



PRISON PROBLEMS IN INDIA: AN OVERVIEW ON THE CONSTITUTIONAL AND LEGAL STATUS

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Abstract: The degree of civilisation in a society can be judged by entering its prisons.¹ When an individual has chosen to deviate from the path of ethical values and moral conduct attributable to a responsible citizen, he is not anymore someone to be condemned and reformed with harsh and unbearable treatment. There has to be a devised mechanism which suits the particularity of the accused to strip his mind from its offending thoughts. This paper is aimed at cluttering the various initiatives taken by Governments in India from time to time to facilitate the process. The legislative provisions along with the committees formed to recommend measures have been discussed. Major problems plaguing the process of reform have been highlighted to generate an idea to lessen its effect. This paper also primarily reflects upon the subsequent development in the field of prison administration and drive through some perplexing ground realities that add to the process of deterioration. Additionally, it highlights the possible policy overhaul to serve the purpose.

Index Terms: - Prison, Prison problems, Prison administration etc

INTRODUCTION

The term Prison symbolizes a system of punishment. Generally it's a kind of institutional placement of the accused person including both the under-trials and suspects². Since crime in any society is inexorable so there emerges the need to put in place correctional facilities to cleanse the offender of his criminal intent of wreaking havoc. It can be said that we are made to believe that there cannot be a society without crime

¹ Said by Fyodor Dostoevsky

² Sharma, P. D. (1998). Criminal Justice Administration. In P. D. Sharma, *Criminal Justice Administration* (p.145). Rajasthan: Rawat Publications.

and criminals. Therefore, the importance of prison is indispensable for any society. Hate the crime not the criminal has been the lighthouse for criminal justice system in India. Whenever an accused is subjected to serve a term of imprisonment, a process of reformation and transformation also follows it. Too rigid and grueling counseling drives the inmates insane and leads to more disastrous consequences and frustrate the objectivity of sentence. Here comes the need to make prisons a conducive place for character building rather than a breeding ground for law evaders. This study is specifically focused on the areas of study concerning existing prison setup in India and its possible restructuring.

HISTORICAL BACKGROUND

The modern prison system in India is essentially based on the British prison model which is a consequence of prison developments in America at the end of eighteenth century³. It is known that a well-organised system of prisons has been in existence in India since time immemorial. It is on record that Brahaspati laid a lot of emphasis on imprisonment of convicts in closed prisons. However, Manu was against this system. Arthashastra, mentions Kautilya wrote that the rulers in ancient India constantly used forts to lodge their prisoners. He personally thought that as far as possible prisons should be constructed by the road-side so that monotony of prison life would reduce to a great extent. In ancient India, the spiritual aspects of human life were overemphasized and therefore, prisons were designed so as to provide ample opportunities for penance and remonstrance. It was a common practice to keep the prisoners in solitary confinement so that they could be given the opportunity of self- introspection⁴.

PRISONS ACT, 1894

The objective of Punishment was to deter offenders from repeating crime. The common modes of punishment that are recognized in India are death sentence, imprisonment, fine and seizure. In, 1862, the jail enquiry committee expressed concern for the insanitary conditions of prisons which resulted to death of several prisoners. Thereafter, certain recommendations were made by the Jail committee in 1877. As a result of which the Indian Prison Act, 1894 was enacted. The Act provided for classification of prisoners and the sentence of whipping was abolished. The medical facilities were further improved and better amenities were endeavored for and elaborate provisions were made for women inmates. The present emphasis is not only on safe custody of prisoners but also on their reformation and rehabilitation. Despite several changes, the prison policy as reflected through the Act, by and large, remained deterrent⁵.

³ Gosh, P. (n.d.). *Share Your Essays*. Retrieved April 29, 2021, from www.shareyouressays.com:https://www.shareyouressays.com/essays/essay-on-modern-prison-system-in-india-599-words/121436

⁴ Paranjape, N. V. (2017). *Criminology, Penology, Victimology*. Allahabad: Central Law Publications.

⁵ Bhusan, V. (1970). *Prison Administration in India*. Delhi : S Chand.

COMMITTEES ON PRISON REFORMS IN INDIA

- **The Mulla Committee**

In 1980, the Government Of India under the chairmanship of justice A N Mulla chaired a committee on Jail Reforms in India. The objective of the committee was to analyse the laws relating to the rehabilitation of offenders.

- **The Krishna Iyer Committee**

In 1987, under the chairmanship of justice Krishna Iyer another committee was set up to study the status of women prisoners in India. The committee suggested for induction of more women in the police machinery in view of their distinct role in tackling women and children offenders.

CONSTITUTIONAL PROVISIONS

The Constitution of India has enumerated “Jail”, “Police” and “Law and Order” in the State List of the Seventh Schedule. As a result, the central government is devoid of any responsibility to modernize prisons and interfere in their administration. Unfortunately, the five-year plans gave very scanty focus to prison administration and prison reforms.

SUBSEQUENT DEVELOPMENTS

The utility of prison as an institution for rehabilitation of offenders and preparing them to further induce in mainstream society has always been a contentious issue. Stressing on the need for retaining the institution of prison, Dr Paripurnanndverma, observed that “a prison symbolizes evil and therefore, evil doers find themselves in perfect harmony inside the house of evils”⁶. This assertions seems to be an over simplification of facts as this does not hold good for all categories of criminals. There are a large number of offenders who are otherwise well behaved and are persons of respectable class of society but they fall prey to criminality on account of monetary impulsiveness, provocation or yield to situational circumstances.

The propelling intent behind sending criminals to prison is to transform them into honest and law-abiding citizens by inculcating in them distaste for crime and criminality. However, the Supreme Court in

⁶ Verma, P. (1963). *Crime, criminal and convict* . Agra: Ram Prasad and sons.

Ram Murthy Vs. State of Karnataka⁷, has observed various issues faced by the prisoners which seriously needs reforms. The issues are as follows:-

1. Overcrowding
2. Unnatural death
3. Insufficient foods
4. Inadequate clothing
5. Delay in trial
6. Improper medical facility
7. Inadequacy of trained staffs
8. Prison vices
9. Torture and ill-treatment
10. Deficiency in communication

The Court noted that these are the major problems which need immediate attention but unfortunately the Indian Prisons are still struggling.

Basing upon such inhuman conditions the former chief justice, R C Lathoti pointed out that there are four major issues which are as follows:-

1. Overcrowding
2. Unnatural death
3. Inadequacy of staffs
4. Untrained or inadequate trained staff

Recently the Supreme Court has taken laudable steps in decongesting the prisons, while the directing the states and UT to form a high powered committee and it reiterated that

“Right to life under article 21 is the most precious fundamental Right of every citizen of India. It unconditionally embraces even an under trial/ convict walled off from the society”. The Supreme Court has also directed the states to consider examining releasing inmates, convicted or facing trials in non-serious charges, locked in prison either on regular bail or on parole to inhibit overcrowding and spread of infectious diseases during this unprecedented time.

⁷ AIR 1997 SC 1739

REPORTS OF THE MISMANAGEMENT AND DISORDERLY STATUS OF PRISONS

The rise in prison population leads to deplorable prison conditions, resulting in human rights violations. These substitute negation of the United Nations Standard Minimum Rules for the Treatment of Prisoner (Nelson Mandela Rules) 2015, which calls upon governments to corroborate that “the prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.” In 2018, the normal inhabitation pace of prisons was 117.6%. Nonetheless, these numbers fluctuate across states and types of prisons. For example, in Nagaland, the occupancy rate is 30.5%, while in Uttar Pradesh (UP) it is 176.5%. Correspondingly, while the occupancy of district jails was highest (132.8%), it was 58% for women jails⁸.

Simultaneously the researcher has noticed a trend setting in India where the terminologies ‘prison’ and ‘jails’ are used interchangeably which subscribe to the fact that no particular endeavour has been made to separate Undertrials from that of Convicts. A major portion of all prisoners are undertrials. As long as infrastructure in lockups is limited to merely a piece of furniture or so and no appreciable arrangement is made with regard to the basic necessities of the inmates, the day is too far to realise the long cherished and often argued prison reforms and decentralisation.

When we are living in days of a great devotion been attached to the sacrosanct human rights and at the same time when we come across news and reports of torture and inhumane miserable treatments being meted out to the inmates on behest of the state intermediaries it shocks the conscience of the community.

It is pertinent to mention here that due to lackadaisical approach of district administration and the district judiciary in few states, there is no visits and inspections tour being made to jails to check the living conditions of the prisoners, also a lack of statutory monitoring of the state of affairs ultimately lead to lawlessness and many sort of anti-social activities being operated from within the cell that further strike at the very soul of criminal reform agenda.

MAJOR PROBLEMS

Some of the major problems faced by the prisoners in the prisons are as follows:-

⁸ Lamba, M. D. (2020, Jan 25). *Hindustan Times*. Retrieved May 15, 2021, from [www.hindustantimes.com: https://www.hindustantimes.com/analysis/analysis-india-s-prison-system-needs-urgent-reform/story-HYecwGnYltYqCZqfV3rycL.html](https://www.hindustantimes.com/analysis/analysis-india-s-prison-system-needs-urgent-reform/story-HYecwGnYltYqCZqfV3rycL.html)

➤ OVERCROWDING

It is an undeniable fact that prisons in India are generally overcrowded. For instance, there were 814 prisoners in Sambalpur circle jail against the capacity of 541⁹. Around 100 offenders were brought to the Jail between Sept 5, 2020 and Sept 15, 2020 and majority of them are involved in petty offences. According to the data of National Crime Record Bureau as on Dec, 2013 the number of Under Trial Prisoners was 67.6% of the entire prison population. Therefore, sec 436 and 436-A of Criminal Procedure Code, 1973 needs to be invoked. Plea-bargaining as provided under sec 265-A also be used to reduced the pendency of cases and reducing overcrowding in prisons. The All India Committee on Jail reforms headed by Justice Mulla has in its report¹⁰ classified on various types of remission and advocated for useful recommendations to streamline the remission system in India.

It was also suggested that earnest effort be made towards invoking provisions like Plea-bargaining, fast track courts and Lokadalats and production of accused before the court directly or via video-conferencing¹¹.

➤ PRISON DISCIPLINE

Prison discipline has always grasped the attention of the penologist throughout the world. Once Donald Taft, while expressing his view about the prison administration, commented that prisons are deliberately so planned as to provide unpleasant compulsory isolation from general society. According to him, a prison characterizes rigid discipline, provision of bare necessities, strict security arrangements and monotonous life¹². Chapter V, sec 27 to 30 of the Act deals with the discipline of prisoners

The consciousness of subjection to compulsive forces of the State through the agency of prison often leads to scuffle between prison officials and the inmates. The custody of prisoners should therefore, ensure their safety and security as also minimize the chances of conflict with prison administrators. Cruel inhumane degrading punishment is to be mitigated at all cost to truly reform them and imbibe humane and ethical values while furthering the inclusion in mainstream.

➤ IMPROPER MEDICAL FACILITY

Health essentially constitutes a vital factor that prison authorities need to pay attention. It is disheartening to note that despite the sizeable prison population in India, there exist acute lacks of published information about the prevalence of health problems in prisons. Chapter VIII, Sections 37 to 39 of the Prisons Act, 1894 deal with the health of prisoners. According to this chapter, every prisoner should be asked about his health at the time of entering the prison. It will be the duty of the state

⁹ n.a. (2018, Sept 16), The New Indian Express

¹⁰ 1980-1983

¹¹ Bhim Singh Vs Union of India, Manu/SC 10786/ 2014.

¹² Engalnd, D. T. (1964). *Criminology*. New York City: The Macmillan Company .

government to ensure safety and control the spread of the disease not only to the prisoners but also to the people living outside the jails.

The most common diseases that are found in the prisons are anemia, tuberculosis, diarrhoea and HIV AIDS. TB is considered to be the single biggest cause of death among the world's prison populations¹³. In order to tackle the problem of prisoners, volunteers may be deployed in the prison for nursing.

In *Anil Kumar Vs State of M.P*¹⁴, the Madhya Pradesh High Court issued directions to the state to initiate adequate steps to control spread of diseases in prisons.

Recently the Supreme Court has been instrumental in directing various state governments to decongest the jails and make necessary arrangements to contain the spread of infectious disease transmission.

➤ **CRIMINALITY AMONG THE INMATES**

A major problem attributable to prison discipline is criminality among inmates inside the prison. The prime cause for criminality among prison inmates is their frequent quarrels inside the institution. Each prisoner tries to establish his superiority over his fellow comrades. Therefore, prisoners often narrate their stories of courage with exaggeration while committing crimes. Sometimes the situation takes the shape of a group rivalry resulting in skirmishes among the prisoners.

To ensure inspections and visiting of district level officials, the District Legal Service authorities (DLSA) is entrusted with the duty to provide in regular intervals legal aid and other humanitarian assistance for their well-being and contemporary difficulties. Now when states are more inclined in imposing imprisonment as a form of punishment, it becomes incumbent upon the policy makers to cleanse the criminal culture inside jails and devise measures for creating conducive and reform based approach in grooming the inmates.

➤ **NEED FOR TRAINED CORRECTIONAL PERSONNEL**

The Central Bureau of Correctional services, functioning under the home ministry in 1961 formulated a uniform policy and advised the state governments to take need based initiatives on glaring issues of jail administration, probation, after-care, juvenile and remand homes, borstals and protective homes etc. greater emphasis need to be given in training the prison personnels in developing a pampered and humanistic methodology in piloting the directives of jail manuals so that the Correctional

¹³ As per the record available in <https://home.rajasthan.gov.in/content/dam/pdf/StaffCorner/Training-Material/Useful-Presentations-And-Videos/Overview%20of%20prisons%20in%20India.pdf>

¹⁴ 2000 (1) C. Cr. J 118

centres actually cater to its name and inculcate moral reform and behavioural shift in the psychology of the prisoners rather than making them stubborn and hardcore elements.

CONCLUSION

Aforementioned contentions clearly visualize the lack of honest implementation of the directives and orders being provided by earlier various committees. Care has to be taken to ensure that efficient and able prison staffs adhere to the norms of jail manuals sincerely. If prison setup fails to serve the desired purpose of reformation and rehabilitation of potential law evaders, it wouldn't be an anomaly to call the structure itself a failed state of affairs. Although several committees related to prison reforms have been formed, still then it is suggested that a committee is required at state level to conduct a survey or fetch data in ensuring compatibility of the recommendations of committee's decisions. Also counts the smooth administration of prisons and the removal of any sort of practical difficulties faced by the prisoners to ensure their voyage being sail back to the bay of civilization values.

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