
PRISON REFORMS IN INDIA

Muskan Jain, O.P.Jindal Global law University

ABSTRACT

In the words of Mahatma Gandhi for Prison reforms, “Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care.” The Indian prison system has received considerable government attention because of its infamous cruel and inhumane conditions in recent years. The objective of this paper is to study the prison reforms in India by tracing its development prior-independence and post-independence in brief. Through this paper, we will examine how the prison reforms are still stagnant as inmates are still systematically denied their fundamental rights. The Conditions of the Indian prisons will be analysed through a detailed analysis of Tihar jail in New Delhi. We will also focus on various rights guaranteed to the prisoners by the Indian Constitution and examine various cases. Lastly, this paper will also emphasise on international criminal justice system and their implication of prison reforms through a development lens.

Introduction

In the most basic sense, prison is a place where a prisoner is isolated and deprived of freedom and personal contact with the outside world. The objective of a prison is to punish the prisoner for disobeying the law or committing a crime and for reforming them into a honest and law-abiding citizen for the society. Since no society is free of crime, therefore, prisons are crucial for every country. Prisons in India are known for their inhumane and dreadful conditions. Prisoners in India have since time immemorial had to struggle for their fundamental rights. Prison has a huge impact on the prisoners as often when the prisoners are released, they end up committing another crime. To mitigate such issues and achieve the main objective of a prison which is reformation, prison reforms are institutionalised in India. Prison reforms are initiated through various committees to improve the situations by providing adequate facilities and ensuring that the prisoners are not exploited. Methods such as parole and probation are used to rehabilitate the prisoners.

Historical Background of Prison Reforms In India

Development of Prison reforms before independence

Initially, the prisons in India were institutionalised by the Britishers during the British Raj.¹ During this period, in 1835, Lord Macaulay described the horrendous conditions of Indian prisons which arouse a need for reformation of prisons in India.² Since then, various reform committees have been established to improve the conditions of the prisons. In 1836, the First Prison Enquiry Committee emphasised towards providing basic necessities such as food and clothes to the prisoners. In addition to this, sufficient steps were taken to eliminate corruption from the prisons.³ Construction of Central Prisons was initiated after the Macaulay Committee in 1846.⁴ Further, this year similar concerns like in the first Committee regarding the unsanitary conditions of prisons were described by the second Prison Enquiry Committee. However, after reviewing the prison administration, this committee also made recommendations regarding the

¹ Jamshed, Prison Reforms in India, 3 IJRR ISSN: 2349-7688, 51-59(2016).

² Paras & Vanjul, The Prison and the Prisoners, 1 Burnished law Journal ISSN: 2582-5534 (2020).

³ Supra note 1,

⁴ Rishabh Bhargava, A Critical Study of Prison Reforms in India, 2 Pen Acclaims ISSN: 2581-5504, 1-14(2018).

health and accommodation of the prisoners.⁵ A specific minimum space for a prisoner was suggested by the committee.⁶ These reforms were incorporated through various laws such as the Prison Act, 1894. In regards to the prison administration and management, this antediluvian act is the only amalgamated framework that operates across all parts of India.⁷ However, this act failed to address certain issues which were then addressed by the Indian Jail Reform committee 1919-20 led by Sir Alexander Cardio. This committee was chosen to recommend measures for Prison reforms. Depending on the shape and size of the prison, this committee recommended to fix a maximum intake capacity of the prisoners to eradicate overcrowding of prisons. Moreover, after studying the conditions of prisons all over the world, this committee also emphasized on eliminating the corporal approach of punishment in jails and instead adapt a reformatory approach.⁸ Furthermore, During the period of 1907-1927, to protect the young and juvenile delinquents from the hardened offenders, various reformatories and Borstals were built for the juvenile delinquents.⁹ Lastly, offenders were classified into women offenders, handicapped offenders, habitual offenders, etc by a Jail reform committee in 1946.¹⁰

Development of Prison reforms after independence.

After Independence, the state government had control over the operations of the prisons in India. For the benefit of the society, the state government tried to adapt a reformatory approach for the prisoners like caring for the inmates by using the approach of rehabilitation, providing sanitary health care facilities and education to them.¹¹ To incorporate this approach, more reform committees were introduced by the government. In 1949, through Pakaswash Committee, payment of fair wages was given to the prisoners for the work they did.¹² In 1983, Justice Mulla Committee made various recommendations for prisons such as setting up of National Policy on prisons, incorporating an All India Service called the Indian Prisons and Correctional Services to recruit efficient people, provide opportunities for education to inmates,

⁵ Ibid.

⁶ Supra note 1,

⁷ Uzair Ahmad, Legal Backdrop of Prison Reforms, IPLEADERS () <https://blog.ipleaders.in/legal-backdrop-prison-reforms/>.

⁸ Advocatespedia, https://advocatespedia.com/PRISON_REFORMS (last visited May 17,2021)

⁹ Supra note 1

¹⁰ Supra note 4

¹¹ Supra note 1

¹² Supra note 4

sanitary living conditions, etc.¹³ Further, in the same year, the Jail Reforms Committee suggested for setting a National Prison Commission which would overlook the modernization of Indian Prisons. Jail Reform Committee also emphasised on protecting the juvenile delinquents and for classifying prisoners based on a scientific and rational reasoning. Lastly it also suggested on shifting the mentally ill prisoners to a mental asylum.¹⁴ Over the years, concerns for the juvenile delinquents were increasing. As a result, In 1986, a comprehensive legislature that is Juvenile Justice Act was enacted. This Act specified a uniform framework for the Juveniles across India. Observation homes, special homes and juvenile homes were built by this Act.¹⁵ Further, to study the conditions of women prisoners in India, Justice Krishna Iyer Committee was appointed by the government in 1987. This committee emphasised on protecting a women`s security and recommended for having a separate institution for women offenders which would consist of women staff only.¹⁶

Conditions of Prisons in India (Need for implementing Prison Reforms in India)

In the words of Oscar Wilde, “ It is not the prisoners who need reformation, it is the prisons”. Oscar Wilde said this statement after spending two years in prison for indecency. In the landmark case of **Ramamurthy v. State of Karnatakath**¹⁷ the Supreme Court identified nine major issues regarding the prisons in India, which required immediate attention. Issues such as overcrowding, insufficient food and inadequate clothing, neglect of health and hygiene, torture and ill treatment, delay in trial, deficiency in communication and management of open prisons were discussed in this case. These problems have been an issue for Indian prisoners for several years now.

In 1950, The All India Jail Manual Committee reported overcrowding in prisons as a major problem for Indian prison administration. One reason behind this overcrowding is the conversion of the cells for the prisoner`s accommodations into workshops and storerooms. As a result the authorized number of accommodations for prisoners fall short in comparison to the

¹³ GK TODAY, <https://www.gktoday.in/gk/prison-reforms-and-draft-national-policy-on-prison-reforms/> (last visited May 18, 2021).

¹⁴ Supra note 1

¹⁵ Ibid.

¹⁶ Home.rajasthan.gov, <https://home.rajasthan.gov.in/content/dam/pdf/StaffCorner/Training-Material/Useful-Presentations-And-Videos/Overview%20of%20prisons%20in%20India.pdf> (last visited May 20,2021)

¹⁷ Ramanurthy v. State of Karnataka (1997) 2 SCC 642

increasing number of prisoners.¹⁸ Another reason for overcrowding in India is the delay in trial. Only one third of the prisoners are convicted offenders whereas majority of them are undertrial.¹⁹ Moreover, unnecessary prolonged detention of under trial prisoners is also considered as another reason for overcrowding. Majority of these prisoners are involved in minor violations of the law.²⁰ Various reports and cases have shown the overcrowding of prisoners in India. In the year 1994-95, the Tihar jail exceeded the intake capacity of 2,500 prisoners by taking in 8,500 prisoners.²¹ Again, in 2006 the Tihar Jail consisted of 13,000 prisoners against the intake capacity of 6,200.²² Further, in 2007, prisoners in India were reported as 3,76,396 against the authorized capacity of 277,304. In fact one of the reports also stated how the inmates slept in shifts due to the shortage of accommodation and overcrowding of prisoners.²³

Overcrowding in itself further leads to problems such as insufficient food, inadequate clothing, unsanitary living conditions, etc. Although the aforementioned jail reforms have emphasized on problems like cleanliness, diet, clothing and unsanitary living conditions. However, the special commission of inquiry reported in 1997 reveal the horrible conditions the prisoners were living in Tihar jail. According to the report 10,000 prisoners in Tihar Jail were accustomed to serious health problems which included horrendous living conditions, overcrowding with severe medical staff crunch.²⁴ In fact, most of the time the prisoners received only one drug that is aspirin which they were informed as a pain killer that reduced fever. Medical facilities for prisoners is considered as a privilege which only a few can avail and afford.²⁵ Moreover, it's not just a shortage of medical staff, but also a severe staff crunch in Indian prisons. Reports indicate a vacancy of prison officials by almost 33% in Indian prisons. Delhi being the nation's capital has an acute shortage of prison supervisors and guards and has the most over-crowded prisons. In terms of severe staff crunch, Tihar Jail in Delhi ranks third with an acute shortage

¹⁸ Report of the All India Jail Manual Committee, 1957-9, para 38.

¹⁹ Atul Thakur, Why Jail sentence in India is double punishment, Mumbai Mirror, <https://mumbaimirror.indiatimes.com/news/india/why-jail-sentence-in-india-is-double-punishment-reveals-ncrb-statistics/articleshow/72161844.cms>, (last visited May 20, 2021).

²⁰ Jaytilak Guha Roy, Prisons and Society: A study of the Indian Jail System, Gian Publishing House 75, (1989).

²¹ Ramanurthy v. State of Karnataka (1997) 2 SCC 642

²² Supra note 16

²³ Report of the All India Jail Manual Committee, 1980-83, Vol. I para 3.17, p. 21.

²⁴ Supra note 16

²⁵ Aryeh Neier & David Rothman, Prison Conditions in India, Human Rights Watch, 1-59, <https://www.hrw.org/sites/default/files/reports/INDIA914.pdf>

of 50% from the actual prison staff requirement.²⁶

With the severe staff crunch, overcrowding of prisons further leads to rampant violence, surveillance difficulties for the staff and increase in number of criminal activities within the prison. A study of living conditions inside Tihar by a civil society group indicate that instead of the disputes being resolved by the prison officials, the *dadas* of the prisons were called for it. None of the prisoners in custody were given protection against these people.²⁷ Further, Indian prisons not only have violence between inmates, but also have violence initiated by the prison officials on the inmates. Custodial violence is rampant in Indian prisons. The prisoners are exposed to inhuman treatment by the prison staff repeatedly. Reports show the daunting reality of the Indian prisons. Prisoners in the high risk cells of Tihar Jail are often tortured and abused by the jail authorities. They are forced to drink their own urine and are deprived from basic necessities such as drinking water.²⁸

In addition to the aforementioned problems, issues such as lack of treatment programmes, allegations of indifference, labour being extracted from the prisoners without the payment of proper wages and lack of uniformity in law with regards to prisons all over the country, are prevalent in Indian prisons.²⁹

Rights of Prisoners

Fundamental rights form the core of human rights in India. Just like every human being, prisoners are also guaranteed fundamental rights by the law of the country but in a restricted manner. The soul of article 21³⁰ of the Indian constitution is to provide prisoners the Right to Fair procedure. Prisoners are also guaranteed rights under Article 14³¹ and 19³². Further, All India Committee on Jail Reforms, 1980-83³³ has mentioned various rights that prisoners can

²⁶Basant Rath, Why we need to Talk About the Condition of India`s Prisons, The Wire, <https://thewire.in/uncategorised/india-prison-conditions>.(last visited May20, 2021)

²⁷ Danish, No security, medicine or protection: The horrors of living in Tihar Jail, Firstpost, <https://www.firstpost.com/india/no-security-medicine-or-protection-the-horrors-of-living-in-tihar-jail-662355.html> (Last visited May20, 2021).

²⁸ S.A.R Geelani, On the conditions in Tihar jail, <https://revolutionarydemocracy.org/rdv11n2/tihar.htm> (last visited May20, 2021).

²⁹ Supra note 1

³⁰ Article 21 of the Indian Constitution.

³¹ Article 14 of the Indian Constitution.

³² Article 19 of the Indian Constitution.

³³ Report of the All India Jail Manual Committee, 1980-83, Vol. I para 3.17,p. 21.

avail. These rights include- Right to Human dignity, Right to Access the law, Right to basic minimum needs, Right to meaningful and gainful employment, etc.

Implication of fundamental rights of prisoners by the court in various cases – Reform oriented decisions

The Report of Royal Commission, 1949-53³⁴ mentioned that imprisonment itself is a penalty and the function of the prison authorities is not to add more penalties every day by the punitive condition of discipline labour and diet.

In the infamous case of **Sunil Batra v. Delhi Administration**³⁵, the Supreme Court secured the fundamental rights of the prisoners. The court held that it must be noted that prisoners are human beings and not animals. A convicted human does not make that person a non-person whose rights can be infringed or taken away. The court also emphasised that no prison officials have any right to defile the dignity of a prisoner. When a prisoner is traumatized a country's constitution suffers a shock. Through this case facilities where the prisoners can raise their concerns and complaints in relation to the infringement of their fundamental rights were implemented.

In the case of State of **Andhra Pradesh v. Challa Ramkrishna Reddy**³⁶, the court held that unless the rights of a prisoner is curtailed by the constitution, a prisoner is entitled to all the fundamental rights. Similarly in **DBM Patnaik v. State of Andhra Pradesh**³⁷, the three-judge bench emphasised on the rights of a prisoner and ruled against the inhuman treatment of the officials on the prisoners. The Court held that just because a prisoner is a Naxalite, does not mean that the officials have any right to use oppressive measures to curb their political beliefs. By subjecting a prisoner to inhuman treatment, the prison officials would be violating the prisoner's rights assured under Article 21³⁸ of the Indian Constitution and would also be offending the spirit of the constitution.

The Honourable Supreme Court Justice “Krishna Aiyer” in the case of **Charles Sabraj v. The**

³⁴ Report of Royal Commission, 1949-53.

³⁵ Sunil Batra v. Delhi Administration, AIR 1978 SC 1675

³⁶ Andhra Pradesh v. Challa Ramkrishna Reddy, AIR 2000 SC 2083

³⁷ DBM Patnaik v. State of Andhra Pradesh, AIR 1974 SC 2092

³⁸ Article 21 of the Indian Constitution

Superintendent, Tihar³⁹ held that “imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, Courts will refuse to recognise the full panoply of Part III enjoyed by a free citizen”. The court ruled that prisoners can avail their rights provided under Article 14⁴⁰, 19⁴¹ and 21⁴² of the Indian constitution in a limited form and that when constitutional rights and statutory provisions are transgressed to the injury of a prisoner then the court would intervene even in the prison administration. Further, he also emphasised that a prisoner’s imprisonment is not merely retribution but also rehabilitation.

The court in the case of **Sanjay Suri and others v. Delhi Administration and others**⁴³ took a reform oriented decision by pointing out that efforts to create a sense of humanism in the prison officials and their subordinates must be made to make sure that the prisoners are not subject to any injustice and that they receive a right direction in life. Further, in the case of **Vikram Deo Singh Tomar v. State of Bihar**⁴⁴, the court again gave a reform oriented direction to renovate the prison institution to provide basic adequate amenities such as sufficient water, sanitary living conditions, clothes, etc to the prisoners. The court also directed to the superintendent to ensure a daily visit by a doctor at the prison. Lastly, the court in the case of **Dharambir v. State of U.P.**⁴⁵ directed the state government to permit family members to visit the prisoners and at least once a year under guarded conditions allow the prisoners, to visit their family members.

Nationwide Implication of Prison reforms – By reviewing the criminal justice policy through the development lens.

In 2015, the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development. Through this adoption the UN member states agreed to renew their commitment towards making the world a better place to live for the upcoming generations. Countries have focused on adopting a development-led approach to the rehabilitation and reintegration of offenders. Programmes and measures that follow the basic principles of this kind of integrated approach are already in place in various parts of the world. This approach includes four

³⁹ Charles Sabraj v. The Superintendent Central Jail Tihar, AIR 1978 SC 1514

⁴⁰ The Constitution of India, 1950, Article 14

⁴¹ The Constitution of India, 1950, Article 19

⁴² The Constitution of India, 1950, Article 21

⁴³ Sanjay Suri and others v. Delhi Administration and others, AIR 1988 SC 414

⁴⁴ Vikram Deo Singh Tomar v. State of Bihar, AIR 1988 SC 1782

⁴⁵ Dharambir v. State of U.P (2010) 5 SCC 344

promising practices that have led various countries towards positive and effective results.⁴⁶

Thailand has explored the usage of the first development-led integrated approach that is reintegration of women offenders. In 2017, training programs to work in small and medium-size enterprises (SMEs) were initiated for women prisoners. Further, In 2018 the 'Model Prison Plus (+)' Project was established to encourage comprehensive rehabilitation programmes to enhance the skills and knowledge of prisoners and to provide psychological support to prisoners which would help them return to the society and a job with opportunities. Through this approach Thailand was able to reduce the discrimination and unemployment faced by women prisoners after they left the prisons.⁴⁷

Jamaica sought to improve the reintegration services for the youth offenders to manage developmental impacts of youth violence. According to the UN Development Programme, 'youth violence is more than a security concern. It is a major human development problem'. To combat this issue, Jamaica introduced 'A New Path' project through which they provided training to the youth offenders. Marketable technical skills, life skills and psychosocial support was given individually to the youth offenders to ensure their successful reintegration into society. Through this project around 950 young people have received assistance. With reintegration, this project provided work and targeted support which mitigated the damage caused by contact with the criminal justice system.⁴⁸

Criminal Records of offenders have constituted as a significant barrier to gain employment and live a law-abiding life for prisoners after their release from prison. In January 2017, Costa Rica introduced a legislative reform which sought to overcome this issue by adopting a development-led approach. This legislative reform permits courts to erase a criminal record of an offender after their release by taking certain criteria into account, which include the offence committed, duration of the sentence and when necessary the vulnerability of the offender during the offence committed. This law is only applicable for minor law offenders and is at the

⁴⁶ Global Prison Trends, Penal Reform International and Thailand Institute of Justice, https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Global-Prison-Trends-2018_EN_WEB.pdf

⁴⁷ Thailand Institute of Justice, Summary report: The Bangkok Rules 7th Anniversary Conference: "Beyond the Prison Walls: Multi-stakeholder Perspectives on Prisoner Rehabilitation and Reintegration", (only available in Thai), held in Bangkok, Thailand, 21 December 2017, www.tijthailand.org/useruploads/files/2018/MAR/IBR_7anni_Summary_Report.pdf.

⁴⁸ UNDP, Caribbean Human Development Report 2012, Human Development and the Shift to Better Citizen Security, 2012, p45.

complete discretion of the judges in each case.⁴⁹

In Kenya, an innovative project was implemented by the Penal Reform International in collaboration with the Kenya Probation and Aftercare Service to combat the poverty-prison cycle and overcrowding by enhancing and increasing the use of community service. This development-led approach dealt with poverty, inequality and gender disempowerment. To reduce the unnecessary use of imprisonment, through this project, offenders in Kenya were given entrepreneurial training with a small investment in an individual's small start-up business. This project ensured a reduction in reoffending and also enhanced public awareness and understanding of community service.⁵⁰

In January 2018, the prolonged and indefinite solitary confinement was ruled as unconstitutional by the Canadian Court. The Supreme court noted it as 'a generous standard given the overwhelming evidence that even within that space of time an individual can suffer severe psychological harm. The British Columbia Civil Liberties hailed this decision as the most significant decision made for the prisons in the history of Canada.⁵¹

Many countries with overcrowding have sought to decongest prisons by introducing or expanding non-custodial options or even by adopting alternatives to imprisonments. 17 out of 29 European countries have had a reduction in prison population due to keeping people under supervision instead of prison. This approach of non-custodial sanctions also resulted in a reduction in reoffending. In Northern Ireland, a pilot programme which included a combination of restorative justice, community service and supervision led to a 40 % reduction in the reoffending rate.

By recruiting more female prison guards, Rwanda succeeded in dealing with the issue of staff crunch. Rwanda increased the proportion of female prison guards from 8% in 2011 to 24% in 2017.

⁴⁹ Ernesto Cortés and Zhuyem Molina, Criminal Record Reform in Costa Rica: A Step toward Proportionality and Improved Prospects For Women's Lives after Prison, Costa Rican Association for Research and Intervention in Drugs (Asociación Costarricense para el Estudio e Intervención en Drogas, ACEID) and Washington Office on Latin America, 29 June 2017, www.wola.org/analysis/criminal-record-reform-costa-rica-steptoward-proportionality-improved-prospectswomens-lives-prison/.

⁵⁰ Penal Reform International, Excellence in Training on Rehabilitation in Africa (ExTRA) Project, Community service as an alternative to imprisonment: Pilot project final evaluation, 2016.

⁵¹ Supra 39

Current situation of Prisons in India during Covid` 19

Recently, a letter was written to DN Patel, Chief Justice of Delhi High Court by the People`s Union for Democratic Rights informing him regarding the alarming situation of Delhi prisons in view of the virulent new wave of Covid`19. Reports by the Indian Express, indicate that approximately 200 prisoners and 300 staff members have been tested covid positive in Delhi jail.⁵² In Maharashtra, 198 inmates and 86 staff members have tested positive. The prisoners and prison staff have tested covid positive in almost all Indian prisons. Problems such as overcrowding, inadequate health facilities, unsanitary living conditions make it even more difficult for the prisoners to survive in prisons. Although, 5,000 prisoners were released on special parole and interim bail due to Covid`19, however, because of the return of 90% of those prisoners, problem of overcrowding is again creating issue. Currently, prison authorities are making plans to decongest the prisons.

Conclusion

Prison reforms in India are an outcome of political pressure by politicians who suffered in prisons during their imprisonment instead of emerging as an outcome of a social movement. Although various prison reforms have been initiated since 1853, their implication is still not visible. Prisoners are still living and suffering in horrible conditions. Prisons are not fulfilling their objective of reforming the prisoners into law-abiding citizens. Prisoners are human just like every other human, and they also deserve to live a life with dignity. The Indian Judiciary has played a significant role for the prisoners` rights by giving reform oriented decisions. Just like that the prison administration should also incorporate such reform oriented steps to combat issues. Indian prisons can also incorporate development led approaches used by international criminal justice system to improve their countries` current situation. An ideal prison must provide adequate work, vocational training and basic educational facilities as well as medical and recreational facilities. Prison administration should work towards creating an environment which will help the prisoners psychologically. With Covid`19 at its peak, proper implementation of prison reforms is required now more than ever. By Judicial surveillance,

⁵²Upadhyay, S., 2021. 'Alarming Conditions In Delhi Prisons', PUDR Writes To Delhi HC Chief Justice Seeking Necessary Directions To Delhi Govt, Prison Authorities. *Live Law*. <https://www.livelaw.in/news-updates/pudr-writes-to-delhi-hc-chief-justice-seeking-necessary-directions-to-delhi-govt-prison-authorities-173028> [Last visited May 26, 2021].

media involvement, regular check on implementation of reforms and provisions, the prison conditions will be improved. Moreover, various alternatives to imprisonment such as pardon, open prisons, furlough, etc, can also be used to combat the issues of prisons in India. Implementation of prison reforms is a serious issue which needs attention for the development of the country. The government should continuously work towards improving prison reforms.

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