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Prison reforms in India	Rahul Mankad

ABSTRACT

Prisons in India are the major domains headed by the government of respective state under Prisons Act, 1894. Indian prisons depict the exact image of an obsolete and spurned housing area where human beings are kept in which their physical and physiological health are brunt. India is shown to be with the lowest imprisonment rates in the world having 33 prisoners per 100,000 populations. However there were no divergence made between a convict and a under trial in a prison. Hence distressing situation has been intensifying in India due to such over crowding in jails. In the present scenario the purpose behind jails, to reform the prisoners has not been served. In India, the idea to reform prison burst because of the cruelest situation faced by the prisoners during the time of incarceration. The prisoners are treated to be an animal even through they are under trial as their human rights are buried, from the time, when they enter into the premises of jail. The research shows the immediate need to alter the rules followed in jails to ensure discipline and proper administration pursue through the classification made between various prisoner i.e. between civil and criminal prisoners, casual and habitual offenders, and convicted and the under trial prisoners. The research study shows the various measures that need to adopt for the development of prisons in India. The study shows variety of approaches embraced by numerous countries for the improvement and to bring transformation in the current system governing prisons and prisoners.

KEYWORDS: Prisons, Reformation, Imprisonment, Social Change.

INTRODUCTION

"The degree of civilisation in a society can be judged by entering its prisons." -Fyodor Dostoevsky

India is the largest democracy in the world not only for name sake. There are free elections, freedom of speech and expression, independent judiciary, an outspoken media, multi-party parliamentary system, various non- governmental organisations all of which contributes to a healthy and empowered civil society. Despite the checks and balances the conditions of Indian prisons are an indication that something is going wrong.

The prison population of India is towards an upward trend since 2000. In the year 2015 the total prison population was 420,000 making India fifth in terms of prison population in the world. In spite of the fact that India is the world's second most populous country it has the lowest prison population rate, 33 per 100,000 of national population. But the occupancy rates of Indian prison are extremely shocking. The Supreme Court of India went up to the extent of saying that we should release the prisoners if the States are unable to keep them properly. This statement was made by the court when it was shocked to know that many of the 1,300 prisons across the country were overcrowded even to the extent of more than 600 percent. These are not mere numbers, they are the projection of real picture of Indian prisons. In addition to overcrowding there are issues of non-fulfilment of basic necessities and gross violations of human rights of prisons. Lack of proper food, medical facilities, sanitation, water supply, torture by jail staff and inmates are issues which need redressal. It is extremely important to understand more the prisoners are mentally and physically harassed greater criminals they would become. The idea to reform them through imprisoning them will never be served in such situations. With such inhuman conditions Indian prisons are often termed as universities to train criminals.

The idea behind prisons is to reform the criminal so that he abstains from committing crime in future. The nexus of the problem is that merely restricting him and exposing him to harsh treatment won't prevent him from committing crime. Instead a total psychological change in him needs to be brought to curb his criminal mindset. This change can never be brought by giving him

¹ See: Prison Evidence of its use and over- use around the world by Jessica Jacobson, Catherine Heard, Helen Fair Institute of Criminal Policy and Research, http://www.prisonstudies.org/sites/default/files/resources/downloads/global imprisonment web2c.pdf (Last accessed on 10.04.2020).

² See: World Prison Brief by Institute of Criminal Policy and Research, http://www.prisonstudies.org/country/india(Last accessed on 10.04.2020).

³ Supreme Court shocked at over 600 percent overcrowding in jails by Press Trust of India, https://timesofindia.indiatimes.com/india/supreme-court-shocked-at-over-600-per-cent-overcrowding-in-jails/articleshow/63546393.cms (Last accessed on 10.04.2020).

harsh treatment. Because of the harsh treatment they are subjected to a sense of hatred develops in them which drags them towards crime.

India has been working to reform its prisons since independence. Various committees have been setup who have highlighted the need to humanization of conditions of prisons. But less have been achieved till now. For actual realization of India's commitment towards protection of human rights reforms in prisons is required. India should work to become an ideal for the world in the way it treats and reforms its prisoners.

HISTORICAL BACKGROUND

The prison reforms were worked on to from British period. In 1835 a Discipline and Inquiry Committee was established with TB Macaulay as its member. The committee submitted its report in 1838. The committee highlighted the issue of corruption in the jail administration and it mainly recommended for establishment of Central Jails. The committee also recommended for increased harsh treatment and rejected all humanitarian needs and reforms of prisoners. The second Commission for Inquiry and Discipline was made in 1864 which gave similar recommendations as the earlier committee. It also gave recommendation for improvement in food, clothing, conditions of accommodation and medical facilities.⁵ In the year 1877 a Conference of experts were held to inquiry into prison administration. It suggested the need for legislation and gave a draft on it. The Fourth Jail Committee was formed in 1888 on whose recommendation a draft was formulate. This bill became the law in 1894 with Viceroy assent.⁷ The contemporary prison administration of India is governed by this Act without any substantial change to the Act. But the review of prison reforms continued. In 1919-20, the Indian Jail Committee in its report for the first time in the history of prison reforms talked about reform and rehabilitation of prisoners as an objective of prison. The enactment of Government of India Act 1935 resulted into transfer of the subject of prisons to Provincial Governments. This eliminated the possibility of national legislation on the subject.

After the independence *Pakwasa* Committee was established for prison reforms in 1949. It recommended that without any substantial supervision on the prisoners their labour should be used to construct roads. After this the concept of wages to prisoners for their work was introduced. The prisoner's punishment was also remitted on the ground of their good behaviour. In 1951 the

⁴ http://parliamentlibraryindia.nic.in/writereaddata/Library/Reference%20Notes/Prison_reforms_in_India.pdf (Last accessed on 10.04.2020).

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⁶ A Social-Legal study of Prison by Priyadarshi Nagda http://shodhganga.inflibnet.ac.in/bitstream/10603/147761/1/priyadarshi%20nagda.pdf (Last accessed on 10.04.2020).

⁷ Supra 4.

Government of India invited United Nations experts to give their recommendations for prison reforms. The Committee suggested for transforming jails into reformation centres. On the basis of the Committee's recommendations the Government of India in 1957 appointed *Mulla* Committee to formulate model prison manual. The committee submitted its report in 1960. The manual of 1960 acts as guiding principle for jail administration in India till now.⁸ The Home Ministry has after this has updated the manual many a times to include important provision. The last time prison manual was updated in January, 2016.⁹

The Government of India set up a *Mulla Committee* in 1980 for prison reforms. This committee submitted its report in 1983. It gave pertinent suggestions like improvement in the conditions of jails by providing proper food, clothing, sanitation. Training of jail officials and their organisation in different cadres and establishment of All India Service called Indian Prisons and Correctional Service. The under-trail prisoners should be reduced to bare minimum and kept separately from convicts. Easy access of press and public to jail so that first hand information of conditions of jails can be obtained. The Government shall endeavour for allocation of adequate financial resources to jails.¹⁰

The Government also had set up *Krishna Iyer* Committee in 1987 to study the conditions of women in jails. The Committee recommended for recruitment of more women staff in jails to handle women and child offenders.¹¹

An attempt was made to repeal 1894 Prison Act and bring in a new legislation in 1998 on the direction of Supreme Court in the case of Ramamurthy v. State of Karnataka¹² to bring a uniformity in prison laws and prepare model prison manual. The new bill was never passed.¹³

PROBLEM IN PRISON

Overcrowding - Supreme Court was shocked to hear in May, 2018 that many of the 1,300 prisons across the country are overcrowded even to the extent of more than 600%. ¹⁴ In a recent TEDx talk Smita Chakkarburrty a prison researcher who has interacted with 30,070 prisoners in Bihar jail, described prisons so overcrowded that the inmates had to tie themselves to the bars to sleep because there was no space to lie down. ¹⁵ The Human Rights Watch, 1991 report mentioned

⁸ Ibid.

⁹ http://pib.nic.in/newsite/PrintRelease.aspx?relid=134687 (Last accessed on 10.04.2020).

¹⁰ Supra 4.

¹¹ Ibid.

¹² Ramamurthy v. State of Karnataka, A.I.R. 1997 S.C. 1739.

¹³ Supra 4.

¹⁴ Supra 3.

¹⁵ Why Open Prisons Are The Solution To India's Overcrowded Prisons by Charu Bahri on Sepetmeber 21, 2018, link; https://www.indiaspend.com/why-open-prisons-are-the-solution-to-indias-overcrowded-prisons/(Last accessed on 10.04.2020).

overcrowding in jails as a big problem. On the basis of Jail Committee report of 1980-83 it stated that the confinement of under trials in prisons is the major cause of overcrowding. The Jail Committee of 1980-83 stated that the prisons were so overcrowded that the prisoners had sleep in shifts. The Jail Committee of 1980-83 stated that the prisons were so overcrowded that the prisoners had sleep in shifts.

As mentioned above the major reason of overcrowding is confinement of undertrials in the prison. This was the cause in 1980 and continues till now. According to Prison Statistics 2015, the total capacity of Indian jails is to accommodate 3,66,781prisoners whereas it is accommodating 4,19,623 prisoners out of which 2,82,076 prisoners are undertrials that accounts for 67.2% of the total inmates.¹⁸

Lack of proper Medical Care – Lack of space caused due to overcrowding results into mental and physical torture of inmates. They also create lack in sanitation facilities and results into diseases caused to inmates which are rarely treated due to lack in proper medical care. Kazi et al mentions Indian prisons to be great avenues of infectious diseases. The Jail Committee of 1980-83 mentioned the pathetic conditions of the cells. It mentioned that most of latrines in jails were not having proper water supply, in some cells the only pots were kept to attend natural calls. Many latrines were not available in night so many of them available used to overflow at night. These unhygienic conditions lead towards infectious diseases to inmates. The second conditions lead towards infectious diseases to inmates.

The Human Rights Watch Report of 1991 states that the inmates who were exposed to such unhygienic conditions when used to fall ill. They were attended by a doctor who was the king in prison. He used to give medicine which used to reduce pain or fever. He used to prescribe nutritious food like fruits, egg, milk, meat to those who were to pay him. The report also stated that the ones who were taken to hospital were also not lucky because of the lack of infrastructure and medical staff at the hospital.²¹

Torture- Torture is routine activity in jails.²² Although the Indian law considers extra judicial confession as inadmissible but still the police tortures the accused to the extent that many times they die in the custody. According to a brief by People's Union for Democratic Rights in 1990 there were 48 custodial death in the time span of 1980-1990 in the city of Delhi, where less than 1% of the national population lived. The brief alleges that the death was due to severe beating and

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¹⁶ Human Rights Watch , 1991 link; https://www.hrw.org/sites/default/files/reports/INDIA914.pdf (Last accessed on 10.04.2020).

¹⁷ Report of All India Committee on Jail Reforms, Para 3.7 p.21 (Vol. I 1980-83).

Prison Statistics 2015 by National Crime Record Bureau http://ncrb.gov.in/statpublications/psi/Prison2015/Full/PSI-2015-%2018-11-2016.pdf (Last accessed on 10.04.2020).

¹⁹ International Journal of Infectious Diseases, 14, e60-e66.

²⁰ Report of All India Committee on Jail Reforms, Para 3.7 p.21 (Vol. I 1980-83).

²¹ Report of Human Rights Watch, p-38 (1991).

²² Ibid.

prolonged torture. It mentioned that whenever the any person is brought to the police station in connection with an offence he is subjected to severe beating and torture. Sexual abuse designed not only to hurt but humiliate. The torture is to the extent that they die.²³ The report shows instances and experience of doctors where they are pressurised by police to issue a death certificate stating natural death of such prisoners.²⁴ According to Prison Statistics 2015 by National Crime Record Bureau a total number of 1,584 deaths were recorded in jails in the year 2015 out of which 115 were unnatural.²⁵

The problem of torture is faced by those who are unable to get a bail because they cannot afford a lawyer or they are unable to bribe the police. Corruption is the reason behind police torturing the inmates. When they get the money from the accused or his family, he is not tortured by police but the one who is unable to pay gets tortured.

Women in Jails- Many women in jails are sexually abused and raped by the police officials. The Prison Statistics of 2015 do not mention any data related to custodial rape, but they occur. The Report of Human Rights Watch, 1991 states that it is impossible to assess the frequency of custodial rape, but one indication is that the Delhi police themselves acknowledges the 14 cases in which 24 police officials were accused and suspended or dismissed between the period of 1988 to 1990.

Krishna Iyer Committee of Jail Reform suggested to have more women officer's recruitment for tackling women and children.

Non-Separation- There is no separation of under trials from convicts, convicts of petty offences and serious crimes, male prisoners and female prisoners. According to Standard Minimum Rules for the Treatment of Prisoners 1955 by United Nations under trials must be kept separated from convicts, female from male, juvenile from adults' offenders, civil offenders from criminal offenders.²⁶ But little have been achieved.

SUGGESTIONS

The overcrowding in jails can be tackled by reducing the under trials to bare minimum.²⁷ The speedy trail of the under trails is necessary. Apart from this *Open Jails* can serve the problem of overcrowding as well as reformation and rehabilitation of prisoners. According to Prisons Statistics 2015 the open prison in Rajasthan are amongst the best practices in prisoner's welfare and

²⁴ Ibid.

²³ Ibid.

Prison Statistics 2015 by National Crime Record Bureau, http://ncrb.gov.in/statpublications/psi/Prison2015/Full/PSI-2015-%2018-11-2016.pdf (Last accessed on 10.04.2020).

²⁶ http://www.refworld.org/docid/3ae6b36e8.html (Last accessed on 10.04.2020).

²⁷ Supra 4.

rehabilitation.²⁸ The inmates at the open jail of Udaipur run their small business like a tea stall and return to jail in the evening. They are allowed to live with their families in the jail. Many of them are murder and rape convicts. According to the report they do not pose any threat to the society and they intend to continue their work after their sentence is completed an aspire to live a peaceful life. The eligibility criteria for open jail is the convicted should have completed one third part of his total sentence and has been found to show good conduct on his part.²⁹

Open jails provide for social assimilation and financial independence to the prisoners before their sentence is completed. Open jails also prove out to be beneficial even to the State because the cost occurred on the maintenance of the prisoner can be taken out from the income of the prisoners. Rajasthan aspires to open two open jails per district because the cost of maintaining a Central Jail at Jaipur was fourteen times expensive as compared with its open jail at Sanganer town.³⁰

Overall 1in 45 prisoners in Rajasthan's open jail absconded on parole or escaped, whereas all India figures for closed prison is 1 in 481 as per 2015 data.³¹ Supreme Court in December, 2017 directed the States to establish one open jail in each district³² and in May, 2018 directed them to utilise the open jails to full capacity³³.

Denmark is also a great example of open jails.³⁴ The prisoners in Denmark cook their own food, wear their own cloth and meet their families once a week. The recidivist rate in Denmark is relatively lower static around 27% almost half the rate of average recidivism across various U.S. jurisdictions.³⁵Although the recidivism rate of India is low around 7.8% but it has been on an increase from past years according to NCRB.³⁶

Apart from this there shall be separation of male and female offenders. The convicts of petty offences shall be kept separately from offenders of serious crimes.

The Central and State governments shall work to ensure that no torture of the prisoners is done by police officials. It is important to understand that prisoners are no less humans and should be

²⁸ Supra 15.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Change mindset, set up open jails, advises Supreme Court by Amit Anand Choudhary on December 20, 2017, https://timesofindia.indiatimes.com/india/sc-favours-open-jail-as-a-reformative-measure-for-prisoners-asks-centre-to-study-its-feasibility/articleshow/62137822.cms (Last accessed on 10.04.2020).

³³ Supra 15.

³⁴ Denmark does not treat its prisoners like prisoners and its good for everyone by Keramet Reiter, Lori Sexton and Jennifer Summer on February 2, 2016, https://www.washingtonpost.com/posteverything/wp/2016/02/02/denmark-doesnt-treat-its-prisoners-like-prisoners-and-its-good-for-everyone/?noredirect=on&utm_term=.3ae2ccdc4eb0 (Last accessed on 10.04.2020).

³⁵ Ibid.

³⁶ Rate Of Recidivism on rise: NCRB by on August 23, 2015, link; https://timesofindia.indiatimes.com/city/hyderabad/Rate-of-recidivism-on-the-rise-NCRB/articleshow/48637317.cms (Last accessed on 10.04.2020).

treated with dignity. Proper space, food, clothing, sanitation and medical facilities should be given to them. The police officials must be trained to handle the prisoners with humanity. Corruption in the police department must be controlled.

The children of the female offenders who live with them in the jails or are born in jail should be given proper care. There mental and physical needs are to be looked after. It important to stop treating the prisoners differently i.e. the one who pay tax, one is political prisoners etc. All the prisoners must be treated equally. All of them must be given educational and vocational training. Have access to newspapers and television for informative shows. The prisoners should be given training in yoga and meditation. This will help them in attaining peace of mind and also reform them.

CONCLUSION

Supreme Court on September 25, 2018 constituted a committee headed by its former judge Justice Amitava Rao to inquire into jail reforms across the country and suggest measures to handle them.³⁷ One more committee in row of the prison reforms. As one looks on to the recommendations made by various Jail Reform Committees, how many recommendations have been implemented till now; very few. Establishment of committees is not the need; the need is to implement those recommendations given by earlier committees. The Government needs to understand that prisoners are humans too and provide them basic facilities. More financial resources should be allocated to prisons so that proper facilities can be given to the inmates.

Reformation of prisoners should be the objective of the prison. Rehabilitation and reformation of prisoner are necessary to reduce crime, providing them a better life after their sentence is completed. Reading international reports like Human Rights Watch 1991 on condition of prisons in India shocks the conscience of an individual. These reports show gross human rights violations which are committed inside jails by police officials who are appointed for the safety and security of citizens. The police official's inhuman treatment with the prisoners need to be curbed.

Examples like Udaipur should be set all over the country so that India becomes an ideal for different countries of the world for its prison conditions and administration.

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³⁷ Supreme Court constitutes committee to look into prison reforms by PTI on September 25, 2018, link; http://www.newindianexpress.com/nation/2018/sep/25/supreme-court-constitutes-committee-to-look-into-prison-reforms-1876897.html (Last accessed on 10.04.2020).

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