

## Premature Release of Prisoners

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On the occasion of independence day, Andhra Pradesh government ordered the premature release of 1050 prisoners. It proposes to release another 285 on October 2. Of the prisoners released, 602 are offenders sentenced for life and others for varying terms. The scale of release is unprecedented in the state's history. Right-wing political parties and the media have expressed concern on the decision to grant remission of the unexpired portion of the sentence, particularly of prisoners sentenced for life.

One of the factors that has made the government's decision controversial is the release of one Mujeeb Ahmad, convicted of killing an additional superintendent of police in Hyderabad in 1994. As an alleged ISI agent, he, in fact, refused to leave prison lest he should be physically targeted by the BJP and VHP; he approached the magistrate for an escort to reach his home in Hyderabad safely. The BJP complained that the prisoner did not regret his crime and questioned the appropriateness of the release of such offenders by the government. The media, which publicises the horrors of prison life, never ceases to expect the institution to bring about moral reformation among offenders, ignoring the contradictions involved in such expectations. Without going into the debate of whether most of the offenders require moral reformation and whether the institution has ever achieved it in the past – unless one equates obedience with moral transformation – it should be clear that reformation is not a statutory condition for the release of any offender.

The controversy thus began and spread to other aspects of the prisoner's release. It is now widely believed that nearly 80 prisoners who are part of the factional politics of Rayalaseema, from where the chief minister hails, have been released overriding rules. The media expressed fears about the release of so many ex-offenders at one go. The BJP made this criticism initially, and the TDP has taken it up. It is important to note that though the relatives of ordinary prisoners still confined have expressed their disappointment, no political party has taken it up as a cause worth fighting for.

In case of lifers, the government released all those who had completed seven years of actual imprisonment, or 10 years including remission, and those who had crossed 65 years of age and had completed five years of actual imprisonment. In case of prisoners with a term sentence, it released those who had completed half of their sentence by July 31; those who got special remission for one year, and those sentenced for one year but who got special remission of 15 days were also released. These criteria followed by the government are not new, yet the number of prisoners released shocked many people.

It is important to note that some of the prisoners sentenced for life had served more than 10 years<sup>1</sup>. How does one explain the variations in the periods of imprisonment? The fear of the release of so many convicts at a time is unwarranted,<sup>2</sup> and moreover they are all released as a rule under certain conditions, violation of which sends them back to prison to undergo the unexpired, period of their sentence.<sup>3</sup>

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<sup>1</sup> For instance, Marapelli Ashok and Giridhar from Warangal have served 14 years of actual imprisonment; Kotagiri Ravikiran of Hanamkonda, 10 years; Jatbiridhari Mohan of Hyderabad, 12 years; Kalanaik of Guntur, 12 years; Laxminarayana of Nalgona, 14 years; Pasulollu Venkataswamy of Kunool, 9 years of actual imprisonment in various prisons of Andhra Pradesh. These are only some of the instances of many more cases of long periods of incarceration of prisoners.

<sup>2</sup> In a recent TV (ETV) talk show, M.R Ahmad, DIG of prisons, Telangana ranse says that 96 percent of the prisoners are ordinary persons and so not need any reformation. Of course, this is only for public consumption as a prison is also made a closed institution in the name of the danger posed by offenders. A 1978 study found that 93.58 percent of prisoners in Punjab jails had no previous conviction, ' Socio-economic background of prisoners in Punjab jails', *Economical and Statistical Organisation*, Punjab, p 7, 1978.

<sup>3</sup> Section 432(3) of the Criminal Procedure Code is as follows: "If any condition on which sentence has been suspended or remitted is, in the opinion of 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".

Here, it is important to deal with the legal aspects related to life imprisonment of offenders. Section 53 of the Indian Penal Code, which provides for life imprisonment, does not specify the duration of imprisonment the offenders sentenced for life have to undergo. In *Gopal Vinayak Godse vs State of Maharashtra*, the Supreme Court held that "a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison".<sup>4</sup> In fact, imprisonment for life as a punishment came into existence through Indian Penal code (Amendment) Act XXVI of 1955, which replaced the punishment of transportation for life. This, does not, however, mean to reduce the rigour of the punishment. The report of the joint committee, which moved the Criminal Procedure Code (Amendment) Bill 1954 says, "Therefore, the mere substitution of the expression 'imprisonment for life' for transportation for life should not change the nature of punishment".<sup>5</sup> Thus in cases of life prisoners, prisons became places of internal exile within society. Life sentence thus represents the colonial sentence of transportation, but hardly evokes any sympathy towards offenders from society.

However, Section 55 of the Indian Penal Code authorizes the government to reduce the period of life sentence for a period not exceeding 14 years. Section 57 of the IPC says that for the purpose of calculation, life imprisonment should be reckoned as being equivalent to imprisonment for 20 years. Also, Section 432 of CrPC authorizes the government to suspend the execution of any sentence of any offender or remit the whole or part of his sentence. But on the basis of these sections, the court cannot direct the government to release prisoners even after they complete more than 20 years, since the power to commute is exercised by the government under the overriding power conferred by Articles 72 and 161 of the Constitution. As of today, the law, as interpreted by the courts, expects the lifer to die in prison. Thus there is an element of indefiniteness in the period of sentence of lifers. In any case, under the present law is not less than 16 to 19 years including the pre-conviction period<sup>6</sup> in some of the states.

Before 1978, however, governments used to release offenders sentenced to life after the completion of seven years of actual sentence. To check the misuse of this power and to ensure a minimum period of sentence, parliament brought an amendment to the Criminal Procedure Code in 1978, inserting a Section 433(A). This section stipulates that offenders sentenced for life, in whose offences death is one of the punishments provided by law, should serve at least 14 years of imprisonment. This has resulted in the long incarceration of one group of convicts.

The all-India committee on prison reforms 1980-83 dealt with the dehumanizing and degenerating effect of long imprisonment, as a result of the application of Section 433(A) on one section of lifers. It recognized the need for bringing about legislation to fix a term of imprisonment over a reasonable period. It reasoned that the long incarceration cuts off prisoners from conjugal life, decision-making in day-to-day life, and from mainstream society into which he would have to be re-assimilated, and offers no incentive for self-discipline and self-improvement. The committee perceptively warned that the deep discontent simmering among life convicts in all the states and union territories might erupt in prison riots.

To honour the suggestions made by the Mulla Committee in 1988, the government constituted a prison advisory board on premature releases. The board proposed to release prisoners who had completed 65 years of age and three years of actual sentence, elderly prisoners, and those who had undergone 10 years of actual sentence including remand period. The government also issued guidelines to the advisory board to make recommendations for the release of prisoners who came under Section 433(A) of CrPC.<sup>7</sup> But these guidelines were not followed scrupulously in practice. Premature release of prisoners with political influence began during the government of the Telugu Desam Party in 1988 itself, and apparently gathered strength during the congress government between 1990 and 1993. Between 1988 and 1993, 60 prisoners with political influence were released

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<sup>4</sup> AIR 1961, SC, 600. Also see *Ashok Kumar vs Union of India*. AIR, 1991, SC,1792.

<sup>5</sup> Referred to 29<sup>th</sup> *Report of the Punishment of Imprisonment for Life under the Indian Penal Code*, July 1968, Government of India, Ministry of Law.

<sup>6</sup> In Uttar Pradesh, there is no provision to review the cases of those who have been sentenced to life imprisonment even after 20 years. See the statement made by Justice Ranganath Misra, the then chairperson of the National Human Rights Commission in *Human Rights Newsletter*, Volume 3, No. 4, April 1996.

<sup>7</sup> See government order, Miscellaneous No 69, Home (Prisons B) Department, dated January 29, 1991.

after completing just 3-5 years of their sentence. During this time, 30 prisoners who came under Section 433(A) were prematurely released. Only five of them received clearance from the prison department.<sup>8</sup> However, during 1991-93, 310 lifers were released after they had completed 14 years of imprisonment. What is important for us here is that the release of prisoners, especially premature release, has been subject to political and bureaucratic influences and corruption irrespective of the party in power.

This was the context that prompted many prisoners, belonging to the factional politics of the Telugu Desam, to move the high court in 1993, alleging discrimination by the government in the premature release of prisoners. The court ordered the government to communicate to the prisoners. The court ordered the government to communicate to the prisoners concerned the reasons given by the advisory board for not recommending a particular case.<sup>9</sup> Instead of addressing the prisoners' grievances, the government dispensed with the procedure of considering cases recommended by the advisory board for premature release. The government said that prisoners sentenced to life had no right to demand their release even after completing 20 years of imprisonment. It proposed to consider the case of each prisoner on a merit basis for premature release.<sup>10</sup>

The cancellation of the procedure for the periodical premature release of prisoners deeply disturbed lifers and long-term prisoners. The criterion for release on an individual basis further compromises fair procedure and gives more scope for corruption and political influences. Interestingly, the lifers in prison are well aware of the procedure for premature release. To display their discontent, they went on a hunger strike immediately after the TDP formed the government in 1994. They continued their hunger strike in two phases between December 1994 and February 1995. This was a historical struggle initiated by Naxalite prisoners but later continued by ordinary prisoners demanding that the government, among other things, fix the period of sentence for life prisoners to avoid discriminatory practices. The prisoners questioned the indefiniteness of life sentence and the consequent discretionary powers of the government. The reduction of life sentence to seven years of actual imprisonment through the process of premature release, even to those who come under Section 433(A), is one of the achievements of the prisoners' movement.

If the criterion of seven years of actual imprisonment and 10 years inclusive of remission is applied to lifers, 300 convicts on average should be released prematurely every year. After the prisoners' movement, the government released nearly 400 of them in 1995 and 1,000 life convicts during 1996-2000.<sup>11</sup> But in the second term of TDP rule, the government became insensitive towards the problems of prisoners. In the past three years it has released just 46 prisoners as it attached many conditions to such release. Therefore, from 2001, many prisoners, who should have been released under ordinary circumstances, continued to languish in prisons and their numbers only accumulated. This explains the wide variations in the terms of sentence served by the prisoners released recently.

Since the system provided for premature release is not uniform in all states, nor is it followed seriously, the National Human Rights Commission circulated guidelines in 1999. But a majority of the states, including AP, did not respond. NHRC directed state governments to constitute sentence review boards on a permanent basis and process three months in advance the applications of prisoners eligible for premature release. It also proposed to monitor electronically the cases of premature

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<sup>8</sup> For instance, the government suspended the sentence of the life imprisonment of an MLA, T Thirumala Reddy, although an appeal was pending in the high court and his release on interim bail was cancelled. The close associates of Ramana Reddy, ex-MLA from the Congress Party, who was convicted in multiple murder cases, say that he was released after completing just five years in prison. The media also made a lot of noise about this. These are only some of the prominent people who were able to influence the government and were released. Murali and Narasinha of Hyderabad were released after four years and five months and five and half years respectively in 1991; see 'Jeevitha Khaitheelaku Raajakeeya Kshamabhiksha' (political mercy to life convicts), *Eenaadu*, dated May 31, 1993.

<sup>9</sup> In late 1993, the then prison advisory board refused to recommend the prisoners involved in the factional feuds of Rayalaseema, who belonged to the then opposition party, Telugu Desam, for premature release. Therefore Kannabiran, a prominent civil liberties lawyer, contested the government in the high court on the grounds of discrimination before law under Article 14 of the Constitution.

<sup>10</sup> See the GO Ms No 372, dated December 29, 1993. It is important to note that M V Bhaskar Rao, the then home secretary, was criticized by TDP as being a supporter of Congress Party.

<sup>11</sup> See *Vaaritha* Telugu news daily, dated March 17, 2003.

releases from all jails in the country. But the website in AP, updated last in 2001, has virtually no details on premature releases.

There has always been a handful of prisoners with strong political linkages influencing the government's decisions on premature releases. The government also has its own stake in running the prisons in a particular manner but this has serious ramifications for a large section of ordinary prisoners, especially those sentenced for life. As there are hardly any supportive structures – except the ones associated with political groups including Naxalites – in society to defend the rights of prisoners, the present controversy could give the opportunity to governments to reverse the positive results achieved by prisoners' struggles.