

“A Critical Study of Prison Reforms in India”

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ABSTRACT

This Research work is intended to study “ A Critical study of Prison Reforms in India” as one of the growing need for an integrated criminal justice system and it has added fuel to the already burning issue of Prison Reforms.

This Research work opens with a brief review of the History of Prisons in India and of the integrative theory of Penology. A view of punishment that takes into account of retribution and deterrence but emphasizes correction, reformation and rehabilitation. The Researcher defines the concept of the Prison as a place where treatment takes precedence over custody is said to be the foundation for Prison Reform. Because the main obstacle to Prison Reform in India is Overcrowding. It is first recommended that prison populations be reduced by establishing Local Custodial facilities for unconvicted offenders and by using community treatment alternatives to minimize short term prison sentences .If these steps are taken, the prisons can devote their efforts to organizing and planning for long term inmates.

Thus this further study looks at the prior independence as well as post independence of Prison Reforms, present status of Prisons, Recent trends in Prison reforms and judicial trends related to Prison Reforms in India.

The Researcher has mainly referred to the secondary sources available in the form of websites as well as books for the purpose of preparing the research work.

KEYWORDS

Prison, Overcrowding, Correctional Reform, Rehabilitation, India

I INTRODUCTION

In the words of **Nelson Mandela**, “a nation should not be judged by how it treats its highest citizens but its lowest ones.” Mahatma Gandhi also quoted for the Prison reforms as – Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care. Punishing the offenders is the primary function of all civil societies. Prisons are known to have existed throughout the history. Prison is known by different names in different countries like correctional facilities, detention centres, jails, remand centres, etc. Prisonization personifies a system of punishment and a some sort of institutional place for convicts and undertrials during

the period of trial. There is no society without crime and criminals, that's why prison is indispensable for every country. The objective of punishment can be achieved by imprisonment.

Prisons are not normal places. The prisoners are deprived of freedom and personal contacts with family and friends and the real purpose of sending criminals to prison is to transform them into honest and law abiding citizens but in actual practice, the prison authorities try to bring out reformation of inmates by use of force and compulsive methods. Consequently, the change in the inmates is temporary and lasts only till they are in the prison as soon as they are released they again get attracted towards criminality. It is the reason that the modern trend is to lay down greater emphasis on the prisoners so that they can be rehabilitated to normal life in the community. This objective can be achieved through some techniques of Prison reforms such as Probation and Parole.

Today Prison is treated more as a correctional or improvement facility which itself indicates that there is more emphasis on reformation of prisoners in the form of punishment. To achieve this goal, a pleasant atmosphere is required to be created in jails for the benefit of inmates. Apart from emphasis on social and ethical values for integration with society after release, inmates also require educational, recreational and vocational training facilities. This will help to provide them with alternate sources of livelihood after release.

In India, prison reforms did not emerge out of the social movement but were necessarily an outcome of the worst conditions of treatment faced by the political sufferers in prisons during the period of their imprisonment.

1.1 Meaning of Prison

According to **Donald Taft** Prisons are deliberately so planned as to provide unpleasant compulsory isolation from society. A Prison characterises rigid discipline, provision of bare necessities, strict security arrangements and monotonous routine life. Life inside the prison necessarily pre-supposes certain restrictions on the liberty of inmates against their free will.

The original term of Prison is jail or penitentiary. Prison has been defined as a place properly arranged and equipped for reception of persons who by legal processes are committed to it for safe custody while awaiting trial or for punishment. A prison or jail is a facility in which individuals are forcibly confined and denied a variety of freedoms under the authority of the state as a form of punishment. Hence in its origin the prison was considered as a place of detention of offenders until trial and judgment and the execution of the latter.

Section 3 of the Prisons Act, 1894 defines Prisons as a Prison means any jail or place used permanently or temporarily under general or special orders of the state government for the

detention of prisoners and include all lands and buildings but does not include any place for the confinement of prisoners who are exclusively in the custody of the police.

II HISTORICAL BACKGROUND OF PRISONS IN INDIA

The evolution of prison system in India is very complex systems of the world to understand.

- a) Ancient Indian prison system
- b) Medieval India
- c) Modern India
- d) Prison system post independence

A well organized system of Prisons is known to have existed in India from the earliest time. It is on record that Brihaspati laid great stress on imprisonment of convicts in closed prisons. However Manu was against this system. It was a common practice to keep the prisoners in solitary confinement so as to afford them an opportunity of self introspection. During early days punishment for criminal behavior inclined to be public events which were designed to shame the person and deter others.

The object of punishment during Hindu and Mughal period in India was to prevent offenders from repeating crimes. The recognized modes of punishment were death sentence, hanging, whipping or flogging. The prisoners were ill treated, tortured and subjected to most inhuman treatment. They were kept under strict and supervision control. Thus prisons were places of terror and torture as well as prison authorities were expected to be tough in giving the sentences.

During 18th century imprisonment, with hard labour, was beginning to be seen as a suitable sanction for petty offenders. The British Colonial rule marked the beginning of Penal Reforms in India. The British prison authorities made arduous efforts to improve the condition of Indian prisons and prisoners. They introduced radical changes in the existing prison system with looking after the sentiments of the indigenous people. The prison administration who were mostly British officials, classified the prisoners into 2 heads namely – Violent and non violent prisoners. The Prison Enquiry committee appointed by the government of India in 1836 recommended for the abolition of the practice of prisoners working on roads. Adequate steps were also taken to eradicate corruption among the prisons staff. Inspector General of Prisoners was appointed for the first time in 1855 who was the Chief Administration of Prison in India. His main function was to maintain discipline among the prisoners and the prison authorities.

Conditions of Prisoners were harsher than animals in India and prisoners were treated with hatred. There was no uniform civil code to give punishment. The meaning of the punishment

itself was to crush the prisoner. Jailors were also cruel persons. But in 1835, some thought of reformation arose.

The second jail enquiry committee in 1862 expressed concern for the unhygienic conditions of Indian prisoners which resulted into death of several prisoners due to illness and disease. It emphasized the need for proper food and clothing for the prison inmates and medical treatment of ailing prisoners.

Prisoners Act was enacted to bring uniformity in the working of the prisoners in India. The act provided for classification of prisoners and the sentences of whipping was abolished. The first half of the 19th century represented a watershed in the history of state punishment. Capital punishment was now regarded as an inappropriate sanction for many crimes. The 19th century saw the birth of the state prison with introduction of many models.

III CLASSIFICATION OF PRISONERS

Prisoners can be categorized in three manners as under :-

3.1 Pre Trial Prisoners

3.2 Under trial prisoners

3.3 convicted prisoners

3.1 Pre trial prisoners

Pre trial prisoners are the accused, detained who are under the custody of the state for the purpose of interrogation and investigation based on FIR or evidences found during the investigation. They are in the custody of state for very limited period.

3.2 Under Trial Prisoners

Under trial prisoners are the prisoners who are in the Judicial custody i.e jail awaiting the trial in their case. Their charge-sheet may or may not have been prepared by the police authority or judiciary.

3.3 Convicted Prisoners

Convicted prisoners are the prisoners who are found to be guilty of some particular offence which is committed by him after due process of law. They are punished by the competent court as a penal action to be kept in prison.

IV PRISON REFORMS IN INDIA

4.1 Historical Aspect

Prison Reforms – prior independence

The modern prison system in India was originated by TB Macaulay in 1835. A committee namely Prison Discipline committee 1836 was appointed which submitted its report on 1838. This committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. After the recommendation of Macaulay committee between 1836-1838, Central Prisons were constructed from 1846. The contemporary prison administration in India is thus a legacy of British rule.

In 1864, the 2nd commission of inquiry into jail management and discipline made similar recommendations as the 1836 committee but in addition this commission made suggestions regarding accommodation for prisoners, improvement in diet and medical care.

The Indian Jail Reforms committee 1919-20 was appointed to suggest measures for Prison Reforms, which was headed by Sir Alexander Cardio. As a measure of prison reform, the jail committee further recommended that the maximum intake capacity of each jail should be fixed, depending its shape and size.

A Jail Reform committee, 1946 was constituted in the year 1946 for the formation of the jails. This committee gave the suggestions as the child offenders should be treated differently, modern jails should be constructed and the classification of offenders should be women offenders, habitual offenders, handicapped offenders.

Prison reforms – After independence

After independence of India, the work on the reformation of jails speeded up. So in 1956 the punishment of transportation was substituted by the imprisonment for life.

In 1949 Pakawasha committee gave the permission to take work from the prisoners in making the roads and for that wages shall be paid. After that there was a recommendation on prison reforms in 1951 by Dr. W.C. Reckless (Technical Expert). Later on the committee was appointed to prepare an All India Jail Manual in 1957 on the basis of suggestions made by Dr. W.C. Reckless.

The Govt. 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 committee was asked to examine the problems of prison administration and to make suggestions for improvements to be adopted uniformly throughout the India.

The All India Committee on Jail Reforms 1980 -83 was constituted by the government of India under the chairmanship of Justice Anand Narain Mulla. The basic objective of the committee was to review the laws, rules and regulations.

In the year 1986, A Juvenile Justice Act was enacted and observation homes, special homes and juvenile homes were constituted where the neglected children and juvenile delinquent can be admitted and the juvenile delinquent cannot be kept within the prison.

In 1987, the Government of India appointed the Justice Krishna Iyer Committee to undertake a study on the situation of women prisoners in India.

4.2 Modification in Prison Administration

The condition of modern prison system is far more better than that in the past but still much remains to be done in the direction of prison reforms for humane treatment of prisoners.

The following modification in prison administration can be suggested for improving the efficiency of these institutions are :

4.2.1 The offenders should be confined to prison for only a minimum period which is absolutely necessary for their custody. The elimination of long term sentences would reduce burden on prison expenditure.

4.2.2 The women prisoners should be allowed to meet their sons and daughters more frequently and should be more liberal in case of under trial prisoners. It will keep them mentally fit. Women offenders should be handled only by women police or prison officials as well as the idea of setting up of separate women jails exclusively for women prisoners.

4.2.3 The under trials, minors and first offenders should be kept separated from each other. The young prisoners also should be separated from adults.

4.2.4 There is need for scientific classification of prisoners based on the nature of crime committed, age , sex and character.

4.2.5 The Prisoners belonging to peasant class should be afforded an opportunity to go to their fields during harvesting season on temporary ticket on leave so that they can look after their agriculture.

4.2.6 Though the prisoners are allowed to meet their near relatives at fixed intervals yet there is a further need to allow them certain privacy during such meetings. The rights of the prisoners to communicate and meet friends, relatives and legal advisers should not be restricted beyond a particular limit.

4.2.7 The auspicious days and festivals should be celebrated through rejoicings and other meaningful programmes so that the prisoners can at least momentarily forget that they are leading a fettered life.

4.2.8 In recent decades the Supreme Court has shown deep concern for prisoners right to justice and fair treatment and requires prison officials to initiate measures so that prisoners basic rights are not violated and they are not subjected to harassment and inhuman condition of living.

4.2.9 Women prisoners should be provided training in tailoring, doll making, embroidery, etc. The prisoners who are well educated should not be subjected to rigorous imprisonment instead they should be engaged in some mental as well as manual productive work.

4.2.10 There is a dire need to bring about a change in the public attitude towards the prison institutions and their management. This is possible through an intensive programmes using the media of press. The media men should be allowed to enter into prison so that their misunderstanding about prison administration may be cleared. It will certainly create a right climate in society to accept the released prisoners with sympathy without any hatred for them.

4.2.11 The Supreme Court, in its landmark decision in **Ramamurthy v. State of Karnataka (1997) 2 SCC 642**

This case identified **nine major problems** which needed immediate attention for implementing prison reforms.

- A) Overcrowding
- B) Delay in trial
- C) Torture and ill treatment
- D) Neglect of health and hygiene
- E) Insufficient food and inadequate clothing
- F) Deficiency in communication
- G) Management of open prisons

4.3 Prison and Prison Laws in India

Prison is a state subject under List- II of VIIth schedule in the Indian Constitution. The management and administration of prisons falls exclusively in the domain of the state governments and is governed by the Prisoners Act, 1894. Therefore the states have the power to

change the current prison laws, rules and regulations. **The important statutes of the Prison laws in India are as follows –**

- i) The Indian Penal Code, 1860
- ii) The Prisons Act, 1894
- iii) The Prisons Act, 1900
- iv) The Identification of Prisoners Act, 1920
- v) The constitution of India, 1950
- vi) The Transfer of Prisoners Act, 1950
- vii) The Representation of People Act, 1951
- viii) The Prisoners (Attendance in courts) Act, 1955
- ix) The Probation of Offenders Act, 1958
- x) The Code of Criminal Procedure, 1973
- xi) The Mental Health Act, 1987
- xii) The Juvenile Justice (care & Protection) Act, 2000
- xiii) The Repatriation of Prisoners Act, 2003
- xiv) Model Prison Manual, 2016

4.4 Techniques of Prison Reforms

The desired goal of reformation or rehabilitation of criminals is achieved through various tools and techniques in the institution of jail. Some such tools and techniques of prison reforms are as follows :

4.4.1 Probation

The word Probation is a very significant tool of reformatory penology; it is basically a period during which the convict ordered to undergo sentence remains, instead of being in prison, under supervision.

The release of the convict on probation serves as a reformatory treatment plan prescribed by the convicting court and in the course of this treatment, the conviction on probation lives within his

community and modulates his own life under conditions imposed by the court and remains under the supervision of a probation officer.

4.4.2 Parole

Parole is the release from a penal reformatory institution of a criminal who remains under the control of correctional authorities in an attempt to find out whether he is fit to live in the free society without supervision. It is thus the last stage in the correctional scheme of which probation may probably be the first. After the careful study as well as showing the potential for correction he is allowed to join the society conditionally.

4.4.3. Furlough

Furlough is another reformatory tool that is often confused with parole. Undoubtedly, parole and furlough are reformatory tools of the penal system but both are different. Furlough must be granted to the prisoner periodically irrespective of any particular reason. The object behind this tool is merely to enable him to retain family and social ties and avoid negative effects of a continuous prison life. The period of furlough is treated as remission of sentence.

4.4.4 Pardon

The term pardon as an act of mercy by which the prisoner is absolved from the penalty which was imposed on him, the grant of pardon may be absolute or conditional. In India, there are certain provisions which are contained in **Article 72** and **161** of the Indian constitution provides that the President of India and the Governors of the states respectively are empowered to grant pardon, reprieve or commute the sentence of any convict.

4.4.5 Open Prisons

Open prisons also named as open air camps, open jails are another significant tool of criminal reformation. Open prisons institutions are essentially a 21st century device for rehabilitating prisoners to normal life in the society through an intensive after care programme. They provide work to the inmates in forests, agricultural farms and construction sites instead of allowing them to be idle inside the prison cells. These prisons play an important role in the scheme of reformation of a prisoner which has to be one of the criteria of reformatory management.

In India, the **1st open prison** was started in the year 1905 in **Bombay presidency**, however this open prison was closed in 1910. Thereafter in the year 1953, **Uttar Pradesh** established the first open prison in India.

4.4.6 Self governance by inmates

Under the system of self government in prisons, the inmates elect some of their fellow prisoners as their representatives and the entire prison management is run by that elected body of prisoners, who exercise complete or at least partial control over mess and are expected to take care of the interests and welfare of their fellow prisoners.

4.4.7 Work Release

Work release is considered to be a very effective reformation tool in modern criminal justice. In this method, the prisoner is allowed to work for pay in the society for part time basis. This gives him an opportunity to mix up with the society in a normal manner without any limitations. This helps the prisoners to adjust in the situation at the work place after the release.

4.4.8 Vipassana

Vipassana is a straightforward way to achieve peace of mind and to live a happy useful life. The 1st Vipassana course in a prison took place in Jaipur, India in 1975. However it was only after almost 20 years that Vipassana established itself as a tool for social and prison reform in the 1990's, it was with this purpose of dealing with the emotional and psychological problems of prison inmates, it became an integral part of the prison which helped in building community as well as developing their personality in a positive manner.

4.5 General Issues related to Prison Reforms

There are certain general issues which are related to Prison reforms are as follows:

4.5.1 Mulaqat System

The system of Mulaqat i.e family meetings of prisoners in jail needs to be taken seriously as it is an extremely effective but unexploited tool of reformation although the prisoners are allowed to meet their near relatives at fixed intervals, the mulaqat is for very short time and in very uncomfortable atmosphere with no privacy during such meetings. The meetings under the supervision of prison guards are really embarrassing for prisoner as well as the visitor for want of privacy. The right of the prisoners to communicate and meet friends, relatives and legal advisers should not be restricted beyond a particular limit.

4.5.2 Celebration of festivals and other ceremonies

It is opined by the reformers that the system of limiting the scope of festivals and other ceremonial occasions merely to delicious dishes for prisoners needed to be changed by bringing in celebrations through rejoicings and other meaningful programmes so that the prisoners could at least momentarily forget that they are leading a fettered life.

4.5.3. Communication by post or mail

The existing rules relating to the restrictions and scrutiny of postal mail of inmates should be liberalized. This shall infuse trust and confidence among inmates for the prison officials, most of the times the only excuse presented by the prison authorities in support of such restrictions is that the same is done in the interest of security of the prison.

4.5.4 Education and skill training

The continuing education of prisoners is yet another tool that keeps them occupied and also would help their rehabilitation after release from jail. There should be greater emphasis on vocational training of inmates which will provide them honourable means to earn their livelihood after release from jail. The objective is to enable them to gain the skills and qualifications that could help them the employment on release.

4.5.5 Spiritual trainings

Some penologists have advocated the need for spiritual training of the prisoners, which is certainly a positive step towards reformation. It is strongly believed that the practice of yoga and meditation can enable the prisoners to control their mind and also bends the negative temperament to positive one. This approach to prison reforms will surely bring about a positive change in the attitude of prisoners and help in their rehabilitation.

V JUDICIAL TRENDS

The Indian Judicial system has played a significant role in the direction of prisoners and also to ensure safety and security of the people in custody or inmates are as follows with the help of deciding Case Laws :

5.1 Sunil Batra v. Delhi Administration AIR 1978 SC1675

The Apex court held that Prisoners are entitled to all fundamental rights which are consistent with their incarceration.

Emphasizing the need for humane treatment of prisoners and protection of their basic human rights, the Supreme court in Sunil Batra II (1983) 3 SCC 488, observed as follows :-
“Fundamental rights do not flee the persons as he enters the prison although they may suffer shrinkage necessitated by incarceration.”

Outlining the substantive and procedural rights to which the prisoners are entitled, the Apex court said : “ Infliction may take many protean forms apart from physical assaults. Pushing the prisoner into a solitary cell, denial of necessary amenity and more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of

degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affiliation or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained.”

5.2 D. K. Basu v. State of West Bengal 50 AIR 1997 SC 610

It was held that, the information of arrest is required to be given to the friend or relative of accused immediately, while he is arrested. The purpose is very clear that, by this communication the relative or friends of accused can start the efforts to know the facts of accused, to obtain the legal advice and take the defense against an application for remand and do the necessary preparation for bail.

5.3 Rudal Shah v. State of Bihar 1983 AIR 1086

It was held that, if the trial against a prisoner concludes into acquittal the prisoner is entitled as a matter of right to be released forthwith. After an order of acquittal, he cannot be detained behind the prison walls.

5.4 Sanjay Suri v. Delhi Administration (1988) Cr LJ 705 (SC)

The Apex Court held that the prison authorities should change their attitude towards prison inmates and protect their human rights for the sake of humanity.

5.5 Sheela Barse v. State of Maharashtra AIR 1983 SC 378

The Supreme Court on a complaint of custodial violence to women prisoners in jails, directed that those helpless victims of prison injustice should be provided legal assistance at the state cost and protected against torture and maltreatment.

The court also held that interviews of the prisoners become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated.

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

The court directed the state government to allow family members to visit the prisoners and for the prisoners at least once a year, to visit their families under guarded conditions.

5.7 Re Inhuman Conditions in 1382 Prisoners case

The Counsel for the Petitioner filed before the Supreme court of India under Article 32 of the Indian Constitution to address the status of Prison reforms in India and to issue directions, if necessary for prison reforms. The Prisoners are no less human than others and therefore must be treated with dignity. The Supreme court of India recently on March 14, 2016 delivered a landmark judgment which regard to the legal and constitutional rights of prisoners in India

especially the under trial prisoners. In compliance of the court's directions the Model Prison Manual 2016 provides for establishment of under trial review committee consisting of Secretary, district service legal authority along with the district judge, as chairperson, the district magistrate and the district superintendent of police.

VI SUGGESTIONS

6.1 Media's Role : There should be regular visits by the media and press to study the condition of the inmates and these reports should be published and the plight of prisoners should be highlighted by media.

6.2 Institutional Publication : There should be some institutional publication in every correctional system in which inmates should be allowed to express themselves freely.

6.3 Regular transfer of jail officials : There should be a regular transfer of the authorities of a Jail, so that these officials do not get involved in corrupt and torturing activities.

6.4 Strict implementation of bail provisions : The provision of no bail in jail should be implemented in letter.

6.5 Fine cases : In the case of default in paying fine there should be a provision that the person who is not able to pay fine should be allowed to pay it in installments.

6.6 Effective legal service : Should be provided to the prisoners as an effective legal service in every jails to guide the prisoners in the legal matters.

6.7 Pregnant women inmates : There should be special care for the pregnant woman inmates in the correctional systems. Lady doctor should be appointed by the government as permanent staff in the prisons.

6.8 Judicial surveillance : Every District Judge should be given the responsibility of visiting the prison in his area of jurisdiction. This would put check on the various activities which usually go on in prisons and it will also help in curbing the menace of corruption in the prisons.

VII CONCLUSION

At last by a concluding point that the Prison system has granted a mission to reform the convicts and take them back to the society. An ideal prison must provide adequate work, vocational training and basic educational facilities as well as medical and recreational facilities.

In India, prison reforms did not emerge out of the social movement but were necessarily an outcome of the worst conditions of treatment faced by the political sufferers in prisons during the period of their imprisonment.

The India Judiciary has played a vital role for the improvement of the Prison system in the past and hopefully the decisions given by the Apex court in the present case would further help in reducing some of the existing problems in the current prison system. Thus it can be ended that it is just the beginning of a long journey as well as a small step towards better prison system management and administration.

Therefore this study gives to understand the Prison Reforms by looking into the Prison reform as it is not just about prison buildings but what goes on inside them that needs to be changed and the focus must be on the human rights of prisoners besides improving their amenities.

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