

Examination of Prison Reforms in India Considering the Social Problems and Recommendations of Committees

Prof. Dr Souvik Chatterji, Tama Chakraborty

Head of the Department of Juridical Sciences, JIS University, Calcutta

LL.M in Corporate Laws at JIS University, Calcutta and Samrat Samaddar (BBA LL.B(H) student at JIS University, Calcutta

ABSTRACT: -

The advent of Human Rights activism and the growing need for an integrated criminal justice system has added fuel to the issue of prisons reforms in which the apex court has issued several directions. In *Re-Inhuman Conditions in 1382 Prisons*. In the Past, there have been so many attempts to improve the condition of the Prisons in India but unfortunately nothing appears to change the ground. The paper has a two-pronged approach; firstly, the paper will critically examine the present case in the light of reformatory schemes and issues prevailing in India's prison management system and also progress to conduct a reality check with respect to the implementations of these directions and other recent steps undertaken in this directive. Finally, the paper concludes with the suggestions and conclusion from the analysis made in this article along with the recommendations of various governmental and non-governmental organizations.¹

INTRODUCTION

Term prison is derived from the Latin term which means 'to seize'. According to Oxford English Dictionary prison means 'a place properly efficient and equipped for the reception of persons who by legal process are committed to it for safe custody while pending of trial and punishment'.

Under the Government of India Prisons Act, 1870 prison means 'any goal or penitentiary including the airing grounds and other grounds or buildings engaged for the use of the prison'. Prison means jail or any place which is used for the detention of prisoners permanently or temporarily under the general and special orders of a Local Government.²

Background & Reforms

Prisonization means **a system of Punishment**. It helps in keeping crime under control by eliminating criminals from the society. It serves as an institution for the reformation and rehabilitation of offenders. **The Constitution of India** has mentioned the concept of '**Prison**' along with '**Police and Law and Order**' in the **State List of Seventh Schedule**.

¹ <https://ijert.org/papers/IJCRT2107273.pdf>

² <https://www.legalserviceindia.com/legal/artic...>

The Central Government has not given any responsibility to look after the Prison administration. The Prisons in India is governed by the **Prisons Act, 1894 and Prison Manual** of the respective State Governments. There are around 1350 prisons in India consisted of 144 central jails, 617 sub jails, 410 district jails, 86 open jails, 41 special jails, 31 women jails and having around 478,900 prisoners.

The History of Prisons in India brought changes in society's reaction to crime from time to time. The prison administration in India is originated by **T.B Macaulay in 1835**. The following are the proposal of the lord Macaulay committee, the development of the prison system was started from this period.³

- I. Prison Enquiry Committee, 1836-** The responsibility of this committee is to examine discipline among the prisoners and the abuse of power by the jail authorities was started with the office of inspector general of prison. Proper food, clothing and medical treatment was also included to the top priority.⁴
- II. Prison Enquiry Committee, 1862-** This committee was formed by the review of the administration system of prisons in India. The main concern of these committee are the overcrowding and unsanitary conditions which leads to several deaths due to illness and diseases. Better clothing and food, regular medical checkup and minimum space for each prisoner was also recommended by the committee.
- III. Prisons Act, 1894-** By the recommendations of the third and other two enquiry committee formed in 1877, 1889 and 1892, the Prisons act, 1894 was formed to bring about the consistency in the regulation of prisons in India. Under this act, the provinces have the power to set their own rules for the administration of prisons and the sentence of whipping was abolished as well. In India "Prison" falls under the subject of state in List II of the Seventh Schedule to the Constitution of India. The administration of Prisons falls under the ambit of State Governments and is administered by the Prisons Act, 1894.⁵

³ www.lawcolumn.in/reforms-and-present-situation-of-the-prison-system-in-india/

⁴ www.lawcolumn.in/reforms-and-present-situation-of-the-prison-system-in-india/#Prison_enquiry_committee_1836

⁵ www.lawcolumn.in/reforms-and-present-situation-of-the-prison-system-in-india/#Prison_enquiry_committee_1836

- IV. The Government of India Act, 1935-** By the enactment of this act, the provinces were empowered to set their own rules, policies and procedures. The subject of jail was transferred from central to administration of provincial government.
- V. The Jail Reform Committee, 1983-** This Committee was recommended to set up a **National Prison Commission** which looks up the modernization of prison system in India. The committee made a ban on locking up both juvenile and adult criminals together. It creates protective legislation for the minor juveniles. It separated mentally ill prisoners to mental institution.
- VI. The Juvenile Justice Act, 1986-** This Act aims to consolidate and amends the law relating to juvenile in conflict with law. It provides a framework for protection, treatment and rehabilitation of the young offenders in the purview of juvenile justice system, because the children have been recognized as the future of the nation. Their development and protection should be the utmost priority of the country.
- VII. The Repatriation of Prisoners Act, 2003-** The Government of India brought this act to transfer of sentenced prisoners from India to another country or place. The Act provides that the Indian Government arrange the transfer of the prisoner undergoing a sentence of imprisonment under an order passed by the Criminal Court. The agreement of transfer has been mutually signed by both the countries but agreement come into force after ratification by both the countries.⁶
- VIII. Model Prison Manual, 2016-** The **National Crime Records Bureau** drafted **Model Prison Manual in 2013 and 2016**. The manual deals with various issues such as custodial management, medical care, education in prisons, legal aid, vocational training, computerization and skill development programmes etc. The Supreme Court held in **Inhuman Conditions in 1382 Prisons**⁷, to look into the aspects of jail reforms across the country and suggest measures to deal with them. The various aspects which Court mentioned were to fill up the vacancies for prison staff, preparation of manuals for prison officials and encourage open prisons.

⁶ lawcorner.in/reforms-in-indian-prison-system-backgrounds-problems-and-judicial-pronouncement/#Introduction

⁷ A.I.R 2016 S.C. 993 (Para 4)

1. Major Problems of Prison System in India

There are some very common problems across the jails in India, and the situation is likely to be the same or worse in many developing countries. Overcrowding, prolonged detention of under-trial prisoners,

unsatisfactory living conditions, lack of treatment Programs, and the allegations for the indifferent and even inhuman approaches of prison

staff have repeatedly attracted the attention of the critics over the years. A few major problems of prison systems in India are discussed below;

- I. Overcrowding:** Overcrowding has been one of the grave issues of the prison system in India. As to a report by the National Crimes Record Bureau that the occupancy rate of jails is 118.5% of the prison capacity.⁸
In the case of **Bhim Singh v. Union of India**⁹, it was held that, overcrowding may be reduced by using the provisions of plea- bargaining, fast track Courts, Lok Adalat and production of accused before the Court directly or through video conferencing. Other methods may include by releasing on parole, extensive use of fine, civil commitment and release on probation.
- II. Custodial Torture:** The Custodial tortures among prisoners are quite prevalent. Though third-degree tortures by police is not allowed after the landmark judgment in **D.K Basu's case**¹⁰, there is still a prevalence of brutal violence inside the prisons.¹¹ In the case of **Hussainara Khatoon v. State of Bihar**¹², the Supreme Court held that, a procedure which does not make legal services available to victims of custodial torture or undertrials cannot be regarded as just, fair and reasonable.
- III. Unhealthy Living Conditions:** The overcrowdings of prison lead to an unhealthy living condition. 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.¹³
- IV. Staff Shortage and Inadequate Training:** Prisons in India have a sanctioned approximately 49030 prison staff at various ranks, of which, the present staff strength is around 40000. The ratio between the prison staff and the prisoners in the Indian prison is approximately 1:7. It means only one prison officer is available for 7 prisoners in India.
- V. Unequal Treatments in Prison:** "Though the prisons may be supposed as the

⁸www.legalserviceindia.com/legal/article-9979-prison-system-in-india-development-and-problems.html

⁹Manu/SC 10786/2014

¹⁰1997 (1) SCC 416

¹¹www.legalserviceindia.com/legal/article-9979-prison-system-in-india-development-and-problems.html

¹²A.I.R. 1979 S.C. 1360

¹³timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/

levelling institutions in the world where some different variables that could create/develop the vital effects on the conditions of confinement of the criminal records and their inmates and also their Behavior in prison, other factors play an important part in many countries".¹⁴

According to Human Rights Report, countries like India and Pakistan, where a "rigid" class system exists in the prisons, under this system, special privileges are given to the minority of the prisoners who came from the upper and middle classes irrespective of their crimes they have committed.¹⁵**Poor Budget for Health and Care in Prison:** According to the **National Crime Records Bureau (NCRB) 2005**, In India, an average of INR 10,474 was spent per inmate per year by prison authorities during the year 2005, distributed under the heads of food, clothing, medical expenses, vocational & educational, welfare activities, and others.

VI. Insufficient Legal Aid: The prisoners who cannot afford legal representatives have been protected against torture. Since the majority of prisoners, 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 value 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.¹⁶

VII. Abuse of Prisoners: Physical abuse of prisoners by the guards is another major problem in the prisons of India. In India unwarranted beatings are an integral part of prison life. Women prisoners in Indian prisons are particularly vulnerable to custodial sexual abuse. The prisoners were also tortured by corporal punishments and the uses of leg irons, fetters, shackles, and chains.

The enslavement of other prisoners for the convict officers who effectively run the prisons is particularly severe for new comers (known as amdani). In prison, they are teased, harassed, abused, and even tortured as part of the process of breaking them in.¹⁷

VIII. Custodial Rape: The possibility for custodial rapes varies in India from state to state and jail to jail. Many cases remain unnoticed or unreported only a few come as a matter of chance. According to the **PUDR, "chance circumstances"** brought these cases to light. Otherwise, they probably would have gone unreported.

- In India to make it seem that rape in custody is increasing. a woman's shame would ever be known by anyone other than the victim and her rapists if she maintained the silence, the fear continued especially when it is the police who are the rapists; the woman has little or no opportunity to raise her voice after the rape, and the result of a

¹⁴ Neier et al 1991

¹⁵ timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/

¹⁶ timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/

¹⁷ timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/

complaint is that the victim would suffer more while nothing would happen to her rapists.¹⁸

2. Challenges

Here are some challenges that government should look into these matter-

- i. Deficiency in communication with prison administration, judicial authorities etc. to address the violation of their rights and access to legal aid.
- ii. Management of Personal abuse and psychological effect on the prisoner.
- iii. Safety of women prisoners and young offenders were not ensured.
- iv. Infrastructure quality in the prisons was found to be inadequate.
- v. Rampant overcrowding in the prisons leading to an unhealthy life.¹⁹
- vi. Continuous rise in harassment and torture in the cell.
- vii. Management of Personal abuse and psychological effect on the prisoner.
- viii. Minimum basic needs were not fulfilled i.e. clean drinking water, proper diet, ventilation etc.

3. Rights of Prisoners and Major Judgments on it

A prisoner should not be treated as a freed individual with each and every disappointing right and excesses. His chance should be made game arrangements to give checks and certifiable necessities. These obstacles should be reasonable.²⁰

- I. The Supreme Court of India in **DBM Patnaik v. State of Andhra Pradesh**²¹ stated that, 'the offenders' basic constitutional rights are not completely violated by mere confinement of the offenders.
- II. The Court in **Sunil Batra v. Delhi Administration**²², 'affirmed its authority under Article 32 & 226 of the Indian Constitution to address cases where fundamental rights are violated.' It clarified that prisoners retain the right to approach the Court if their fundamental rights even after conviction are infringed upon.
- III. The **State of Andhra Pradesh v. Challa Ramkrishna Reddy**²³, the court held that 'a prisoner is entitled to all his

¹⁸ timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/

¹⁹ www.lawcolumn.in/reforms-and-present-situation-of-the-prison-system-in-india/#Prison_enquiry_committee_1836

²⁰ 2021 IJCRT | Volume 9, Issue 7 July 2021 | ISSN: 2320-2882

²¹ AIR 1974 SC 2092

²² 1978 AIR 1975

²³ AIR 2000 5 SCC 712

fundamental rights unless his liberty has been constitutionally curtailed’.

- IV. In **State of Maharashtra v. Prabhakar Pandurang Sanzgir**²⁴, the Supreme Court passed the judgement that, ‘conviction that someone is bound can’t deny one of his focal rights and that such conditions are not to be associated with the level of the difficulty of supervisor advantages of the kept individual. The Court other than contemplated that every prisoner holds all such rights that are as a rule got a kick out of by free occupants close by the one that is lost on an astoundingly basic level as a scene of containment’.
- V. In **Charles Sobaraj v. Supdt Central Jail Tihar**²⁵, the Supreme Court emphasize on the Prisoner rights & held that, the necessity of the prisoner rights like proper living conditions and medical care should be given to the prisoners.
- VI. In **Francis Corahe Mullin v. The Administrator, Union Territory of Delhi**²⁶, **Justice Bhagwati** held that, the right of petitioner to have an interview with legal advisor of his choice is violative of **Article 14 & 21** of the Constitution of India & must be held unconstitutional & void. Petitioner were entitled to have an interview with his legal advisor at reasonable hour, after taking an appointment from the Superintendent of the Jail.
- **Justice Marshall** other than put himself out there undeniably and unequivocally in close to terms: "I have truly passed on my viewpoints that a prisoner doesn't shed his principal set up rights at the prison way and I totally support the court's holding that the interest of detainee."²⁷
- VII. **Kharak Singh v. State of UP**²⁸, in this case the decision given by Six-judge Supreme Court Panel, they agreed to overturn certain parts of the Uttar Pradesh Police Regulations, deeming them unconstitutional. Chief Justice Sinha and Justice Imam and Mudhlokar in Kharak Singh vs State of UP concurred with Justice Ayyangar’s opinion.²⁹
- In this Case, the court highlighted on the word ‘Life’ and expressly said, “the manner which limits the mutilation of the body by the excursion of an arm or leg, or the putting out of an eye or the beating of some other organ of the body through which the soul visits with the other world. It will as a last resort be said that choice to live isn't kept to a more modest animal presence. It shows some bewildering decision from the sound clear nature of a being”.³⁰

4. Prison Reforms with Regard to Judicial

²⁴ AIR 1966 SC 424: (1966) 1SCR 702

²⁵ AIR 1978 SC 1514, (1978) 4 SCC 104

²⁶ 1981 AIR 746, 1981 SCR (2) 516

²⁷ Indra Jeet Singh, “Indian Prison: A Sociological Enquiry”, Concept Publishing House, Delhi, (1979), p.1

²⁸ 1963 AIR 1295, 1964 SCR (1) 332

²⁹ www.lawbhoomi.com>kharak singh vs state of up

³⁰ Anand Grover, "Policing Lock-up Conditions," The Lawyers, Bombay, September 1987, p. 7.

Pronouncements

The Supreme Court of India set up a committee in 2018 headed by its retired judges on Prison Reforms. They were look into the problems faced by the prisoners, suggest measures, and put special focus on imprisoned mothers and their children. Problems which were given urgent notice were overcrowding, a huge number of under trials, shortage of prison staff, and unhygienic food.

Provisions like **Section 304 of IPC, 1860** punishment regarding custodial death, **Section 30 of the Protection of Human Rights Act** talk about the issuance of CCTV's inside the Jails. In the case of custodial rapes, this became a serious problem because the accused were mostly in power and influential. They could easily destroy the evidence.

To overcome such situation, certain amendments were made in various statutes. Exceptions were introduced in the **Evidence Act**. The **Criminal Act 1983** introduced **Section 114A** in the **Evidence Act**.

Article 21 of the Constitution provides us with the right to Life and nothing on this earth is greater than life. Even the prisoners have their right to life. The judgment also ratifies the **UN Convention against Custodial torture and other cruel, Inhumane, Degrading Treatment or Punishment**.³¹**D. Upadhyaya V. State Of Andhra Pradesh**³²: The apex court showed concern over the children living in the jail with their prisoner mother and laid down directives in respect to adequate food, shelter, medical care, clothing, education and recreational facilities for such children. It further added that in case of a child born out of a prisoner mother, his/her birthplace should not be recorded as 'prison' in the birth certificate.³³

A. Sheela Barse V. State of Maharashtra³⁴: The Supreme Court gave various directions in respect to the women prisoners; they should be guarded by female guards or women constables. They should be kept separately from male wards. Further it was added that the interrogation of women prisoner should be carried in presence of the women officials.

B. State Of Gujrat V. High Court of Gujrat³⁵: The Supreme Court stated that reasonable wages should be paid to prisoners for the labour work done by them while in prison.

5. Sunil Batra V. Delhi Administration³⁶: The Apex court held that, there should be a scientific classification of prisoners based on the nature of the crime committed, age, sex, character and educational level.

CONCLUSION

In this Article I tried to sum up the situation going on inside the prison. Though the Apex Court set up some new guidelines and legislations to make better situation inside the prison cell and there were number of implementation and court decisions which helps to protect the rights of the

³¹ Assembly debate ♦ Prison Reforms, available at: <https://www.insightsonindia.com/2022/02/17/sansad-tv-assembly-debates-prison-reforms>

³² A.I.R. 2006 S.C. 1946

³³ lawcorner.in/reforms-in-indian-prison-system-backgrounds-problems-and-judicial-pronouncement/#_ftnref5

³⁴ A.I.R 1983 S.C. 378

³⁵ A.I.R 1998 S.C. 3164

³⁶ A.I.R 1978 S.C. 1675

prisoners in India but I feel there is still a heavy amount of work which is needed to be done in this direction. One of the major issue is the prison system is still governed by the Prisons Act of 1894. This Act was made before independence and now we are in 2024. Even though the prisoners have committed crimes, still they have their shares of rights. Those rights cannot be taken away from them.³⁷

BIBLIOGRAPHY: -

1. Criminological analysis of Prisons Act, 1984, available at:
<https://dpnewsletter.blogspot.com/2021/02/criminological-act.html?m=1> [analysis-of-prisons-](#)
2. https://www.lawcolumn.in/reforms-and-present-situation-of-india/#Prison_enquiry_committee_1836 [the-prison-system-in-](#)
3. <https://ijert.org/papers/IJCRT2107273.pdf>
4. https://lawcorner.in/reforms-in-indian-prison-system-backgrounds-problems-and-judicial-pronouncement/#_ftn6
5. <https://www.legalmantra.net>
6. <http://indiankanoon.org>

³⁷ www.legalserviceindia.com/legal/article-9979-prison-system-in-india-development-and-problems.html