Justice components of the Criminal Justice System expanded during the creation of States and Local Governments. This political development increased the scope and operations of the Police and the Courts and led to an increase in the number of suspects and convicts committed to prison.

The majority of persons in prisons are remand prisoners. The total prison population (as at March, 2016) is 61,527 broken down as follows:

- a. Male inmates 60,567
- b. Female inmates 960
- c. Total number of convicts 17,633
- d. Awaiting Trial Persons 45,864³

The rate of overcrowding in Nigerian prisons in general is 70%, however there are specific prisons with overcrowding rate of 90%. The inability of the courts to process persons charged with criminal offences quickly has led to congestion of this population in our prisons.

One of the main reasons for the inability of the courts to process offenders quickly is due to the limited transportation infrastructure of the NPS. Specifically, the total number of vehicles available for the NPS to transport offenders to courts nationwide is two hundred and sixty-eight (268) (with a coverage area of seven hundred and seventy-four (774) local governments areas

³ *ibid*

and five thousand and twenty two (5,022) courts across the thirty-six states of the Federation and the FCT) For example: Kuje Prison services ninety five courts within and around the FCT, the total number of Black Maria (small vans) available are three.

Poor Prison Facilities

It is the duty of the NPS to provide secure custody for those committed to its care by the courts. Secure custody means keeping the prisoners safe in humane custody. Inmates are housed in squalid and congested cells due to lack of structures. Most of the prisons in use are pre-colonial and colonial prisons built almost 100 years ago.

In recent times cellblocks have been built in some of the prisons but they are quickly used up. Out of the 47 prisons proposed by the Federal Government in 1980 to expand prisons in ten years, only 20 have been completed 35 years after. None of these are modern in any sense.

Limited Rehabilitation Opportunities

Congestion is a hindrance to the attainment of the mandate of the prisons in terms of inmate training and rehabilitation. Most of the Prison workshops have all gone into obsolescence. No one seems to complain because there are really very few convicts to train and so the need seem not 10.1. There is a need for better endowment and monitoring of the Aftercare programme of the NPS. Through this programme, many discharged prisoners who showed proficiency and seriousness in the trades they learnt, have been equipped with the necessary tools to carry on with the vocations after discharge.

The limited funding of the continuous adult education programme of the NPS is a challenge. This lost opportunity becomes more glaring when the success of this programme is noted. A total of 288 prisoners are currently studying in the National Open University study centers in 10 prisons.

INDIAN PRISONS

According to Constitution of India, prison administration falls under the jurisdiction of respective state governments under the Prisons Act, 1894. It is the responsibility of states to review and change already laid down prison governing rules and regulations. The history of

prison reforms in India dates back to colonial rule. Indian Penal Code was enacted in 1860. After that many commissions and committees were constituted and laws were enforced to reform the prison condition. The Mulla Committee, The Krishna Iyer Committee, The Juvenile Justice (Care & Protection) Act, 2000, Model Prison Manual (2003) are few example (Mahaworker, 2006). On the recommendations of these committees and commission, new rules and regulations were enacted. There is still deficiency at implementation level. The human situation of prison in India is not satisfactory and does not reflect the implementation efforts on the ground.

India is more or less facing the same challenges in prison system. Prison conditions are very poor across India. According to New Delhi (2010, November 26) India has fifth largest prison population in the world. The situation is likely to be the same or worse as in many developing countries. Due to chronic poverty the crime rate is increasing. According to the statistics of the National Human Rights Commission (2004), there were a total of 3, 32,112 (international: 332,112) prisoners against the total capacity of 2, 38,855 prisoners in the 1315 jails in India as on 31 December 2004. Out of total prisoners, 2, 32,731 inmates were awaiting trial (70% of total prisoners). This included 12,276 women and 1,570 children. The highest overcrowding rate was reported from Jharkhand with 195.2% overcapacity Delhi with 149.7%, Chhattisgarh with 94.5% and Gujarat with 91.5 % sanctioned capacity. The Times of India (November 18, 2007) reported that the showpiece of India's prisons, Tihar Jail continues to suffer from significant overcrowding: there are 12,300 prisoners against sanctioned capacity of 6,200 prisoners in the Tihar Jail. (The Times of India; November 18, 2007).

The Asian Legal Resource Centre (ALRC) has termed the conditions of prisons in India very deplorable. Overpopulation, prolonged detention of under-trial prisoners, unhygienic living conditions are characteristics of Indian prisons. There is lack of correctional and treatment programmes.⁴ Indifferent and even inhuman approach of prison staff make the prisoners more prone to recidivism. Corruption and extortion on behalf of prison staff and prison guards have made prisons a place of opportunity for them. Jails are understaffed and those who are working there are ill motivated and lack proper poor training. Inequalities and distinctions, insufficient

⁴ Mazhar H. B. and Muhammad S. A. (2012) 'Situation of Prisons in India and Pakistan: Shared Legacy, Same Challenges,' A Research Journal of South Asian Studies Vol. 27, No. 1.

prison programmes, low spending on health care and welfare, lack of free legal aid, physical, emotional and psychological abuse of prisoners are rampant problems. Prisons have become centre of coercion, corruption and illegalities. Custodial torture and deaths are order of the day irrespective of United Nations declarations.⁵

In the Indian prisons, one of the most common human rights abuse as reported by many researches carried out is lack of access to healthcare. The general access to health care facility of the prison is when an inmate feels sick and wants to meet the doctor, they can inform about his health problem to the circle warder or during the circle jailer's round at the opening time in the morning from 8 am to 12 pm and in the afternoon from 4 pm to 6 pm. The circle jailer allows such inmate to meet the doctor at the hospital outpatient department. Other than this, when the doctor visits the particular circle, any sick inmate can approach the doctor there. The medical officer prescribes medicine after check up. If there is any need to admit them, the medical officer admits them in the prison hospital ward.⁶ All of the respondents expressed concern about non-availability of police guards to escort them to the hospital. This delayed treatment, and sometimes treatment was discontinued for unknown duration. At times, an ailing inmate could not be sent to the government hospital even after being referred by the prison doctor unless his condition became serious.⁷

The core activities in prisons are security, safety, and welfare of the inmates. Security and safety are of high priority. Most decisions on staff allocations and rotations are made to ensure that security takes the highest priority. Management and coordination of health activities become the secondary, and often neglected, area. Conflict between the health and welfare needs of inmates and the safety concerns and protocols has become a common feature in most countries.⁸ It is highly likely that certain rights and privileges of inmates may be waived based on how management views the perceived security risk situation.⁹

⁵ *ibid*

⁶ Sayantani G. (2009) 'A Qualitative Exploration of HIV/AIDS Health Care Services in Indian Prisons' *JOURNAL OF CORRECTIONAL HEALTH CARE*

⁷ *ibid*

⁸ Sifunda, S., Reddy, S. P., Brathwaite, R., Stephens, T., Ruiters, R. A. C., & Borne, V. V. D. (2006). Access point analysis on the state of health care services in South African prisons: A qualitative exploration of correctional health care workers' and inmates' perspectives in Kwazulu-Natal and Mpumalanga. *Social Science & Medicine*, 63, 2301-2309.

⁹ Watson, R., Stimpson, M., & Hostick, T. (2004). Prison health care: A review of literature. *International Journal of Nursing Studies*, 41, 119-128.

In a study that was conducted in 157 prisons across 300 districts between July-December 2013 in India titled “Status of Tuberculosis services in Indian Prisons”¹⁰ found out that Diagnostic and treatment services for TB were available in 18% and 54% of the prisons respectively. Only half of the prisons screened inmates for TB on entry, while nearly 60% practice periodic screening of inmates. District level prisons (OR, 6.0; 95% CI, 1.6-22.1), prisons with more than 500 inmates (OR, 5.2; 95% CI, 1.4-19.2), and prisons practicing periodic screening of inmates (OR, 2.7; 95% CI, 1.0-7.2) were more likely to diagnose TB cases. 19% of the inmates screened had symptoms of TB (cough \geq 2 weeks) and 8% of the PTBP were diagnosed with TB on smear microscopy.¹¹

Entry level and periodic screening which are essential for early identification of TB and this was practiced in only just over half the prisons visited. During the visit, we were also informed that, as a routine procedure inmates will be asked to disclose about his/her health condition at the time of entry. Following discussion with prison authorities there were about 1707 inmates who had disclosed to have TB between 2010 to 2013. District prisons had highest number of TB patients.¹² However, in this study we have used the data for 2013 only where 504 TB patients were identified (424 known TB patients on treatment and 80 identified through¹³

¹⁰ B.M. Prasad et al. (2017) ‘Status of Tuberculosis services in Indian Prisons’ *International Journal of Infectious Diseases*, vol. 56 pp. 117–121.

¹¹ *ibid*

¹² *ibid*

¹³ *ibid*



Figure 1. Map of India showing districts where ACF was conducted in Prisons.¹⁴

Conjugal Rights

Conjugal rights are the sexual rights or privileges implied by, involved in and regarded as exercisable in law, by each partner in a marriage. They refer to the mutual rights and privileges between two individuals arising from the state of being married. These rights include mutual rights of companionship, support, sexual relations, affection and the like. The act of a husband or wife staying separately from the other without any lawful cause is referred to as subtraction of conjugal rights.

¹⁴ *ibid*

Conjugal Rights for Prisoners

Conjugal rights are usually exercised through visitation for prisoners. A conjugal visit is a scheduled period in which an inmate of a prison (or jail) is permitted to spend several hours or days in private with a visitor, usually his or her legal spouse during which both parties may engage in sexual intercourse. This visitation could be from the spouse or partner of the inmate to the inmate within the walls of the prison, or through other means such as the provision of a structure by the prison where supplies such as soap, condoms, lubricants, bed linens and towels may be provided, or in certain cases where prisoners are allowed to leave the prison premises, to the outside world under supervision.

Some scholars posit that for an offender who is sentenced to imprisonment, his or her punishment is just imprisonment. Thus, the punishment should not deprive such an individual of his or her rights. According to this school of thought, the prisoner should only be punished by imprisonment which he or she has been convicted for in a fair judicial process in a just and independent court. This point of view serves as the bedrock for legal systems which provide for and permit conjugal visits for prisoners.

The generally recognized basis for permitting such visits in modern times is to preserve family bonds and increase the chances of success for a prisoner's eventual return to normal life after release from prison. Additionally, they serve as an incentive to motivate inmates to comply with the various day-to-day rules and regulations of the prison, and to avoid any infringement which may result in disqualification from having conjugal visits. Those in favour of conjugal visits argue that it will help in the rehabilitation of inmates, prevent sexual harassment and depression in jail. They further argue that it gives psychological relief to some prisoners and gets them to know that they are still responsible and that deprivation of conjugal rights amounts to double punishment. Furthermore, some of the supporters of this position assert that conjugal rights are God-given and not government-given and that it would be unfair to the partners of convicts to deny them conjugal rights as though they were also convicted.

INDIAN EXPERIENCE

The Jasvir Singh & Ors V. State Of Punjab & Ors

Summary of Facts

The petitioners, husband and wife, were tried for the offences under Section 302, 364A, 201 and 120-B of the Indian Penal Code, for kidnapping and brutally murdering a 16 year old minor for ransom. The trial court awarded them death sentence. The honorable Supreme Court dismissed their criminal appeal but commuted the death sentence to life imprisonment for the wife. The petitioners then sought enforcement of their perceived right to have conjugal life and procreate within the jail premises. They sought for a direction to be given to the jail authorities to allow them to stay together and resume their conjugal life for the sake of progeny and make all arrangements needed in this regard. They were also open to “artificial insemination”. Issues involved the pivot of the debate rests on Article 21 of the Constitution of India. The right to life, as contended has two essential ingredients, namely, (i) preservation of cell; and (ii) the propagation of species of which conjugation is a vital part. In *State of Andhra Pradesh v. Chalaram Krishna Reddy*,⁷ it was held that a prisoner in spite of incarceration as a convict or under trial continues to enjoy certain fundamental rights which include the right to life. Equally significant is the „international perspective on the right to conjugal life in the precincts of jail“, which too calls for discussion. The petitioner’s contention was opposed by the State of Punjab, essentially on the plea that the Prisons Act, 1894 contains no provision to permit „conjugal visitation“; Section 27 of the Act rather mandates proper segregation of male and female prisoners. The alternative solution of „artificial insemination“ was also considered redundant as according to the affidavit dated November 20, 2010 there existed no such provision in the Prisons Act, 1894 or in the Punjab Jail Manual to allow the convicts ⁷ *Chalaram Krishna Reddy*, (2000) 5 S.C.C. 712. *Anamica Singh Prisoners’ Conjugal Visitation Rights in India* 77 (husband and wife) to be in the same cell in the jail or to allow for artificial insemination.⁸

Judicial Determination

1. Right to procreation survives incarceration. Such a right is traceable and squarely falls within the ambit of Article 21 of the Constitution read with the Universal Declaration of Human Rights, 1948.
2. The penological interest of the State ought to permit the creation of facilities for the exercise of right to procreation during incarceration, may be in a phased manner, as there is no inherent conflict between the right to procreate and incarceration. However, the same is subject to reasonable restrictions, social order and security concerns.
3. The „right to life“ and „personal liberty“ guaranteed under Article 21 of the Constitution include the right of convicts or jail inmates to have conjugal visits or artificial insemination (in alternate). However, the exercise of these rights is to be regulated by procedure established by law and is the sole prerogative of the State.
4. Ordinarily, all convicts, unless reasonably classified, are entitled to the right to procreation while incarcerated. Such a

right, however, is to be regulated as per the policy established by the state which may deny the same to a class or category of convicts, as the aforesaid right is not an absolute right and is subject to the penological interests of the State. 5. Finally, the establishment of a Jail Reforms Committee was ordered which will suggest methods to implement „conjugal visitation“ in prisons and also suggest any reasonable classification that needs to be considered while granting such rights to the prisoners.

NIGERIAN EXPERIENCE

Charles Okah Vs. Federal

The convicted mastermind of the 2010 Independence Day bombings, Charles Okah, sued the Federal Government of Nigeria for allegedly violating the rights of inmates in Kuje Maximum Security Prison. He asked the court to compel the government to pay him N350 million damages for alleged violation of his fundamental rights.¹⁵

Joined in the suit, are the Federal Ministry of Interior and the Nigerian Prisons Service as first and second respondents, respectively. Among the reliefs sought by the applicant is the declaration that the failure of the respondents to respond to the letter of a prison inmate is a breach of fundamental right. He also sought a declaration that his detention in solitary confinement without a charge and a valid court order breached his fundamental right.

The applicant also sought a declaration that the refusal of the respondents to allow for conjugal visits to the prison breached the fundamental right of both convicted and awaiting trial inmates.

He also sought a declaration that the failure of the prison authorities to allow him access the welfare office at the prison to make calls to his family abroad violates his fundamental right.

The applicant challenged the failure of the respondents to stop illicit sex trade and drug trafficking by prison warders at Kuje Prison and sought a declaration that the acts violated the rights of awaiting trial and convicted inmates at the prison.

¹⁵ FHC/ABJ/CS/118/2016

AUSTRALIA

In Australia, the Commonwealth Franchise Act 1902 disqualified from voting those convicted and under sentence ‘for any offence punishable by imprisonment for one year or longer’.¹⁶ The provision remained substantially the same when the Commonwealth Electoral Act 1918 was enacted, and so it stood until 1983, when the disqualification was amended to apply to persons ‘under sentence for an offence punishable under the law of the Commonwealth or of a State or Territory by imprisonment for five years or longer’. The effect of the introduction of that provision was to reduce the numbers of prisoners disqualified from voting.

CANADA

The Canadian Supreme Court in *Sauve v. Canada (Chief Electoral Officer)*¹⁷ with respect to the first objective of promoting civic responsibility and respect for the law, denying penitentiary inmates the right to vote is more likely to send messages that undermine respect for the law and democracy than enhance those values. The legitimacy of the law and the obligation to obey the law flow directly from the right of every citizen to vote. To deny prisoners the right to vote is to lose an important means of teaching them democratic values and social responsibility. [6] The majority view is summarized in the reasons of the Chief Justice:

The right of every citizen to vote, guaranteed by s. 3 of the Canadian Charter of Rights and Freedoms, lies at the heart of Canadian democracy. The law at stake in this appeal denies the right to vote to a certain class of people—those serving sentences of two years or more in a correctional institution. The question is whether the government has established that this denial

¹⁶ The Commonwealth Franchise Act 1902 Section 4 of the Act made a range of disqualifications from the general definition in section 3. People who had at any time been convicted of treason could not vote. A person who was under sentence or awaiting sentence for any offence which could be punished by imprisonment for one year or longer (under the law of Australia, or of the United Kingdom, or of any other Dominion of the Empire) was also not allowed to vote. People of "unsound mind" were also disqualified. Indigenous people from Australia, Asia, Africa and the Pacific Islands, [excluding New Zealand and 'aboriginal native of Australia' entitled by Section 41 of the Constitution to vote in State Government elections], were not entitled to enroll to vote in an election of the Parliament of the Commonwealth.

¹⁷ [2002] 3 S.C.R. 519, 2002 SCC 68

of the right to vote is allowed under s. 1 of the Charter as a ‘reasonable limit demonstrably justified in a free and democratic society.’ The right to vote which lies at the heart of Canadian democracy, can only be trammled for good reason.

Richard Sauvé, a former member of the Satan's Choice Motorcycle Club, was serving a life sentence for first degree murder. He challenged the law that prevented him from voting while in prison. Section 3 of the *Canadian Charter of Rights and Freedoms* guaranteed every citizen the right to vote. Sauvé was a citizen. So did the *Canada Elections Act* violate the charter?

It was argued that taking away a prisoner's right to vote was a reasonable violation of the charter given that they were irresponsible, uninformed, and simply undeserving. Both the Ontario Court of Appeal and the Supreme Court of Canada disagreed.

First, they found that the right to vote can't be limited to just a "decent and responsible citizenry." Governments had used this restriction to discriminate against citizens on the basis of colour, race, and gender in the past.

Second, the courts ruled that prisoners could not be banned from voting under the pretext that they were isolated from society. With access to cable television and newspapers, prisoners could still stay on top of developments and make informed decisions.

Third, denying the right to vote is a blanket punishment. As such, s.51(e) of the Canada Elections Act was not a "proportional response"; therefore, section 1 of the charter would not allow it to discriminate against prisoners.

Indeed, the courts found that two wrongs did not make a right.

UNITED STATES OF AMERICA

In the United States the opposite view prevails. In *Richardson v. Ramirez*¹⁸ Supreme Court divided six to three in favor of upholding a Californian provision disenfranchising ‘persons convicted of an “infamous crime”’. It should be noted that this provision applied, not only to those serving sentences, but to those who had completed their sentences and been released. The decision of the majority was based largely on a provision (Article 2) to the Fourteenth

¹⁸ 418 U.S. 24 (1974)

Amendment to the United States Constitution, which contemplated that persons who had participated in ‘rebellion or other crime’ might be disqualified from voting. The United States Supreme Court has also upheld a state provision imposing a literacy requirement as a qualification for voting. Only two US states (Maine and Vermont) permit prisoners to vote, although Utah and Massachusetts also did so until 1998 and 2000 respectively.

In France and Germany, courts have the power to deprive people of voting rights as an additional punishment, but this is not automatic. Eighteen European states, including Spain, the Netherlands and the Republic of Ireland, place no formal prohibition on prisoners voting.

OTHER JURISDICTION

The **UK** is, of course, one of the nations that has long refused to give serving prisoners the vote. **Austria** was another and its ban went further than the UK by refusing to allow criminals to vote until they had been out of jail for six months. However, it lost a major case at the European Court, linked to the British case, and has now accepted it has to amend its law.¹⁹

Prisoners in **Armenia** are banned from voting, but none of them have brought a challenge to the European Court. There are similar bans in **Bulgaria, Estonia, Georgia, Hungary and Russia. Hungary and Liechtenstein** both have bans but there are moves in both nations to change the law.²⁰

Some of the most liberal regimes are in former communist states. In **Albania**, all prisoners can vote irrespective of their crime or sentence. There have been no attempts to limit the franchise ever since it was introduced after the Iron Curtain fell. The situation is similar in **Bosnia and Herzegovina**, where prisoners can vote unless their crimes relate to the war in the wake of Yugoslavia's collapse.²¹

¹⁹ Prisoner votes by European Countries, Published by the BBC on 22/11/2002 available at <https://www.bbc.com/news/uk-20447504> last assessed 2/1/2019

²⁰ *ibid*

²¹ *ibid*

Other nations where all prisoners can vote include Croatia, the **Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Macedonia, Montenegro, Serbia, Spain, Sweden, Switzerland and Ukraine.**²²

Most prisoners can vote in **Cyprus and Romania**, unless a judge says otherwise. In **Malta**, it is the other way around - most prisoners lose the vote, unless they are jailed for less than a year. In **Bulgaria**, judges have the power to disenfranchise for life any offender jailed for more than 10 years. If a criminal receives a sentence of less than 10 years, they can still lose the vote. But it must be given back to them after a maximum of 20 years. Judges have so much discretion they can even remove the vote temporarily from criminals who are not jailed.²³

France has a very complex set of rules relating to the type of sentence because disenfranchisement is considered an additional penalty to be imposed as part of the sentence - and therefore it must be proportionate to the offence. That means that some serious crimes lead to mandatory disenfranchisement - but far less serious crimes lead to temporary bans. Like Bulgaria, the exact nature of the ban is up to the trial judge. **Luxembourg, the Netherlands and Slovakia** have similar rules.²⁴

In **Germany**, prisoners lose the vote if they have been convicted of crimes that targeted the state or democratic order. That means that average burglars do not lose the vote, but someone convicted of an act of terrorism or political violence would. **Norway and Portugal** allow the vote unless a criminal is convicted in similar circumstances to those in Germany.²⁵ **Italy and Greece** applies varying degrees of bans. In both countries life sentence criminals lose the vote forever. Italian and Polish courts can ban a criminal from voting, even after his or her release. **Iceland** confines its ban to serious offenders, arguing that such people have lost their civic right to vote by committing a crime that is "considered heinous by public opinion". In **Moldova and Monaco**, prisoners can vote unless the courts say otherwise.

²² ibid

²³ ibid

²⁴ ibid

²⁵ ibid

CONCLUSION

Lack of access to health care offended the right to life itself and many other rights such as right to dignity to human person. Human rights abuse in the prisons of the two countries is such that one can say an inmate is considered lifeless. There is an urgent need to reform the prisons of the two countries. Amendment of legislations is not enough.

