

# Prison Reform In India- An Incomplete Saga

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## I. Introduction

Every society comprises people with different approaches and attitudes towards life. There exist varied perceptions which may often result in a difference in the actions taken by people in pursuance of their respective perceptions. However, these varying actions might result in different impacts on society, all of which are not necessarily good. According to Roscoe Pound's theory of 'social engineering' the interests of the individuals should be handled in such a way that they should be able to act freely but to the extent that the common interest of society is preserved (McManaman, 1958). This is where the role of law is activated to regulate the acts of the individuals so that they should not act in a way that society is harmed.

The need to regulate human actions led to the evolution of a system of controlling the behaviour of an individual in order to protect the interests of society as a whole and humans were made answerable for their actions. It also evolved a system of detaching the individuals from society and keeping them in places now known as prisons as forms of punishment. Recently the idea of "prisonization" has acquired a very wide ambit and ranges from deterrence when ultimately necessary to providing certain reformatory measures with the goal of bringing the prisoners back into society and allowing them to lead a normal life (Jobson, 1971). Hence prison administration's role has grown immensely to cater to the modern-day demands and ensure that prisons serve as a place of reformation and the person can be reintegrated back into society without

posing as a threat to society (Dietch, 2010, pp.295).

The recent developments in Human Rights philosophy have shifted the focus from deterrence to reformatory measures for dealing with offenders. However, prisons still remain a vital part of the criminal justice system because they can be used both as places of deterrence and reformatory experiments. The importance of prisons also lies in providing accommodation to under-trials, generally whose presence is essential to the trial.

But before venturing into why we need prisons or to reform them, let us look at how "prison" as a term is defined. The original term for prison is 'Jail' or 'gaol' or 'penitentiary.' Prison has been defined as "a place properly arranged and equipped for reception of persons who by legal processes are committed to it for safe custody while awaiting trial or for punishment" (Pachauri, 1994, pp.492).

It is a place in which a person is kept under the authority of the state by a proper law and their liberty infringed. The freedom so curtailed is a form of enforcing such punishment as is required by law due to the wrongful act or omission of the individual. These places are most commonly used for the purpose of keeping the person either charged or convicted of a particular crime. Hence, originally a prison was considered a place for the detention of offenders until trial, judgment and the successful execution of such a judgment (Jobson, 1971).

A harmonious reading of Article 246 and Schedule VII of the Indian Constitution divides

the legislative jurisdiction in post-independence India between the provincial (State List) and federal or central governments (Union List). On a comparative analysis, prison administration in India has seen a major change post-independence when it was placed as a subject under the state list and different states adopted different policies according to their social and economic resources. This is in stark contrast to a pre-independent India where prisons were being used to suppress the freedom struggle.

Part II of this paper looks at the various committee's setup and subsequent steps (if any) taken by the government to reform prisons in India. Part III focuses on the most recent holistic reform, review and report by the government of India, which was completed and published in 2007. The judiciary has also played an active role in this saga of prison reform in India. At times, it has stepped in to ensure better implementation and on others, it has evolved policy in the absence of legislative will to do so. These trends and important judgments are discussed in Part IV. This is followed by the identification of major human rights and psychological issues that prisoners face as a result of tardy reform of the prison system in Part V. This paper finally draws its conclusions from the analysis of legislative trends, executive recommendations and judicial pronouncements in Part VI along with some suggestions.

## **II. Prison Reform Committees in India**

There have been various committees formed which highlighted certain issues that were required to be looked upon so that prisons can actually be a place of reformation and rehabilitation of the prisoners and can also preserve the human rights of the prisoners as well. In this chapter, the researcher will put light on various such committees set up post-independence in India and the recommendations given by them.

### **II.1 Post-Independence Period**

Independent India was a liberated India and witnessed a series of various human rights friendly legislations. The newly installed government was keen to pass various mandates inspired by the spirit of constitution. This also inspired the government to reform the prison administration and hence various committees were set up which analyzed the prison administration in India and suggested methods to reform it. This section will discuss the key recommendations of such committees and their impact on the prison administration.

The very first initiative towards this was the establishment of Pakwasa Committee in 1949. It recognized a limited right to work for prisoners to the extent that there should be no intensive supervision over them (Lok Sabha Secretariat, 2017). This committee brought in suggestions to provide wages to working prisoners and also advocated for early-release from punishment to prisoners for good conduct.

The next initiative was aimed a part of making Indian prisons at par with international standards. The government invited Dr. W.C Reckless a technical expert on Crime Prevention and Treatment of Offenders to suggest measures to reform Indian prisons. (Lok Sabha Secretariat, 2017) The expert was called in pursuance of the Technical Assistance Programme in India. He proposed the following guidelines to reformation and rehabilitation of prisoners which were unanimously adopted by the Indian government (Reckless, 1952):

1. Making correctional services as an integral part of the Home Department of each state and a Central Bureau of Correctional Service to be established at the Central level.
2. Use of reformation measures such as parole and probation to reduce the population of prisoners and reduce the burden of prisons.
3. Establishment of aftercare units to all released prisoners to start a new life and settle peacefully in the society.

4. Abolishment of solitary confinement as a method of punishment because it negatively impacts the mental health of a prisoner.
5. Classification of prisoners to assist in their differential treatment to reform them.
6. Periodic revision of State Jail to meet up with the new challenges of the reformation and rehabilitation of prisoners as per evolving social standards.

These recommendations also inspired All India Conference of Inspector Generals in 1952 which further lead to the formation of a committee which prepared the Draft All India Manual in 1957 and setting up of the Central Bureau of Correctional Service in 1961.

### **II.2 All India Jail Manual Committee, 1957**

The Central government established this committee in 1957. It was established with the aim to draft a uniform prison manual for all the states to maintain homogeneity with respect to prison administration and to ensure that at least minimum reformatory measures were adopted in all prisons across the nation. (All India Jail Manual Committee, 1960, pp.1-4) The committee report submitted in 1960 was consequently accepted as the Draft Prison Manual.

The committee made extensive recommendations for reformatory measures including but not limited to the use of modern methodologies to deal with issues relating to prison administration, probation, after-care, juvenile, remand homes, certified and reformatory school, borstals, suppression of immoral traffic etc. (All India Jail Manual Committee, 1960)

The report suggested that a national policy for prison reforms in India should be brought about. The manual also had provisions for classifying prisoners for the purpose of their treatment. Unfortunately, none of the recommendations by the committee ever met the light of the day. The Supreme Court has also criticized the government for limiting this

report on papers and emphasized on the need to implement the same. (BPRD, 2007, pp.32)

### **II.3 Central Bureau of Correctional Services (CBCS), 1961**

The CBCS was established in 1961 by the Ministry of Home Affairs, Government of India in pursuance of the recommendations made by the reports by Dr. W.C. Reckless (1952) and All India Jail Manual Committee (1960). The bureau was setup with the objective of drafting a uniform policy to advise state governments on the emerging issues relating to jail administration.

The year 1971 was observed as 'Probation Year' by the CBCS throughout the nation. This endeavor was undertaken to create awareness amongst the principle organs of the criminal justice system about reformatory methods of probation which had the capability to transform the system. (BPRD, 2007)

Further, the government created a working group in 1972 based on the recommendations of the All India Jail Manual. This working group presented its report in 1973. It brought out in its report the need for a National Policy on Prisons. (BPRD, 2007, pp.17) Some of its salient recommendations are as under:

1. Effectively using alternatives to imprisonment as a measure of punishment policy.
2. Emphasis was laid on the desirability of proper training of prison personnel and of the improvement in their service conditions.
3. Classifying and treating the offenders scientifically and laying down principles for following-up and for after-care procedures.
4. Link the development of prisons and the correctional administration with the national development process and the prison administration. These should be treated as integral parts of the social defence components of the national planning process.

5. Identified an order of priority for the development of prison administration.
6. Inclusion of certain aspects of prison administration in the Five Year Plans.
7. Amending the Constitution to include the subject of prisons and allied institutions in the Concurrent List; enactment of suitable prison legislations by the Centre and the States; and the revision of State Prison Manuals.

In 1964, the Central Bureau of Correctional Services was transferred from the Ministry of Home Affairs to the newly created Department of Social Security, now known as the Department of Social Justice and Empowerment under the Ministry of Human Resource Development. However, the Bureau continued to be attached to the Ministry of Home Affairs for various matters concerning prison administration and reforms. Its Director was later designated as Ex-officio Prison Advisor.

In 1971, the Bureau was re-organized into the National Institute of Social Defence to review policies and programmes in the field of Social Defence. (BPRD, 2007, pp.19)

#### **II.4 All India Committee on Jail Reforms (1980-83)**

This committee was set up in 1980 by the Indian government under the chairmanship of Justice A.N Mulla who suggested various reformist approaches to be adopted in the Indian prison administration to correct the past drawbacks and with the focus on dealing with future challenges. One of the major recommendation of the committee was to set up an all-India service to be named as the Indian Prisons and Correctional Service for the direct recruitment of prison administration officials (AICJR, 1983).

The committee extensively reviewed all the laws in India regarding prison administration and emphasized on removing the diarchy of prison administration. The report which was submitted in 1983 also shifted the focus towards the ongoing practice of keeping

juvenile offenders and hardened criminals together and suggested that the goal of criminal justice system should not be limited to merely punishing individuals for their acts but also to deal with each accused sensitively considering the age etc. and hence juveniles should be kept separately. (AICJR, 1983) Some other recommendations of the committee were as follows:-

1. Improvement of conditions of prisons by making adequate arrangements for food, clothing, sanitation, ventilation etc.
2. Proper training of the prison staff and organizing them into different cadres. It advised the constitution of an all-India service called the Indian Prisons & Correctional Service for recruitment of prison officials.
3. After-care, rehabilitation and probation should constitute an integral part of prison service.
4. The media and public should be allowed to visit prisons and allied correctional institutions periodically so that the public may have first-hand information about the conditions inside the prisons and be willing to co-operate with prison officials in undertaking rehabilitation work.
5. Reduction in the lodging of under-trials in jails. They should be kept separate from the convicted prisoners.
6. Provision by the government of adequate resources and funds to implement prison reform.

This report also points out the reformatory aims of the prison administration. The measures suggested by the committee are:-

1. Custody being the basic function of prisons, appropriate security arrangements shall be made in accordance with the need for graded custody in different types of institutions. The management of prisons shall be characterized by firm and positive discipline, with due regard, however, to the maintenance of the human rights of prisoners. The state recognizes that a

prisoner loses his right to liberty but maintains his residuary rights<sup>1</sup>. It shall be the endeavour of the state to protect the residuary rights of prisoners.

2. The monotony of the prison diet and the quality of food served are issues that prisoners have always complained about. In the restricted environment of prisons, where the prisoners can't get food of their choice and liking, diet assumes special importance. The diet of the prisoners is regulated on the basis of different scales prescribed in the state jail manuals. According to the All India Jail Reforms Committee Report (1980-83), this has led to serious protests and demonstrations by the prisoner community. The Committee, therefore, laid down strict measures to ensure the preparation of good quality and nutritious food for the prisoners. Food was to be of 'medium quality', purchased from government distribution centres rather than through individual contractors. The committee suggested for a separate kitchen to be allocated to the batches of 200 prisoners.

Thus, the All India Jail Reform Committee had positive as well as disciplinary ramifications for life within prison. The committee also recommended that the convicted prisoners should be given 'raw diet' and the required fuel to cook their own food.

The apathy of the All India Jail Reform Committee is that most of the concrete recommendations provided by the committee remained unimplemented. In the case of *Hiralal v. State of Bihar* (1977, para.26), the Supreme Court of India observed, 'Ministers, now or before, who were no strangers to prison torments, have done so little to reform conditions in prisons.'

### **II.5 Justice Krishna Iyer Committee, 1987**

The establishment of this committee was a historic step in prison administration and reforms in India. This was the first time a committee was set up to specifically focus on the plight of women prisoners. The foremost recommendation of the committee was to recruit more women officials in the police force so that the plight of women and juvenile prisoners can be dealt more humanely. This committee emphasized on employing women in non-combative roles which require more patience, restraints and endurance and specific training should be given to them to handle mob upsurges in a sensitive and humane matter. The chief recommendations given by the committee are: (Lok Sabha Secretariat, 2007)

1. Provision of national policy for women prisoners in India;
2. Enactment of new rules and regulations regarding the punishment and conduct of women prisoners;
3. Provision of Free Legal Aid to women prisoners;
4. Construction of separate prisons for women; and
5. Provision for proper care of the child born to a woman prisoner in jail as regards medical help and diet.

### **II.6 Bureau of Police Research & Development**

In pursuance of the recommendations made by the All India Committee on Jails Reforms, the Government of India founded the Bureau of Police Research & Development (BPRD). It was identified as the nodal agency at the national level in the field of correctional administration on November 16, 1995, with the specific charter of duties as given under:

1. Analysis and study of prison statistics and problems of general nature affecting prison administration.

2. Assimilation and dissemination of relevant information to the states in the field of correctional administration.
3. Coordination of research studies conducted by Regional Institute of Correctional Administration (RICAs) and other Academic/Research Institutes in Correctional administration and frame guidelines for conducting research studies/surveys in consultation with the state governments.
4. To review training programmes keeping in view the changing social conditions, the introduction of the new scientific techniques and other related aspects in the field of correction administration.
5. To prepare uniform Training Modules, including courses, syllabi, curriculum etc. for providing training at various levels to the prison staff in the field of correctional administration.
6. Publication of reports, newsletters, bulletins and preparation of Audio-visual aids etc. in the field of correctional administration.
7. To set up an advisory committee to guide the work relating to correctional administration. (BPRD, 2005)

### **II.7 Model Prison Manual for the Superintendence and Management of Prisons in India, 2003.**

It was the result of the opinion propounded by the Supreme Court in the case of Ramamurthy v. State of Karnataka (1997). As a result of the directions issued, the Central government constituted All India Model Prison Manual Committee in November, 2000 under the chairmanship of Director General of BPRD to prepare a Model Prison Manual for the Superintendence and Management of Prison in India in order to maintain uniformity in the working of prisons throughout the country. (Re: Inhuman Conditions, 2016) The committee referred to various recommendations by its predecessors and was highly inspired by the

recommendations of All India Committee on Jail Reforms which were discussed earlier in the paper. There were several working groups formed in the process of preparing this manual and some of the key recommendations of the committee were:

- a. A review of the existing laws, rules and regulations governing prisons,
- b. A comparative analysis of the provisions of the State Prison Manuals of India,
- c. A thorough study of the recommendations made by the All India Committee on Jail Reforms, Supreme Court Judgments and various international instruments on the treatment of prisoners to which India is a party;
- d. A close scrutiny of the implications of the proposed Bill on the prisons being finalized by the ministry of home affairs and identification of gaps in the provision of State Prison Manuals.

### **III. National Policy on Prison Reforms and Correctional Administration – 2007**

Though there were major steps taken to understand and resolve the prison administration in India and to take certain reformatory steps but there was not much difference in reality as most of these recommendations were far from being implemented in their true essence. Another step for understanding the prison administration and propose reforms was taken when the central government in 2005 instituted a committee under the chairmanship of Director General of BPRD for preparing a draft policy paper on the strategy relating to prison reforms and correctional administration. (BPRD, 2007) The move was welcomed and there were speculations of complete revamp of the prison administration by the government. The report was submitted in 2007 and the key points of the same is discussed below.

#### **III.1 Objectives**

The Committee was set-up to review the present legal position and suggest amendments on prison related laws. It was also conferred the mandate to review the recommendations made by various Committees and cull out tangible recommendations, which should be implemented. The committee also reviewed the status of the implementation of the recommendations with respect to:

- a. Physical conditions of prisons;
- b. Condition of prisoners;
- c. Correctional administration;
- d. Prison personnel;
- e. Issues related to modernization of prisons and correctional administration;
- f. To suggest alternatives to imprisonment.

### **III.2 Recommendations**

The Committee, after a deliberation of about 2 years, made certain recommendations to improve the conditions of prisons. They suggested that in order to achieve the goals set out by committee's guiding ambit, the national policy may include the following: (BPRD, 2007)

- a) Incorporation of the principles of prison management and treatment of offenders in the Directive Principles of State Policy.
- b) Inclusion of the subject of prisons in the Concurrent List of the 7th Schedule to the Constitution of India.
- c) Enactment of uniform and comprehensive legislations based on modern principles and procedures for rehabilitation and reformation of offenders.
- d) A Department of Prisons and Correctional Services should be set up in each State and Union Territory.

- e) State shall ensure that no under-trial is unnecessarily detained.
- f) New alternatives to punishment like community services, forfeiture of property etc., effective implementation of Probation of Offenders Act, 1958.

### **III.3 Concerns with the Membership**

One of the major drawbacks of the committee is related to the membership of the committee. Critics argued that there was inadequate representation from major stakeholders like members of the bar, judiciary, civil society organizations, researchers and academicians who were actively involved in knowing the plight of the prisoners. The valuable inputs from these groups would have certainly helped in preparing a more comprehensive draft. Hence, they argue that the entire exercise was a very restrained exercise.

### **III.4 Neglected Areas**

The policy has not been able to address many issues to their most fundamental level. For instance, a recommendation relating to the health of prisoners is that there should be a periodical health check-up of the prisoners. However, neither the period is defined nor the process for the health check-up. The policy also failed to take notice of the fact that many prisons in India still don't have full-time doctors. The health of a prisoner is to be assessed on multiple fronts- general physical, dental, sexual and mental etc. Therefore, a comprehensive strategy for appointing doctors to meet all these varying needs is a prerequisite before creating a policy for the regular health check-up.

There are other issues such as special care to old prisoners, prisoners suffering from H.I.V etc. who needs special focus for humane survival in the prison but the policy doesn't provide for any such special provision. It rather provides for segregating H.I.V positive prisoners from non-H.I.V persons which again attaches a social

stigma on them and will affect their mental health.

The policy also fails to draft the process of releasing an accused from the prison immediately after he has been acquitted by the higher court. In the absence of such a policy the release of acquitted prisoners often gets delayed causing serious violations of their human rights.

The voting rights and the conjugal rights of all the prisoners are also neglected and they have not been provided any such right. The prisoners also suffer from the emotional and mental trauma due to the fact that they are mostly cut off from their families. Though visits are allowed, but they are either very short in terms of time or the policy is not communicated properly to prisoners and their family members.

### **III.5 5th National Conference of Heads of Prisons of States and UTs on Prison Reforms (2007)**

The Ministry of Home Affairs, Government of India convened this conference. The major takeaways from the conference are listed below:

- a) State shall provide for the classification of prisoners on a scientific aggregation of different categories of inmates for proper treatment.
- b) Development in the field of criminology Penology and to promote research on the typology of crime which helps in devising appropriate treatment for offenders.
- c) Individualization of the treatment programmes for offenders, development of vocational training programmes, and provision of free legal aid-to all needy prisoners.
- d) Encouraging inmates to participate in work programmes by payment of fair wages, utilization of incentives of leave, remission, and premature release to convicts.
- e) The state should protect the residuary rights of the prisoner; development of a well-organized prison cadre based on appropriate job requirements, sound training and proper, promotional avenues, encourage voluntary participation of community in prison programmes.
- f) Children of young offenders and mentally ill prisoners shall not be confined to prisons, but will be transferred to appropriate institutions; women prison shall be confined in separate institution and staff will comprise of women employer only.
- g) Selected eminent public men shall be authorized to visit prisons and give report, setting up of a professional non-official registered body to provide assistance for proper functioning Probation parole, rehabilitation shall form an integral part of prison functioning.
- h) Provision for adequate resources for development of prisons, the Central Government shall set up high status National Commission on Prisons on permanent basis, which shall prepare report on the administration and shall be placed, before the Parliament for discussion.
- i) Government shall ensure co-ordination in police, prosecution and the judiciary. State shall promote research in correctional field to make

prison programmes more effective.

- j) State shall make necessary arrangements for security of prisons, prisoners and prison staff by using modern systems and technical gadgets.

#### **IV. Judicial Trends on Prison Reforms**

To meet the objective of the reformation of the prisoners, there are certain basic human rights that are to be afforded to them. In furtherance of this, the Supreme Court of India, in various cases, has highlighted the problems concerning the Indian prison system and the treatment of prisoners. It has also issued various directives and guidelines to reform the prisons to provide basic human rights to the prisoners. This section discusses the various judgments passed by the Supreme Court highlighting the problems in prisons and the guidelines provided by the court in this regard.

In *State of Maharashtra v. Prabhakar* (1966), the court was faced with the question of the right of prisoners to read and write books. Taking the aid of Article 21 of the Indian constitution which protects the right to life and liberty, the court granted the prisoner, the right to read and write books while in jail.

Another landmark case was that of *Bhuvan Mohan Patnaik v. State of Andhra Pradesh* (1974), where a challenge was made to the segregation of prisoners. A three-Judge bench of the Indian Supreme Court held that no oppressive tactics could be resorted to, in order to influence the political beliefs of the prisoners. The case is also remembered for its interesting fact matrix where the prisoner was a Naxalite and was being subjected to torture and inhuman treatment by the prison authorities. The Court, however, also decided that a prisoner could not complain of the installation of a high-volt live wire mechanism on the jail walls to prevent escape from prison. It refused to implicitly recognize what the court opined was “a prisoner’s fundamental right to escape from lawful custody.

*Sunil Batra v. Delhi Administration* (1978) dealt with the question whether apart from fundamental rights, the prisoners were also entitled to all constitutional rights. The Court was called upon to decide as to when could solitary confinement be imposed upon a prisoner. The court in its judgment held that keeping a prisoner in shackles continuously, day and night was a treatment which is unbearable by a human being. In the court’s opinion, such a treatment is so cruel and unusual that the use of such restriction as a punishment is “curse to the spirit of the Constitution”. It held that the Prisons Manual does not empower the prison authority to impose solitary confinement upon a prisoner undergoing death sentence.

In another landmark case relating to the inhuman treatment of prisoners, a letter was sent to a Supreme Court judge by a prisoner who had been sentenced to death. (*Sunil Batra v. Delhi Administration*, 1980) It detailed the torture committed upon another prisoner by a jail warden to extract money from his visiting relatives. The court heard the petition under its inherent write mandate under Article 32 of the Constitution to hold that the protection of the prisoner was within its ambit. It is the responsibility of the court to emphasise that prisoners are persons and not animals in the eye of the law. It has become necessary to punish the deviant ‘guardians’ of the prison system who brutally violate the dignity of the human inmate. The Indian Constitution, the court held cannot be held at bay by jail officials and Part III (which details the Fundamental Rights of Indian citizens) can be invoked by a convict as prison houses are part of Indian earth. The Constitution suffers a shock when a prisoner is traumatized.

On top of it all, the Supreme Court in a catena of cases has held that there is the undoubted right of the speedy trial of undertrial prisoners. In the case of *Undertrial Prisoners v. Union of India* (1994) relating to the detention of undertrials connected with various offences under the Narcotic Drugs and Psychotropic

Substances Act (NDPS Act) 1985. After noting the stringent provisions relating to bail in the concerned Act, the court directed the release of those under-trial prisoners who were languishing in jail for a period exceeding half of the maximum punishment that they could be sentenced to as per the Act.

In *Shaheen Welfare Association v. Union of India* (1996) the Supreme Court opined that the detention of ill persons is unconstitutional and gave directions to stop their confinement.

In *Mohammad Giasuddin v. State of Andhra Pradesh* (1977), the Indian Supreme Court analysed the punitive provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987. The bench felt because of the delay in conclusions of trials, a just and pragmatic approach was required to be adopted to release TADA detainees on bail. The Bench classified these under-trials into four categories and passed different orders relating to their release on bail.

In the case of “*Common Cause*” v. Union of India (1996), the bench directed for the release of under-trial prisoners lodged in various jails of the country on certain conditions. It was stated that directions shall be valid in all the States and Union Territories and would apply not only to pending cases but also to future cases. However, the directions were not made applicable to certain classes of cases, which included “heinous crimes”, and this exception was mentioned in the order.

#### **IV.1 Analysis of Case of Sri Rama Murthy v. State of Karnataka (1997)**

This case arose from a letter sent to the Hon’ble Chief Justice of India at the Supreme Court by the prisoner Rama Murthy who was imprisoned in the Central Jail of Bangalore. In the letter, the main grievance was about the denial of rightful wages to the prisoners despite their hard work in different sections of the prison. Concerns were also made regarding “non-edible food” and “mental and physical torture” of the prisoners. On the basis of this, a District Judge was ordered to visit the central jail and he

provided certain recommendations, the key points of which are mentioned below:

1. P.W.D. authorities in charge of the maintenance of the buildings and the premises of the jail are to be directed to maintain the buildings properly as per the requirement in the jail by getting necessary funds from the Government on a priority basis.
2. Sanitation in the jail premises requires a lot of improvement.
3. The staff in the jail hospital has to be increased by appointing at least two more Doctors, preferably who have specialization in the particular field where the prisoners may require their services in special cases. One lady Medical Officer, a Lady Nurse and two lady attendants for the purpose of attending to women prisoners must also be appointed. The location of their office may be provided in the separate block meant for women prisoners.
4. The Jail Authorities may be directed to arrange for prisoner’s periodical visits to their homes as per the relevant rules without insisting for any deposit or security or police report unless it is inevitable. In the event of an emergency like death, serious illness or in the times of other important festivals or functions, arrangements should be made for their visit relaxing all the required formalities.
5. The Superintendent of the jail may be instructed to produce the undertrial prisoners before the Courts in which their cases are pending on the dates of hearing fixed by the Courts regularly and promptly.
6. The Superintendent of the jail should take all the steps to produce the prisoners to the hospitals outside the jail for the purpose of examination and treatment whenever necessary as per the opinion of the Jail Doctors.
7. It is imperative to provide proper accommodation with sufficient space for meetings of the prisoners with their kin, friends and visitors.

8. If possible separate portions may be made in the accommodation for the purpose of interviews.
9. Canteen facility in the prison must be improved and more daily use articles should be kept in the canteen.

**IV.2 In re-Inhuman Conditions in 1382 Prisons v. State of Assam and Ors. (2016)**

In this case, the Supreme Court took suo moto cognizance of the matter based on a letter written by the former Chief Justice of India, Justice Lahoti to the then Chief Justice of India in 2013. In his letter, Justice Lahoti pointed out four major issues plaguing the Indian Jails, i.e. overcrowding, custodial deaths, lack of staff, and lack of training of prison personnel.

Intervention applications were filed on behalf of the National Forum for Prison Reforms on the issue of custodial deaths in prisons. (Kini, 2017) Considering the issues raised by the National Forum and based on the submissions of the Amicus, the Supreme Court directed all High Courts to institute suo moto public interest litigations and take cognizance of all unnatural deaths that have taken place from 2012 onwards in their respective prisons. It further ordered to award suitable compensation; to make efforts to reduce and possibly eliminate unnatural deaths in prisons and to document each and every death in prison, both natural and unnatural. Also, it also ordered the State Legal Service Authorities to conduct a study as well as a performance audit of the prisons. State Governments were directed to study the availability of medical facilities for prisoners, appoint counsellors and constitute an appropriate Board of Visitors.

The Supreme Court, while considering the issue of improving the legal aid facilities, focused especially on under-trial prisoners by ensuring their release to reduce overcrowding. To this end, to review the cases of under-trials who can be released, Undertrial Review Committees (UTRC) were constituted in each district. The UTRCs were meant to help those people who

were not released due to a systemic failure of the prison system. Fourteen categories of prisoners were identified to be considered by the UTRCs which included first-time and petty offenders, women, sick, and disabled prisoners, as well as those who have completed half of their maximum sentence, but whose trials are still pending.

**V. Human Rights Issues and Prison Problems in India**

The recent developments in human rights jurisprudence have extended the scope of human rights to almost all sections of society irrespective of their caste, gender etc. Considerable focus has also been given to prisoners. A cohort of legal rights has been guaranteed to them to ensure that they enjoy the minimum standard of living. This will also help in reforming policies as a person devoid of elementary social norms would never be able to live a normal life after coming out of prison.

However, Indian prisons, like most other prison systems in the world are facing a large number of issues which are obstructing the absolute realization of human rights for the prisoners. It also has certain peculiar issues due to its demography and laws which are not allowing the prisons to be reformatory in a pragmatic way. This section of the paper will discuss these issues and the psychological impact all these issues have on prisoners.

**V.1 Overcrowding**

One of the main reasons for overcrowding in Indian prisons is the ratio of under-trials as compared to those who are actually convicted. The primary reason for this is because of the inefficient criminal justice system and the workload on the courts. The huge pendency of the cases and the deficient laws on bail and probation adds to it. India has, in recent times also amended its laws by increasing the gravity of punishment for sexual offenders. The amended laws have shifted the burden of proof on the accused and thus the number of under-trials has increased in the prison. According to

the Prison Statistics of India published by the National Crime Records Bureau for 2020 around 76% of all the prisoners were those who were awaiting trials.

The obvious course of action to resolve this issue is that all the organs of the criminal justice system should come together and devise a policy through which the under-trial population can be removed. Although the right to speedy trial remains a fundamental right, (Husainnara Khatoon, 1980) the fact is that limited resources and inefficient planning have left this right far from realization. Similarly, while we have fast-track courts in place for specific cases, but justice is still delayed. They might have been able to address this issue, but in many states these fast-track courts are burdened with additional responsibilities to the extent that they are acting as fast track courts for more than one subject of law. This has defeated the purpose of their institution. Hence the government should come out with a central scheme in collaboration with the Supreme Court to ensure that the courts are set up in a way that the matter is disposed of within a stipulated time without disturbing the founding principle of justice.

### **V.2 Corruption and Extortion**

Corruption permeates multiple levels of the prison administration system. It includes guards on duty and other local contractual staff of the prison. It also eventually leads to the practice of extortion. The major reason of this is the absence of any stringent laws to check the behaviour of guards and the data through CCTVs etc. which is also manipulated. One of the major reasons for this practice is the low salary levels that the local staff of the prison gets. It entices them to extort money received as wages by the prisoners. The government should evaluate and fix a basic livable minimum wage for such local staff considering the vital positions they hold in the prison administration system and should also devise laws to keep a regular check on their behaviour.

### **V.3 Unsatisfactory Living Conditions**

The economic conditions of different prisons are different as per the economic well-being of that state. Though there are certain prisons in India which have improved the living conditions of prisoners but the issue of overcrowding has not allowed that change to be appropriately reflected. There are certain basic issues like hygiene, diet, clothing etc. which still need to be focused upon.

A special commission of inquiry, appointed after the 1995 death of a prominent businessman in India's high-security Tihar Central Jail, reported in 1997 that 10,000 inmates held in that institution endured serious health hazards, including overcrowding, "appalling" sanitary facilities and a shortage of medical staff. (HRW, 2007)

### **V.5 Staff Shortage & Poor Training**

The shortage of staff as compared to the sanctioned strength accentuates an already inefficient prison administration. The current ratio of prison officials to prisoners stands at 1:7 which is very low compared to nations like the United States which has a ratio of 2:3. The government needs to speed up the recruitment process of prison officials to resolve this problem. (Karnamm, 2008)

### **V.6 Inequalities and Distinctions**

Indian prisons are not an exception to the social inequalities that are prevalent in India. The discrimination on the basis of caste, and the privileges enjoyed by those prisoners who came from either the upper caste or from good economic situations have made the life of other prisoners worse. The dominant group treats people belonging to 'lower castes' with immense cruelty.

### **V.7 Inadequate Prison Programmes**

The Indian prison administration is largely based on labor services to prisoners as part of the reformatory programs. There are few instances of other events such as Art of Living sessions that have been carried out in Tihar Jail. However, these are isolated incidents more appropriately considered as an exception. The

prison administration should focus more on the vocational courses and different educational programs etc. which would not only help the prisoners to improve their mental health inside prison but also help them to lead a life with dignity post their release. There is also a lack of awareness among the prisoners about their rights and procedures regarding processes such as probation etc. which might motivate them to change their conduct for early release. This will not only improve them individually but also be helpful in solving the issue of over-crowding.

### **V.8 Lack of Legal Aid**

In India, legal aid to those who cannot afford to retain counsel is only available at the time of trial and not when the detainee is brought to the remand court. Since the majority of prisoners, including those who are in lock up, as well as those in prisons have not been tried, the absence of legal aid until the point of trial reduces greatly the efficacy of the country's system of legal representation to the poor. The lawyers are not available at the point when many of them need such assistance.

A workshop was conducted by the Commonwealth Human Rights watch in the year of 1998 in Bhopal (Madhya Pradesh). It focused on several aspects related to legal aid. It was pointed out that around 70% of the prison population was illiterate and lacked an understanding of prisoners' rights. Thus the poor prisoners in the prison did not always receive what the State was obliged to provide in legal aid. As also observed by the Mulla Committee, (AICJR, 1983) most prison inmates belong to the economically backwards classes and this could be attributed for their inability to arrange the bail bond. Legal aid workers are needed to help such a person in getting them released either on bail or on personal recognizance. (MPM, 2003) The bail provisions must be interpreted liberally in the case of women prisoners with children.

### **V.9 Problems of women prisoners in India**

For women who are detained by the police, custodial rape is a serious threat. A large portion of rape in police custody victims are migrant women who lack established community connections. For instance, Renu Mandal<sup>2</sup>, 27, had arrived in Delhi from West Bengal in January 1990, just five days before the incident that led to her rape in police custody. She settled in an area known as Chittaranjan Park which is largely populated by Bengali migrants, moving in with her sister and her sister's husband. On January 11, Renu quarrelled with a neighbour's child and slapped the child. The episode escalated into a dispute between the two families. Two police officers who were in the neighbourhood at the time intervened and took Renu and her brother-in-law into custody. The brother-in-law was beaten and released; Renu was detained and raped. Shortly afterwards, she was released. When she got back to her sister's home, she narrated what had happened to her and her brother-in-law and others took her to see a local official to complain. In addition, she was examined at the All India Institute of Medical Sciences to verify what happened to her. As a consequence, one police officer was dismissed and another was suspended.

It is impossible to assess the frequency of custodial rape. According to the PUDR, 'chance circumstances' brought these cases to light. Otherwise, they probably would have gone unreported. To a far greater extent than in Western countries, the victims of rape risk punishment themselves or ostracism if their ordeal becomes known. They may be rejected by their husbands and families and, in the case of unmarried girls, the chances of marriage reduce drastically. These statistics make it seem that rape is rare, but gross underreporting seems to be the best explanation. In the case of rape in custody, the factors that militate against reporting are especially great. It is unlikely that

the woman's shame would ever be known by anyone other than the victim and her rapists if she maintains silence, the fear of further retribution is especially great when it is the police who are the rapists; the woman has little or no opportunity to raise a prompt outcry after the rape, and the almost certain result of a complaint is that the victim would suffer more while nothing would happen to her rapists.

## **VI. Conclusion & Suggestions**

### **VI.1 CONCLUSION**

The concept of prison emerged from the idea that the culprits of a crime should be made to suffer in such a way that they should realize their guilt and the impacts of the acts committed by them. The initial idea was to let the criminal suffer equal pain he inflicted on the victim of the crime and on the conscience of the society. However, with the evolving society and the growing concern for the human rights of the "individual", the rights of the prisoners were also recognized. A new belief emerged that even after they are convicted or accused of a crime certain basic rights should be provided to them and they should not be treated in a cruel and inhuman manner. Thus emerged the idea of making prisons the centre of rehabilitation, reformation and treating the prisoners in such a way that they could be made capable of being a part of society and can lead a normal life after their release from the prisons.

This led to giving certain basic facilities and maintaining proper standards in the prison and not allowing the prison to be "hell on earth" as was the orthodox understanding of prison. The basic need felt was to maintain the administration of prison in such a way that it sets out the purpose of its establishment and can also meet up the new demands of the society with respect to the treatment of the prisoners. This is why various committees in India were set up to look into this matter. The committees established gave various recommendations to improve the prison administration in India which we have discussed earlier in this project.

However, there has not been much improvement in the plight of the prisoners and the prisons in India continue to be breeding grounds for human rights violations. This was due to the fact that most of the recommendations given by the committees remained on paper. With a severe lack of funds, corruption and barely existent will of the government for improvement, the prisons suffer from low progress. If we analyze the reports of various committees we will find out that the recommendations given by them were not implemented to their full effect. The report submitted by Justice A.N Mulla's committee which comprised around 659 recommendations that would have been majorly helpful in the revamping of prison administration in India was not given the required effect.

Though there have been some major steps taken by the government like the drafting and circulation of the National Policy on Prison Reforms and Correctional Administration, a lot of work is still required to be done. The annual report of the National Human Rights Commission published in 2018 shows that the number of cases of custodial violence in India is increasing at a very fast rate and it has become a major source of the violation of the rights of the prisoners. The checks and balances on the powers of the police are limited and this gives them practically unbridled power to ill-treat the prisoners. There have been no effective solutions planned out for problems in prison administration such as overcrowding, speedy trial, custodial torture and other such problems.

Prison staff are acutely unaware and scarcely undertrained in prison administration. The administration also lacks governmental funds for managing the prison affairs in a regular manner, since it is not a politically impertinent issue. In some places in India, the prison officials are not even regularly paid. There are no effective reformatory programmes or plans undertaken by the government. The government seems to be clueless about the reformatory measures to be taken in the prisons and is been following the age-old method of

parole and probation for reformation. Prisoner skill acquisition is low on the policymaker's priority list. There need to be strict laws to regulate the performance of prison administration officials after the implementation of training policies.

## **VI.2 SUGGESTIONS**

There are various measures which seem necessary to improve the conditions of prisons and its administration in India. These measures are listed below:

1. The committees set up by various governments at regular intervals have invested a considerable amount of time and research in formulating recommendations for reforming the prison administration in India. Unfortunately, most of their recommendation have not been tried on the ground. Hence, the government should immediately debate and implement the recommendations given by the various committee.
2. The prisons in India should move more towards the reformative scheme than the retributive scheme. This will help the prisoner to be a better person and ultimately will help in the lowering of the crime rate.
3. A major problem in Indian prisons is that almost all the prisons are overcrowded. This is because both convicts and the undertrials are imprisoned together. Therefore, trials need to be speedy. Separate arrangements for the under-trials like keeping them under house arrest must be introduced into the criminal code.
4. There is a need to make specific laws regarding violence in police custody. There is little accountability of police as of now in this regard and this leads to a severe human rights violation of many people, sometimes even to those who are not at all related to crime.
5. Another considerable challenge arises when a prisoner is released from jail. In case a prisoner does not have strong familial or social support he/she finds it

very difficult to readjust to society. Most of the time, this scenario leads them back to the world of crime and contravenes the whole purpose of the whole criminal justice system.

6. Some gruesome forms of punishment like solitary confinement should be completely abolished because it has no good use value. The ultimate objective of imprisoning an accused or convict is to either reform him or in rare cases of the death penalty to deter potential offenders. Solitary confinement does not serve either of those purposes and is an unnecessary burden on the prison administration.
7. There should be a monitoring body to control the administration of the prisons in India and there should be specific qualifications and training to be mandated for recruiting the officials in the prison administration. This monitoring body should consist of various departments like the legal aid department, the medical health department, the after-care unit and the skill development department to treat the prisoners accordingly.
8. Special emphasis should also be made to take care about the mental health of the prisoners and the sexual orientation and gender identity of the prisoners should also be protected as this will help in the overall personality development of the prisoners.

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