

Working of Advisory Boards in Maharashtra State: Serving Human Rights of Felons

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ABSTRACT--Rationale behind construction of a "Sentence Review Board" in any State correctional institution in lies behind the progression of law originating from custodial and penal causes, to reformative and rehabilitative handling of lawbreakers wherein well-behaved and upright conduct, and rectified attitude are considered for as a key criterion for reduction of judicial sentence of imprisonment on personalized footing. In consonance of the statutory power granted, and focusing upon the guidelines issued by "Model Prison Manual 2003" through a notification on December 1, 2015 the Home Department of the Government of Maharashtra formulated the amending rules to "Maharashtra Prisons (Review of Sentences) Rules, 1972" and restructured the "Advisory Boards, Special Advisory Boards and Medical Committees" constituted for the purpose of "pre-mature release" of the certain categorised convicts. As the provision for a pre-mature release is "an executive exercise and not a judicial process", "executive discretion in granting or denying" it raises certain grey areas in the criminal dispensation system in India. The present paper with an analytical and critical approach attempts to study the existing makeup of executive process of "pre-mature release of a felon which though is not a legal right, but is a human right to have his case considered for the grant of remission" in State of Maharashtra.

Index Terms: Sentence Review Board, Imprisonment, Pre-mature Release, Remission, Advisory Boards, Special Advisory Boards

I. INTRODUCTION

"They kept me in a cage for too long because now every room I am standing in is just another cell."

- Raegan Butcher[1]

Since the Vedic period prison is always considered as a "House of Captives"[2] wherein the society keeps the offenders of law and anti-social constituents locked away from the society. As per John Locke prison is for "the few desperate men in society" to be kept down in. During the late 17th century the idea that prisoners could be rehabilitated through some constructive "hard work and meditation"[3] emerged and was implemented[4]. In India through the recommendation of the All India Jail Committee in 1920, imprisonment was aimed as a correctional strategy for the felons through "reformation and rehabilitation" instead of a pure form of sentence and paying for the sins.

In India the notion of "pre-mature release" of convicts through setting up "Probation and Revisiting Boards" was firstly engineered in 1952 by Dr. W.C. Reckless, a United Nations specialist in "correctional work" in his "*Jail Administration in India*". One of the 658 recommendations

of All-India Committee on Jail Reforms in 1983 was that if prolonged incarceration seems unnecessary in terms of "reformation and protection of society" after certain served years of life imprisonment then "actual confinement shall be made flexible".[5] Accordingly sub-clauses (5), (7) and (27) of section 59[1] of the Prisons Act IX of 1894[6] give power to states to make rules applicable to respective state prisons for pre-mature release of convicts.

Likewise in 1997 in *Ramamurthy v. State of Karnataka*,[7] the Supreme Court of India had expressed a dire need for the construction of uniform rules and guidelines for all the prisons in India which resulted into formulation of "*Model Prison Manual for the Superintendence and Management of Prisons in India 2003*" (hereinafter "*Model Prison Manual 2003*") comprised by Bureau of Police Research and Development, Ministry of Home Affairs, Government of India "by evolving national consensus on relevant issues relating to prison reforms in India" with pursuance of the goal to seek for "a guide for States to draw from and adopt best practices". "*Model Prison Manual 2016*" which is the updated version of "*Model Prison Manual 2003*" is adaptive with the changing and modern times has been designed by Ministry of Home Affairs of Government of India which in its Chapter XX-titled as "Premature Release", details down the intent behind the providence of "pre-mature release"[8], "Composition of the State Level Committee (SLC)"[9], "Eligibility for Premature Release"[10], "Procedure by and Guidelines for SLC"[11] etc.

In consonance of the statutory power granted, and focusing upon the guidelines issued by "*Model Prison Manual 2003*" through a notification[12] on December 1, 2015 the Home Department of the Government of Maharashtra formulated the amending rules to "Maharashtra Prisons (Review of Sentences) Rules, 1972" and restructured the "Advisory Boards[13], Special Advisory Boards and Medical Committees" constituted for the purpose of "pre-mature release" of the certain categorised convicts under "sections 432 and 433 of Code of Criminal Procedure, 1973"[14], or by order of the appropriate authority by the virtue of "Article 72 or Article 161 of the Constitution of India 1950"[15], or under "any special law enacted by the State"[16].

In sub-section titling as "*Genesis and the Historical Background of the Prison System and the Correctional Policy*" in section "History of Prison"[17] of the official website of Maharashtra Prison Department[18] it is

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specifically cited that “Most of the recommendations of the All India Jail Manual Committee have been accepted and also implemented in the Maharashtra Prisons. In fact Maharashtra State is the only State, where the provisions of the Model Prison Manual and the recommendations of the All India Jail Manual Committee have been mostly implemented. Through the implementation of the recommendations of this committee, a new humanism was developed in all the prisons in the State.”

However, a deep insight and a meaningful review of the applied working of the Advisory Boards displays a grave picture which is marred with the realities of the contemporary India such as procedural arbitrariness, political interferences, partisan handling, exploitative corruption in administration of prisons, nepotism, dread of public wrath, pressure of media in cases of high-profile convicts, unsanitary and sadistic conditions in jails due to “over-crowding”, in general disregard and apathy by the executive as well as the society towards the incarcerated which creates hurdles for fair and just treatment of prisoners.

II. THEORETICAL BACKGROUND

“IN OUR CELLS They keep us in our cells for a long time... And, if we get out; We lug them with us on our shoulders, like a porter with a chest of goods.”

- VisarZhiti[19]

Factually the working of Sentence Review Boards of any state is largely a subject matter of empirical research. Still the study for the present paper could be achieved to a certain satisfaction with the help of various law and analytic primers on “The Constitution of India 1950”, “The Code of Criminal Procedure 1973 (Act No. 2 of 1974)”, “The Indian Penal Code 1860 (Act No. 45 of 1860)”, “The Prisons Act 1894 (Act No. 9 of 1894)”, “The Protection of Human Rights Act 1993 (Act No. 10 of 1994)”, “The Probation of Offenders Act 1958 (Act No. 20 of 1958)”; multilateral United Nations treaties and conventions such as “International Covenant on Civil and Political Rights 1966” and the “Standard Minimum Rules for the Treatment of Prisoners 1957”. The comprehensive and detailed “*Report of the All-India Committee on Jail Reforms 1980-83*” legendarily known as *Mulla Committee*, the document-“*Implementation of the Recommendations of All-India Committee on Jail Reform (1980-83) Volume I and Volume II*”-primed by Bureau of Police Research and Development, Ministry of Home Affairs, New Delhi in 2003 and “*Model Prison Manual 2016*”-primed by Ministry of Home Affairs, Government of India have proved to be the instituting platforms for this research paper.

“Maharashtra Prisons (Review of Sentences) Rules, 1972”, “Maharashtra Prisons (Review of Sentences) (Amendment) Rules, 2015”, and “*Maharashtra Prison Manual 2015*” have sourced the theoretical and regional backdrop of the existing structure and working of the “Advisory Boards” and “Special Advisory Boards” in Maharashtra State which are statutorily designed for reconsideration of specific sorts of convicts for the purpose of their pre-mature discharge from incarceration.

Interpretations of and directions by Indian judiciary through several judicial verdicts regarding human rights of

convicts, and the real-world data sourced through internet about the actual status of workings of such Boards have reared voluminous trepidations about the real-life application of human rights of such repented and reformed law-offenders flagging in jails still after completion of long years of incarceration.

III. FINDINGS

“Injustice anywhere is a threat to justice everywhere.”

- Martin Luther King Jr.[20]

With aims behind incarceration of “confinement, deterrence, penance, correction, reformation and rehabilitation” the prisons in India are a “massive social organization” undertaking “human engineering, influencing and modifying perceptions, attitudes and behaviours” of its inmates.[21] Along with this line of enquiry through a detailed, analytical and systematic fact-finding approach certain statutory rules and findings can be ascertained about the institution of reviewing of sentences in State of Maharashtra and are listed subsequently:

- “Prison” is enlisted in “State List” of “Schedule Seventh” of the Constitution of India as “Entry 4”.[22]

- “Section 432 of the Code of Criminal Procedure, 1973”[23] gives the government “power to suspend or remit sentences” i.e., the power of pre-mature release of the convicted person.

- In *Sangeet & Anr. v. State of Haryana* (2012)[24] it is justifiably ruled that, “It is true that a convict undergoing a sentence does not have right to get a remission of sentence, but he certainly does have a right to have his case considered for the grant of remission.”[25]

- With the virtue of sub-clauses (5), (7) and (27) of section 59[1] of the Prisons Act IX of 1894[26] the Government of Maharashtra has formulated “The Maharashtra Prisons (Review of Sentences) Rules, 1972”.

- By virtue of Rule 3 of “The Maharashtra Prisons (Review of Sentences) Rules, 1972” an Advisory Board shall be formed aiming for “reviewing from time to time and assessing how far a sentence had salutary and reformatory influence” on the convict.

- By virtue of Rule 4 (1) of “The Maharashtra Prisons (Review of Sentences) (Amendment) Rules, 2015”[hereinafter the Amended Rules 2015] the Advisory Boards shall be constructed with the following listed members:[27]

- As Chairman-“Regional Special Inspector General of Prisons/Deputy Inspector General of Prisons”;

- Member-“Any Judicial Magistrate/Principal Sessions Judge for Greater Mumbai”;

- Member-“The District Superintendent of Police/Commissioner of Police in Greater Mumbai”;

- Secretary-“The concerned Superintendent of the Prison”;

- Three Non-Official Members for 3 years term from-“Members of State Legislature, Social Scientists /Social Workers”.

- By virtue of Rule 4 (2) of the Amended Rules 2015 in State of Maharashtra “Medical Committees” shall be constituted with the three members in each-“District Civil Surgeon, District Health Officer, and the Chief Medical Officer of the concerned prison” for sentence reviewing of “weak or infirmed”-

- male convicts above 65 years of age, and
- female convicts above 60 years of age.

- Rule 6 (a) of the Amended Rules 2015 categorises eligibility terms for pre-mature release of certain convicts punished with certain periods of imprisonment as follows:

- female convicts and “old and infirmed” convicts sentenced for “more than 3 years of imprisonment” and have completed “half of substantive sentence or at least 3 years excluding remission period”;

- convicts sentenced for “more than 5 years of imprisonment” and have completed “2/3 of substantive sentence excluding remission period”;

- convicts “sentenced to life imprisonment” and have completed “14 years of imprisonment including remission period”; and

- Rule 6 (b) (3) gives distinctive contemplation to “pre-mature release of casual female prisoners” who are “sole breadwinners of the family” or “expectant mothers for avoiding having their children inside the prison”.

- No convict of any case serving a “sentence of imprisonment” shall be taken into consideration for pre-mature release under – “The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offender and Dangerous Persons Act, 1981 (Mah. LV of 1981)”; “The Maharashtra Control of Organised Crime Act, 1999 (Mah. XXX of 1999)”; “The Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); and “the prisoners detained and punished under the Central Government jurisdictions detention rules”.

- As per Rule 16 (i) (b) purpose behind the Amended Rules 2015 is “welfare of the prisoner and the society in large”, a pre-mature release of a convict will not be denied merely on a point of non-recommendation by the police “on certain far-fetched and hypothetical assumptions”.

- For an Advisory Board the major area to be considered for pre-mature release of a felon shall be “the circumstances in which the crime was committed by the felon and whether he has the propensity to commit similar or other offences again”[28] along with “social history of the convict; circumstance of his criminal behaviour; conduct in the prison; response to training and treatment; marked changes in habits, attitude and character, degree of criminality, health and mental condition of the convict; possibility of his resettlement after release; opinions of the Commissioner of Police concerned, the Superintendent of Police and the District Magistrate”.[29]

- Interviews of the convict will not be taken by the Advisory Board while contemplating the case of pre-mature release.[30]

- There shall not be a communication about the recommendations of the Advisory Board to the convict or his/her family “except for the order of the State Government for his/her release”.[31]

- By virtue of Rule 21 of “The Maharashtra Prisons (Review of Sentences) Rules, 1972” Special Advisory Boards shall be formed aiming for reviewing adolescent convicts between the age group of “not less than 18 years and not more than 21 years”[32]“at the time of commission of the offence”, sentenced for “3 years or above of imprisonment” and have completed “half of substantive sentences inclusive of remission period”;. The members of the Special Advisory Board shall be “District Magistrate (President), District Sessions Judge, Superintendent of the prison (Member-Secretary), and three non-official members nominated by the State Government”.

- On 15th February and 15th August of each year the Senior Jailer of each prison shall prepare “a statement of all convicts whose sentences have become due for review by the Advisory or Special Advisory Board”[33]; meetings of such Boards shall be held in every six months.[34]

- The State Government after considering each file may pass an order of pre-mature release of the convict.

IV. RESULTS AND DISCUSSION

“Locked behind high walls and iron bars, an unfortunate human world slumbers; Here they have lost even their names, and now they are just a roll of numbers. When will their season of sorrow change, when will the locks be broken; With every breath each one of them hopes and prays, all these lost souls in agony unspoken; Counting each moment of their unending prison days.”

- Justice AnandNarainMulla[35]

The letters of law are the guarantee and providence of the Constitution to the convicts right to access to justice[36], and right to humane and fair treatment. A comprehensive study about the actual implementation and exact effect of the law regarding pre-mature release of convicts has raised some serious inputs about the working of Advisory Boards in Maharashtra. They are penned down subsequently along with feasible solutions:

- The responses jotted down by the Government of Maharashtra to the inquires for the survey of “Implementation of the Recommendations of All-India Committee on Jail Reform (1980-83) Volume I and Volume II”, primed by Bureau of Police Research and Development, Ministry of Home Affairs, New Delhi in 2003 show a major lack of response on part of the Maharashtra State to many queries; e.g.:

- “What portion a convict should have completed to become eligible for pre-mature release? (NDPS Act): No Response [Table 22.04]”;

- “In the case of women offenders, what portion they should have completed to become eligible for pre-mature release? (Murder): No Response [Table 22.06]”;

- “Within how much time from the date of maturity for pre-mature release a convict is on the average released?: No Response [Table 22.12]”.

- “Sub-section (1) of Section 432 is only an enabling provision”[37]i.e., a state “government is enabled to ‘override’ a judicially pronounced sentence,”[38]if certain criteria which are stated in the “Jail Manual or in statutory rules” are fulfilled. “Since remission can only be granted by the executive authorities”[39] the “power to suspend or remit sentences” under “section 432 of the Code of Criminal Procedure, 1973” is used arbitrarily by the State “as per the whims of Sentence Review Boards”[40] thoughthe arbitrary use of “power of remission” is not permissible by law. “The decision to grant remission has to be well informed, reasonable and fair to all concerned.”[41]Each Advisory Board has to jot down reasons and rationale, in detail, behind acceptance or rejection of all the cases examined by it to make its recommendation authentic.[42] The reasons given for denial for pre-mature release when communicated to the convict can provide a new motivation for the convict to work positively upon the questioned area of his file, and correct[43] the problematic area before the next hearing of his case to the Advisory Board.

- Lack of transparency is palpable in the meetings and working of Advisory Boards as they are not open to be witnessed or communicated by the convict or his legal representative.[44]Video filming of these meetings can secure transparency of such proceedings.

- Considering the vast number of convicts deteriorating in jails still after the basic statutory period for introspection and reformation, Rules 6 and 22 of “The Maharashtra Prisons (Review of Sentences) Rules, 1972”shall be amended as per “*Model Prison Manual 2016*”by replacing half-yearly meetings of Advisory Boards with quarterly-held[45]or “more frequently”[46] held meetings of Advisory Boards to enable them to process efficiently the pending cases eligible for pre-mature release.

- In consonance of “*Model Prison Manual 2016*” Rule 4 (1) of the Amended Rules 2015 shall be further amended by including “Director Probation Services/Chief Probation Officer” as a member in the constituent body of all Advisory Boards in Maharashtra State.[47]

- Rule 6 (a) of the Amended Rules 2015 has to be further amended to be in consonance of “*Model Prison Manual 2016*” categorising eligibility terms for pre-mature release of certain convicts punished with certain periods of imprisonment as follows:

- female convicts serving life imprisonment: “on completion of 8 years of imprisonment, including remission”[48], “except those covered under section 433-A of the Code of Criminal Procedure 1973: only after completing 14 years of actual imprisonment”;

- “life convicts: on completion of 10 years of imprisonment, including remission”[49], exception criteria as above;

- convicts sentenced for “rape, dacoity, terrorist crimes, kidnapping, crime against women & children, smuggling, corruption, offences against state: after completion of 14 years, including remission”[50]; and

- “old and infirmed convicts above 65 years of age sentenced life imprisonment: on completion of 10 years or 75 years of age including remission and served minimum 5 years of imprisonment including remission”[51].

- Jailsin India are acutely over-crowded resultant in “acute pressure on publicexchequer”, “with over-crowding in certain prisons, as high as 400% of the prescribed capacity.”[52]Over-population in jails is co-related with “morbidity, recidivism, violence, indiscipline, hazardous to health, hygiene, food-quality, security and surveillance, hampering rehabilitation and reformation of inmates, and influencing negatively by hardened convicts on young offenders”[53] etc. If the prevalent legal and statutory provisions about “pre-mature release” are implemented systematically, the issue of jam-packing in jails will be grasped to a certain extent.[54]

- The “whole-sale manner of pre-mature release”[55] of felons on Independence Day or Republic Day or Maharashtra Day by the state for political popularity has to be precluded.

- The canons of justice[56] are not only for the convicts but shall serve the society also. Before considering the pre-mature release of a felon, it is a duty of the State through prison composition to be absolutely sure in providence of all possible forms of “reformation, rehabilitation, counselling, psychological evaluationand re-integration” of the felon which shall result in minimum probability of re-offense after his/her release in the society.

- A present-day national debate generated on – “pros and cons” of creation of universal criteria of eligibility for pre-mature release after certain years in case of life imprisonment, and ways for minimum “discretion” in hands of statutory authorities - can give intelligent and innovative inputs to the issue in hand.

- While writingof this research paper the major hurdle the researchers have to face is non-availability of “The Maharashtra Prisons (Review of Sentences) Rules, 1972” online or in print form. Along with this, Chapters 13 and 14of “*Maharashtra Prison Manual*” are peculiarly absent from the official website of “Maharashtra Prison Department”. [57] The researchers have to resort to use their personal connections with prison officials to get the *WhatsApp* images of relevant pages and rules which resulted in delay of writing this research paper. It should be mandatory for each state prison department to keep its website updated with all the relevant laws, Acts, rules and manuals for reference of the accessor.

V. CONCLUSION

“*Get up, stand up, stand up for your rights. Get up, stand up, don't give up the fight*”

- Bob Marley[58]

Provision of pre-mature release is not “an indefeasible right” of a convict; it is a discretionary statutory power of a state government.[59] The law permits the statutory authority to use the power of remission as “on a case-by case basis and not in a wholesale manner.”[60]The “meaningful and true chance of pre-mature release” gives a weightyincentive to the convict to participate willingly and positively in reformative activities conducted in jails and plan for constructive future coursed through rehabilitation



programs provided by the state. In India most of the long-languished imprisoned convicts are destined to “an endless wait by adense sentence review process” living in an uninformed and segregated world of prison mostly unknown to when, how, why his/her name will be chosen or rejected for the “mercy of pre-mature release”. In-timely reviewing and monitoring of the “computerized database records of all convicts”[61] will reflect transparency, and non-biased and fair processing of due cases by the Advisory Boards; it will ultimately result into increasing faith of society in criminal dispensation system of India.

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5. Recommendations Nos. 560-566; Ministry of Home Affairs, Government of India, *Report of the All India Committee on Jail Reforms 1980-83*, Vol. I, Vol. II.
6. “59. Power to make rules.-[1] The State Government may by notification in the Official Gazette make rules consistent with this Act- (5) for the award of marks and the shortening of sentences;..... (7) defining the circumstances and regulating the conditions under which prisoners in danger of death may be released; (27) in regard to the admission, custody, employment, dieting, treatment and release of prisoners confined, therein;”
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10. *Id.* Prov. 20.08.
11. *Id.* Prov. 20.09&Provs. 20.20 -20.24.
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14. *Supra* note 8, Prov. 20.02 (i) & (ii).
15. *Id.* Prov. 20.02 (iii).
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22. “4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.”
23. “432. Power to suspend or remit sentences. (1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without Conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced. (3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.”
24. Cri. App. Nos. 490-491 of 2011.
25. See also *State of Haryana v. Mahender Singh* (2007) 13 SCC 606; *State of Haryana v. Jagdish* (2010) 4 SCC 216.
26. *Supra* note 6.
27. *Supra* note 12.
28. Rule 16 (1) (b) of the Amended Rules 2015.
29. *Id.* at Rule 16 (1) (a).
30. Rule 16 (ii) of “The Maharashtra Prisons (Review of Sentences) Rules, 1972”.
31. *Id.* at Rule 16 (v).
32. Rule 21 (1) of the Amended Rules 2015.
33. Rules 13 and 22 of “The Maharashtra Prisons (Review of Sentences) Rules, 1972”.
34. *Id.* at Rules 6 and 22.
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38. *Id.*
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44. *Supra* notes 30, 31.
45. *Supra* note 8, at Prov. 20.06.
46. *Id.* at Prov. 20.07.
47. *Supra* note 8, at Prov. 20.04.
48. *Id.* at Prov. 20.08 (i).
49. *Id.* at Prov. 20.08 (ii).
50. *Id.* at Prov. 20.08 (iii).
51. *Id.* at Prov. 20.08 (iv).
52. *Supra* note 2, Part III at 5.
53. *Id.* at 4.
54. *Id.* at 7.
55. *Supra* note 24, at ¶ 80 (7).
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