

Jurisprudence Of Prison Reforms

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Abstract

Prison is also known by various other names, as Jail (Gaol), detention centre. It is an important part of the criminal justice system, in which accused and convicted persons are confined for reformatory purposes. Reforms in itself means to improve the existing setup and prison reforms is an attempt to improve the conditions of prisons so as to provide an effective penal system and an improved reformatory mechanism. Historically, the prison system, In India, was introduced by Lord Macaulay in 1835 and a major turning point came with the recommendations of Fourth Jail Committee in 1888 which resulted in the enactment of “The Prisons Act, 1894”. It governs the present Jail management and administration. Many attempts were made to bring reforms in prisons in late 70’s and 80’s by forming various committees like Mulla Committee (1980), Krishna Iyer Committee (1987), the model prison manual, and recently constituted J. Amitava Roy Committee.

Although many amendments have been introduced in the prison manual, yet the century old system of prisons in India requires urgent repair to put the system on rail for smooth functioning. The researches have suggested many reforms in this paper dealing effectively with the problem existing in the prisons in India.

Key-Words: Prison, Reformatory Mechanism, Criminal Justice System, Correctional Treatment and Rehabilitation.

INTRODUCTION:

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”
— **Nelson Mandela**

Prisons commonly known as jails, gaols or detention centres etc; forms a very important part of a country’s Criminal Justice System. It is a facility where the accused and the convicted

persons are forcibly kept for reformatory purposes. These people are denied their liberty and freedom in every form during their punishment period. Hence; there is a need to devise ways and means to channelize the energy of the inmates in a constructive way so as to attain the ultimate objective of reformatory justice.

Prisons and their administration, as a subject is covered under Item 4 of State List in the Seventh Schedule of The Constitution of India; thereby falling under the domain of the state governments. The State Governments are therefore bestowed with the responsibility of making reforms and changes as per the needs in the prisons ,their management and their administration.

INTERNATIONAL TREATIES AND OBLIGATIONS:

The International Covenant on Civil and Political Rights (ICCPR)¹ remains the core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice. The International Covenant on Economic, Social and Cultural Rights (ICESR) states that prisoners have a right to the highest attainable standard of physical and mental health². Apart from civil and political rights, the so called second generation economic and social human rights as set down in the ICESR also apply to the prisoners. The earlier United Nations Standard Minimum Rules for the Treatment of Prisoners³, 1955 consists of five parts and ninety-five rules. Part one provides rules for general applications. It declares that there shall be no 'discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. At the same time there is a strong need for respecting the religious belief and moral precepts of the group to which a prisoner belongs. The standard rules give due consideration to the separation of the different categories of prisoners. It indicates that men and women be detained in separate institutions. The under- trial prisoners are to be kept separate from convicted prisoners. Further, it advocates complete separation between the prisoners detained under civil law and criminal offences. The UN standard Minimum Rule also made it mandatory to provide separate residence for young and child prisoners from the adult prisoners. Subsequent UN directives

¹<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> last accessed on 17-02-2019.

²<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> last accessed on 17-02-2019.

³http://www.un.org/en/events/mandeladay/mandela_rules.shtml last accessed on 17-02-2019, also known as Nelson Mandela Rules.

have been the Basic Principles for the Treatment of Prisoners (United Nations 1990) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations 1988). On the issue of prison offences and punishment, the standard minimum rules are very clear. The rules state that “no prisoner shall be punished unless he or she has been informed of the offences alleged against him/her and given a proper opportunity of presenting his/her defence.”⁴ It recommends that corporal punishment, by placing in a dark cell and all „cruel, in-human or degrading punishments shall be completely prohibited as a mode of punishment and disciplinary action“ in the jails.

HISTORICAL BACKGROUND-INDIAN PERSPECTIVE:

The modern prison in India originated with the Minute by TB Macaulay in 1835. A committee namely Prison Discipline Committee, was appointed, which submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, Central Prisons were constructed from 1846. The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care. In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail Management. In 1894, the draft bill became law with the assent of the Governor General of India.

I. THE PRISON ACT,1894

It is the Prisons Act, 1894, on the basis of which the present jail management and administration operates in India. This Act has hardly undergone any substantial change. However, the process of review of the prison problems in India continued

⁴<https://www.hrw.org/legacy/advocacy/prisons/un-smrs.htm> last visited on 18-02-2019.

even after this. In the report of the Indian Jail Committee 1919-20, for the first time in the history of prisons, 'reformation and rehabilitation' of offenders were identified as the objectives of the prison administrator. Several committees and commissions appointed by both central and state governments after Independence have emphasised humanisation of the conditions in the prisons. The need for completely overhauling and consolidating the laws relating to prison has been constantly highlighted. The Government of India Act 1935, resulted in the transfer of the subject of jails from the centre list to the control of provincial governments and hence further reduced the possibility of uniform implementation of a prison policy at the national level. State governments thus have their own rules for the day to day administration of prisons, upkeep and maintenance of prisoners, and prescribing procedures. In 1951, the Government of India invited the United Nations expert on correctional work, Dr. W.C. Reckless, to undertake a study on prison administration and to suggest policy reform. His report titled 'Jail Administration in India' made a plea for transforming jails into reformation centers. He also recommended the revision of outdated jail manuals. In 1952, the Eighth Conference of the Inspector Generals of Prisons also supported the recommendations of Dr. Reckless regarding prison reform. Accordingly, the Government of India appointed the All India Jail Manual Committee in 1957 to prepare a model prison manual. The committee submitted its report in 1960. The report made forceful pleas for formulating a uniform policy and latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc. The report also suggested amendments in the Prison Act 1894 to provide a legal base for correctional work.

II. THE MODEL PRISON MANUAL

The Model Prison Manual The Committee prepared the Model Prison Manual (MPM) and presented it to the Government of India in 1960 for implementation. The MPM 1960 is the guiding principle on the basis of which the present Indian prison management is governed. On the lines of the Model Prison Manual, the Ministry of Home Affairs, Government of India, in 1972, appointed a working group on prisons. It brought out in its report the need for a national policy on

prisons. It also made an important recommendation with regard to the classification and treatment of offenders and laid down principles.

III. RECOMMENDATIONS OF VARIOUS COMMITTEES:

To examine the conditions of prisons and prisoners in the country, government had constituted several panels. The courts have also passed several panels. The courts have also passed several landmark judgments towards this including the historic judgement in **HussainaraKhatoon(IV)vs State of Bihar**⁵ case. Two most important committees on prison reforms are Justice Mulla Committee Report (1983) and Justice Krishna Iyer Committee on Women Prison Report (1987).

Justice MullaCommittee⁶ :This committee had given a number of recommendations of which the notable recommendations are given below:

- Since “Prisons” is state subject and central government has little say in it; it should be moved to concurrent list.
- The government should come up with National Policy on Prison.
- Government should establish a permanent National Commission on Prisons. This commission should submit its annual report on prison related matters to parliament.
- In every state and UT a Department of Prisons and Correctional Services should be set up.
- Government should try to develop a well organized prison cadre based on appropriate job requirements.
- An All India Service namely the Indian Prisons and Correctional Service to be constituted to induct better qualified and talented persons.
- To incorporate the “principles of management of prisons & prisoners” in the DPSP.
- Undertrial prisoners should not languish in the jail and there should be procedure for speedy trial.

⁵ AIR 1979 SC 1377.

⁶ https://mha.gov.in/MHA1/PrisonReforms/NewPDF/PRV1_1TO40.pdf last accessed on 21-02-2019.

- The Committee suggested the government to use alternatives to imprisonment such as community services, forfeiture of property, payment of compensation to victims, public censure etc.
- Living conditions in every prison, custody care, rehabilitation centres should be compatible with human dignity in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical facilities etc.
- Offenders should be provided with adequate opportunities for diversified education, development of work habits and skills, change in attitude, modification of behaviour and implantation of social and moral values.
- The management of prisons must take care of the human rights of the prisoners.
- Appropriate Security provisions should be made for custody suites.

JUSTICE V.R KRISHNA IYER COMMITTEE ON WOMEN PRISONERS⁷:

The committee under the chairmanship of Justice V.R Krishna Iyer submitted its report on women prisoners in the year 1987. Some important recommendations of this committee are as follows:

- The necessary provisions should be made to restore the dignity of women even if convicted under Criminal code.
- Being a marginalised group, women are vulnerable to exploitation inside the prison hence there is a need to establish a separate institution for women offenders which shall comprise of women staff only.
- Free Legal Aid should be provided to all women offenders .
- The committee emphasised on need for security, discipline, holistic programmes and adequate standards of prisons and human rights etc which play an important role in preventing women offenders from psychosis and neurotic disorders.

⁷<http://reports.mca.gov.in/Reports/15-lyer%20committee%20report%20of%20the%20expert%20committee%20in%20legal%20aid.%201973.pdf> last visited on 21-02-2019.

COMMITTEE UNDER BPR&D:

The Government of India constituted a high powered committee under the Chairmanship of Director General, Bureau of Police Research and Development in 2005. It took into consideration the recommendations of J. Mulla Committee Report & J. V.R Krishna Iyer Committee Report and came up with a new report by adding some additional recommendations. It also drafted a National Policy on Prison Reforms and Correctional Administration, 2007.

The Recommendations were as follows⁸:

- It should be made compulsory for the prisoners undergoing sentence of simple imprisonment to participate in Prison Work Programmes.
- An Amendment was suggested in Sec 305-B of CrPC which will make it mandatory for the trial judge to award the maximum sentences in cases where the accused contests the charge levelled against him or her.
- A suggestion was made which shall make provisions for providing compensation to victims of crimes for the wages earned by prisoners serving Rigorous Imprisonment.
- It also recommended the inclusion of Senior Police officers in prison administration to induce the cooperation of police in prison reforms.

JUSTICE AMITAVA ROY COMMITTEE(2018):

The Supreme Court in 2018 while disposing of a suo-motto writ petition (**Re-Inhuman Conditions In 1382 Prisons**) constituted a three membered committee which will be headed by Justice Amitava Roy to look into reforms in prison administration and their management.⁹ The committee will also comprise of Inspector General of Police, Bureau of Police Research and Director General (Prisons) Tihar Jail as its members.

NEED FOR REFORMS:

1. **Over-Crowding of Jails** :The first and the foremost problem that is being faced by our country is that our prisons are over-crowded and this is very well proved by The National Prison Statistics data as on 31.12.2016 released by Ministry of Home

⁸<http://www.bprd.nic.in/WriteReadData/userfiles/file/5261991522-Part%20I.pdf> last visited on 24-02-2019.

⁹<https://www.livelaw.in/sc-appoints-committee-headed-by-justice-amitava-roy-to-look-into-jail-reforms/> last accessed on 24/02/2019.

Affairs. For Instance- as per the data ; the second largest state (area-wise) of India that is Madhya Pradesh has total 123 number of jails with a total available capacity of 27677 inmates and its total occupancy rate (in%) counts for 136 .¹⁰ Similarly our own State i.e Punjab has total 26 number of jails which holds the capacity of about having 22589 inmates ; but even its total occupancy rate (in%) is 100.3 which is still more than the holding capacity. Therefore the biggest problem being faced by our Prison system is over-crowdedness of inmates which lead to an inefficient reformative system.¹¹

2. **Under-Trials** :The data collected by NCRB (National Crime Record Bureau) in 2015 clearly shows that the 67% of the population of inmates are of under-trials which in itself creates a big problem. This Indian rate of under trials is extremely high among the International standards e.g.: France 29%, USA-20%.
3. **Unhealthy External Environment** : The prisons form an important part of the reformative process of the convicts but that is largely hampered by the external environments which push them more towards aggression than towards reforming them.
4. **Lack of legal aid**: Lawyers in India are poorly paid and are often over-burdened with cases. Further, there is no monitoring mechanism to evaluate the quality of legal aid representation in most states.
5. **Unsatisfactory living conditions**: Overcrowding itself leads to unsatisfactory living conditions. Moreover, prison structures in India are in dilapidated condition. Lack of space, poor ventilation, poor sanitation and hygiene make living conditions deplorable in Indian prisons. Mental health care has negligible focus in Indian prisons.
6. **Shortage of staff**: The ratio between the prison staff and the prison population is approximately 1:7. It means only one prison officer is available for 7 prisoners, while in the UK, 2 prison officers are available for every 3 prisoners. In the absence of adequate prison staff, overcrowding of prisons leads to rampant violence and other criminal activities inside the jails.

¹⁰<https://mha.gov.in/MHA1/Par2017/pdfs/par2018-pdfs/rs-21032018/RS2944.pdf> last accessed on 24-02-2019.

¹¹<https://mha.gov.in/MHA1/Par2017/pdfs/par2018-pdfs/rs-21032018/RS2944.pdf> last accessed on 24-02-2019.

7. **Lack of Appropriate Medical Facilities:** Since the prisons are overcrowded and jail doctors are also appointed but in case of emergencies no first aid remedies are easily available .
8. **Torture and Sexual abuse:** Prisoners are subjected to inhuman psychological and physical torture. Though the Supreme Court gave certain guidelines to protect prisoners from third degree torture but still in practicality they are subjected to such tortures. Sexual abuse of persons in custody is also part of the broader pattern of torture in custody. The National Human Rights Commission observes custodial violence as “worst form of excesses by public servants entrusted with the duty of law enforcement.”
9. **Custodial deaths:** In 2015, a total of 1,584 prisoners died in jails. A large proportion of the deaths in custody were from natural and easily curable causes aggravated by poor prison conditions. There also have been allegations of custodial deaths due to torture. Even recently the Supreme Court in 1993 Custodial death case convicted 8 cops thereby setting a precedent and accountability of jail staff in case any such incidence occurs.
10. **Inadequate security measures and management:** Poor security measures and prison management often leads to violence among inmates and resultant injury and in some cases death.
11. **Condition of women prisoners:** Women prisoners face number of challenges including poor nutritional intake, poor health and lack of basic sanitation and hygiene. There are also alleged instances of custodial rapes which generally go unreported due to the victims’ shame and fear of retribution.
12. **Lack of reformatory approach:** Absence of reformatory approach in Indian prison system has not only resulted in ineffective integration with society but also has failed to provide productive engagement opportunities for prisoners after their release.

Measures taken by the Government

- **Modernization of Prisons scheme:** The scheme for modernisation of prisons was launched in 2002-03 with the objective of improving the condition of prisons, prisoners and prison personnel. Various components included construction of new jails, repair and renovation of existing jails, improvement in sanitation and water supply etc.

- **E-Prisons Project:** The E-Prisons project aims to introduce efficiency in prison management through digitization. The E-prisons project supplements the Prisoner Information Management system (PIMS) which provides a centralized approach for recording and managing prisoner information and generating different kinds of reports. The PIMS records Prisoner's basic details, family details, biometrics, photograph, medical details, prisoner case history, prisoner movements, punishment details etc. The availability of these details on an electronic platform will be useful to track the status of prisoners and smooth functioning of the prison system.
- **Model Prison Manual 2016:** The manual provides detailed information about the legal services (including free services) available to prison inmates. The Ministry of Home Affairs has issued an advisory to all States and UTs informing them about the legal aid facility available to under-trial prison inmates.
- **National Legal Services Authority:** It has launched a web application recently to facilitate the under trial prisoners with free legal services. The objective of the above application is to make the legal services system more transparent and useful. All authorities will be able to monitor the provision of legal aid to prison inmates. This will ensure that no prisoner goes unrepresented, right from the first day of his production in the Court.
- **Draft National Policy on Prison Reforms and Correctional Administration:** Its key provisions include:
 1. Amending the Constitution to include principles of prison management and treatment of under trials under DPSP and including prisons in concurrent list.
 2. Enactment of uniform and comprehensive law on matters related to prisons.
 3. A department of Prisons and Correctional Services to be opened in each state
 4. State shall endeavour to provide alternatives to prisons such as community service, forfeiture of property, payment of compensation to victims, public
 5. State shall improve the living conditions in every prison and allied institution.

WAY FORWARD:

Institutional and Infrastructural Developments

At present the prevailing scenario of our prisons instead of being reformatory is promoting the criminalisation in a way. These are overcrowded and are in shabby and unhygienic condition with least facilities of basic human requirements.

1. To decongest the overcrowded jails new jail premises with proper sanitation and health care facilities should be provided. These jails must be away from the populated area.
2. Currently all over India ,there are only18 women prisons and 20 Borstal schools as per NCRB reports of 2015. More Separateprisons for women and children should be provided to protect them from exploitation since this segment of population is vulnerable to all forms of exploitation like sexual abuse,drug abuse etc.
3. The jails set up for women should have all the female staff only which will minimise the chances of exploitation of the inmates.
4. Such jails must have collaboration with handloom and other smallscale industries which will provide an opportunity to inmates to improve their skill which will also lead to an effective implementation of Reformatory Theory Of Justice.
5. Jails must be equipped with paramedical facilities to supplement the healthcare of the inmates.
6. The inmates of the jail must be provided with proper food and clean drinking water which is the basic right of every human being.
7. The hardcore criminals must be segregated from the rest of the inmates so as to facilitate the reformatory process.
8. Another step which should be taken in this direction is to incorporate persons in the management of the prison, who, should coordinate with other segment of society like educational institutions, industrial corporate sector, agricultural sector and health sector so as to promote skill development of inmates or making use of their skill if they already possess it. Even the NGO's can be given a bigger role for the purpose and for their rehabilitations.

This step will go a long way in reforming our prison system by keeping the inmates engaged in a constructive manner and will also in heir rehabilitation in the society after completion of their prison term.