

# **Prisons Reforms in India: A Critical Study on The Inhumane Conditions Prevailing in Indian Prisons**

*by*

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## **ABSTRACT**

*In India, The Prison System is seen as the place for deterrence, reformation and rehabilitation. At the same time all the above-mentioned theories are put in for a toss when it comes to maintenance of the prisons for human co-habitation. The improper maintenance have led to problems like over-crowding of prisoners, unhygienic living conditions, inadequacy of prison guards and lack of speedy trials. At a crucial time, such as the current spread of pandemic in India, the prisoners and the guards are left with very little safeguarding infrastructures and requisite space.*

*Trials through video-conferencing, hygienic kitchens, effective legal aid and adequate police personnel are some of the recommendations put forth by The Amithava Roy Committee<sup>1</sup>, that is yet to be approved by the respective States, owing to their inability to bring a standard maintaining procedures in accordance with the committee's recommendations. At the least, the ratio of adequate guards in proportion to the number of prisoners will mitigate the issues to some extent. For this, the immediate requirement is for the State to actively involve itself in recruiting more guards, so that the prison management becomes efficient and saturated. Prisoners are human beings too, and their basic rights to live in a humane condition is undeniable. On the other hand, the Police personnel who are left to maintain the prisons with very limited infrastructure and manpower also face inhuman treatment because of the State functionaries' incapacity and inability. The paper aims to study the background of prisons and its management in*

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<sup>1</sup> Three-member committee constituted on September 25, 2018 under the directions of Supreme Court

*India, along with future prospects on how things can change for better. The author has also tried to compare the Indian scenario with that of other developed countries, so that we become aware on how to improvise the existing situation and provide for better living conditions to the Prisoners and their Guards.*

**Keywords:** Prison, Inhuman living conditions, Human Rights Violation, Prison Management, Pandemic in Prison.

## **1.0.INTRODUCTION**

The word “Prison” gives the laymen a sense of a secluded place of confinement meant for the wrong-doers of the society –that place which punishes them for their deeds by isolating them from their family, home and the pleasures that is available in a free society thereby restricting their rights. But, in actuality ‘imprisonment’ as a deterrent measure is for the purpose of rehabilitating persons, who have committed wrongs or crimes, by confining them in an authorized and standardized setup so that they are reformed and shall be reintegrated back into the society as better human beings. Once, a political theorist had rightly pointed out that prisons were formed by law to keep down ‘few desperate men in society’. Imprisoning or confinement of a person has been in practice from times immemorial and the evolution of Prison Reforms has been comparatively a very gradual process that has only recently gained some momentum and societal awareness.

### **1.1.OBJECT OF STUDY**

The paper aims to critically analyze the status of Indian prison’s infrastructure and facilities and its impact on the inmates mentally and physically.

### **1.2.SIGNIFICANCE OF STUDY**

A prison is an inevitable abode for wrongdoers, either actual or suspected. But, considering the fact that prisoners are also human being with inherent and inalienable rights, it is important to assure that prisons should act as rehabilitative and reformatory place. Rather, in recent times records have shown that Prison atmosphere is turning inmates into mere hardened criminals and that is alarming.

### **1.3.HYPOTHESES**

Indian Prisons requires upgradation in terms of international standards.

The problems of over-crowding, under-nourishment of prisoners and integration of hardened criminals with under trials has resulted in the reformation concepts of Prisons.

#### **1.4.METHODOLOGY**

The methodology adopted for conducting the study is purely doctrinal. The research paper has adhered to references from several Textbooks, Article, Journals and other news reports.

#### **2.0. PRISONS DURING PRE - INDEPENDENT ERA**

In India, during the British rule Lord Macaulay, head of the Legal Council, had then pointed out to the Governor General of India Lord William Bentick<sup>2</sup> that the prisons in India were maintained at a condition that was terribly inhuman. This led to the improvisations of the Prisons at a gradual pace from then on. A conference of experts was held<sup>3</sup>, which recommended pursuing a resolution to draft the Prison Bill. But, it took several years for the Bill to be enacted. Ultimately, after circulation of the consolidated Bill to several local Governments, the Bill was enacted as the “Prison Act” of 1894. This Act is still remaining in force for the purpose of Administration of Prisons and has undergone any substantial changes. Therefore, under the Act, “PRISON means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto”.<sup>4</sup>

#### **2.1.POSITION AFTER INDIA’S INDEPENDENCE:**

After independence, the Government of India in the year 1951 sought for technical assistance from the United Nations in the field of Prison Reforms, and the latter had obligingly sent an Expert on Correctional Work, Dr. W.C. Reckless to visit and study the Prison Administration in India. His report<sup>5</sup> suggested the following recommendations for the betterment of the process of Prison Reforms:

- Juvenile delinquents should not be put in the same Prison, that were meant for adults,
- Cadres of Personnel were to be specially trained to manage prison services.

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<sup>2</sup> In the Report of the Prison Discipline Committee (1836-38).

<sup>3</sup> Third All India Jail Committee, 1877.

<sup>4</sup> Part of S.3(1) of Prison Act, 1894 (Act IX Of 1894)

<sup>5</sup> Jail Administration in India, 1951

- Prison Manuals were outdated, and hence were to be revised.
- Legal substitutes were recommended in the place of short sentences.
- Probation and Revision Boards were recommended to be set up.
- Integrated department for correctional administration was called for.
- Advisory boards to help the State Governments to develop correctional programmes were called for.

Based on the above recommendations, the Government of India appointed a committee to prepare a Model Prison Manual for examining the problems of prison administration and to make improvements uniformly throughout the country. The Central Correctional Bureau was set up under the Model by the Ministry of Home Affairs in the year 1961. Later, a Working Group on Prisons presented its report in 1973, wherein alternatives to imprisonment were given as a prima facie requirement for curbing the problems of overcrowding in prisons and hygiene issues.

The Hon'ble Supreme Court had immediately after this report held that, prisoners are qualified to the fundamental rights ensured by the Constitution.<sup>6</sup> Based on this, the Government of India convened a Conference of Secretaries of all States and Union Territories<sup>7</sup>, wherein the Central Government proposed the following recommendations:—

- To adhere to the Model Prison Manual
- To setup review committee for under trial prisoners
- To provide legal aid for prisoners in need.
- To appoint legal officers in prisons.
- To strictly follow the Code of Criminal Procedure, 1973 in matters of investigation and inquiry.
- To arrange special medical facilities for lunatic and other physically disabled prisoners.
- To improve the living conditions of prisoners
- To provide educational and vocational training to the prison inmates

### **3.0. JUDICIAL INTERVENTION IN PRISON MANAGEMENT**

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<sup>6</sup> Charles Sobhraj Vs. Superintendent, Tihar Jail, AIR 1978 SC 1514

<sup>7</sup> Conference of 1979.

It is Pertinent to note that most of the Progress in the field of Prison management has been due to the active intervention of the judiciary, this can be seen in the following case laws & judgements: A landmark case in the history of India, discussed in depth about the rights of detainees and the procedural aspects of detention. Several criticisms were put forth against the State and Central Government's arbitrary ways of detention.<sup>8</sup>

Consequent to the above criticisms, Justice A.N.Mulla<sup>9</sup> and Justice V.R.Krishna Iyer<sup>10</sup> had respectively submitted other recommendations, such as

- Incorporation of Prison Management under the Directive Principles of State Policy
- Inclusion of the subject of Prisons in the Concurrent list of Seventh Schedule.
- Evaluation of mechanisms to check on undue imprisonment of undertrial prisoner.
- Provide alternatives to prisons such as community service, forfeiture of property, payment of compensation to victims, etc.,
- Payment of fair wages and incentives for work programmes, to encourage them to participate in more such skill based works within prisons.
- Young offenders between the age group of 18 and 21 should not be confined in the same prisons as that of seasoned and brutal offenders.
- Women offenders are to be confined in separate institutions, or at least separate annexes, and shall be managed by women personnel exclusively.
- Special sanitary conditions and upgraded medical facilities are to be made easily accessible to women prisoners.
- Indian Prison and Correctional services should be constituted, so that qualified and trained personnel are inducted in Prison Management duty.
- Importance is to be given to post-imprisonment correctional methods like Probation, aftercare, follow-up of offenders and establishment of a systematic livelihood after the imprisonment term.
- Maintain uniformity in Prison Management throughout the country.
- Maintain a reasonable balance and standard in Inmates-Personnel ratio, so that care and management is at par.

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<sup>8</sup> Maneka Gandhi Vs. Union Of India, AIR (1978) SC 597.

<sup>9</sup> All India Jail Reforms Committee (1980-83)

<sup>10</sup> The National Experts Committee on Women Prisoners (1987-88)

The ensuing problem that was menacing to the Prison Administration was that of over-crowding. Especially the under trial prisoners, who were in the jails for a period that was even more than their actual sentences if they were convicted.<sup>11</sup> The most affected by this were the young prisoners, who have had to spend the fruitful part of their lifetime behind the bars, because of the inefficiency of the State to conduct speedy trials. The Hon'ble Supreme Court raised this issue as a very serious one and called for the State to do, whatever was required.<sup>12</sup> It was proclaimed that a prisoner's right to claim for a speedy trial<sup>13</sup> shall be implied under the Fundamental Rights to Life and Liberty.<sup>14</sup>

The Government of India understood the need to have an authoritative statistics and to make an in depth study on the trends of imprisonment, and the ways to reduce the stagnation of under trial prisoners by paving way for speedy trial system. For this purpose, in 1995, the All India Committee on Jail Reforms set up a nodal agency known as the Bureau of Police Research and development (BPR&D) for analyzing and making a study on Prison Statistics for the purpose of comprehending the relevant data –to check on overcrowding of prisoners, to stipulate for speedy trials, frame guidelines for conducting surveys, introduction of technological advancements, training prison staffs efficiently, etc.

Subsequently, in order to keep checks on the deaths taking place in custody, and the violent records of the Prison Diaries, the Hon'ble Supreme Court<sup>15</sup> recommended the Government of India to constitute the All India Prison Manual Committee for the purpose of preparing a sophisticated Model Prison Manual for the superintendence of Prisons. Hence, an high powered committee was set up under the BPR&D in the year 2005 to review the Model Prison Manual and other Prison related laws of the Central and State Government and also, to review its implementation. This manual has since then undergone periodical up-gradation and improvisation and is still being researched upon by the experts in the field for extracting the bounden solutions for certain everlasting problems.

In 2013, based on a letter by former Chief Justice R.C.Lahoti, regarding inhuman conditions in prisons, the Hon'ble Supreme Court took suo moto actions<sup>16</sup> and issued guidelines that were

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<sup>11</sup> Hussainara Khatoon Vs. Home Secretary, State of Bihar (1979) AIR 1369

<sup>12</sup> Abdul rahman Antukay Vs. R S Nayak(1984) 2 SCR 914.

<sup>13</sup> Katar Singh Vs. State of Punjab 1994 SCC (3) 569.

<sup>14</sup> CONSTITUTION OF INDIA, ARTICLE 21.

<sup>15</sup> Ramamurth Vs. State of Karnataka (1997) S.C.C. (Cri) 386.

<sup>16</sup> *In Re – Inhuman Conditions in 1382 Prisons Vs. State* , W.P. (CIVIL) NO.406/2013 (2016)

required to be implemented by both, the Central and State Governments, Also, the BPR&D was required to review the Prison Manual and come up with proper mechanism to check on the following:

- To ensure that an Under Trial Review Committee has been set up in all States and Districts Legal service authorities.
- To ensure that the e-Prisons Project and appurtenant guidelines are effectuated at the earliest.
- To set up functional crèches for the children of women prisoners.
- To compound the offences of the prisoners, wherever it is compoundable so that numbers of inmates are reduced.
- Funds to be utilized eminently, so that health, hygiene and rehabilitation of prisoners are maintained at dignified standards.
- Officials of the Committee were required to periodically visit the prisons and make necessary changes in the manual, annually.
- Ministry of Women and Child Development was required to make a separate set of Manuals for Observation homes and Special Homes for Women following the above guidelines.

Further, the Supreme Court had also formed a 3 member Committee on Prison Reforms headed by Justice Amitava Roy.<sup>17</sup> The committee was set up to examine the four grave issues highlighted by the former Chief Justice R.C.Lahoti, that is – Overcrowding in prisons, unnatural death of prisoners, inadequacy of staff and lack of trained staffs. The Committee had submitted its 300 pages report on the recommendations that would improve the existing sorry state of affairs.<sup>18</sup> Some of the key recommendations are as follows:-

- <sup>19</sup>The total number of prisoners as on November 2018 is 4.68 lakh as against the sanctioned strength of 3.83 lakh. This has amounted to overcrowding, by as much as 150% in some of the prisons.
- To introduce modern cooking facilities in the prison kitchens, and setting up of canteens within prisons to buy essential commodities.

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<sup>17</sup> September 25 , 2018

<sup>18</sup> 5 February, 2020

<sup>19</sup> <https://www.outlookindia.com/newscroll/overcrowding-in-jails-related-to-courts-performance-will-pass-orders-says-sc/1727042>

- To ensure health and hygiene by de-congesting the kitchens and providing a upgraded diet for prisoners.
- Trial through video-conferencing, so that mounting number of under-trial prisoners would be reduced by way of speedy-trials.
- Promotion of legal aid, by ensuring one lawyer for every 30 under-trial prisoners.
- Allowing first-time prisoners a phone call a day, to their families, during the first week in prison.
- To mitigate the 30-40% shortages of Prison Personnels, that has become an unusual norm in every prison in India.

The Supreme Court Bench headed by Chief Justice S A Bobde is yet to proclaim its decisions with regard to the above recommendations,<sup>20</sup> as it is awaiting the responses of all the State administration on whether they are prepared to bring about the changes recommended by the committee.

### **3.1. HINDERANCES FACED IN PRISON MANAGEMENT AND THE DIFFICULTIES FACED BY THE INMATES**

The most discussed and long lasting problem has been the problem of Over-crowding. On an average, the Indian Prisons are over 150% overcrowded, and in one jail it was alarmingly at the rate of 609%.<sup>21</sup> And this issue has acted as the root-cause for other relative issues such as hygiene, sanitization, diet irregularities, difficulty in management and maintenance of a dignified atmosphere for the prisoners to rehabilitate.

Secondly, the issue of long term Imprisonment imposed upon under trial prisoners without following the due procedures. The apex Court had issued directions to prison personnel to make effective implantation of S.436 of Criminal Procedure Code.<sup>22</sup>

Thirdly, the problem of substance abuse by the inmates, that has led to several law and order issues and given way for illegal activities within the walls that are meant for rehabilitation in the right way.<sup>23</sup>

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<sup>20</sup> In re., inhuman conditions in 1382 prisons across India (n 15)

<sup>21</sup> PTI, Supreme Court shocked at over 600% overcrowding in jails, TOI, Mar 30, 2018.

<sup>22</sup> SC severely criticized the dismal functioning of Under Trial Review Committee on its order dated May 6, 2016 and Oct. 3, 2016.

<sup>23</sup> *In Re – Inhuman Conditions in 1382 Prisons Vs. State W.P. (CIVIL) NO.406/2013 (2016)*

Fourthly, the custodial deaths and encounters of prisoners in the pretext of unlawfulness within the prison walls, suggests certain immoral and inhumane practices taking place within the high walls.<sup>24</sup>

Lastly, prison deaths have also risen up as an alarming issue in the recent past. Either the inmates have involved in fatal fights that have resulted in deaths, or, the terribly shocking suicide rates within the prisons<sup>25</sup>, even after taking utmost care to ensure that the inmates are not in possession of any hazardous or harm-inflicting tools.

The above problems are not exhaustive, but are the most commonly faced ones across the Indian Prisons.

### **3.2. PRISON MANAGEMENT DURING AN EPIDEMIC**

The Model Prison Manual of 2016 and 2018, does highlight on situations such as an outbreak of an epidemic inside the prisons and calls of preparedness like, a separate ward to be kept ready for infected persons; maintainance of social-distancing; ensuring hygiene, safety and sound mental health of prisoners and the guards; etc. But, with over-crowding being a grave problem, such measures remain valid only in letters and not in spirit. After the recent outbreak of COVID-19 pandemic in India, The Chief Justice of India has taken a suo moto action and ordered to form a High-powered committee in every State, so as to look into the ways by which prisoners can be released either in Parole or Interim bail. The measure has been taken after the UN had warned the World Nations of risks of spread in prisons among the vulnerable groups.<sup>26</sup> This initiative has led to the release of thousands of prisoners, mostly the under-trial prisoners and women prisoners, out of all the overcrowded prisons across India. However, the High Powered committees of each State have carried out different criteria to select the prisoners for release, and have not segregated the “vulnerable group” classification as per the recommendations of United Nations. Hence, there are grave chances of the Indian prisons becoming endangered with the pandemic spread, just like in the case of Italy and the USA.<sup>27</sup> The most affected would be the guards, who will be stranded in delicate position of having to deal with both, the mitigation of spread as well as, the wrath of mental condition of prisoners compelled to be isolated.

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<sup>24</sup> *Ibid*

<sup>25</sup> Shri Sanjay Kumar Jain, IPS, Suicide in Prison, National Human Rights Commission of India, Dec 10, 2014.

<sup>26</sup> Recommendations from UN High Commissioner for Human Rights – Ms. Michele Bachelet.

<sup>27</sup> <https://caravanmagazine.in/law/how-india-is-endangering-vulnerable-prisoners-amid-covid-19>

#### **4.0. COMPARATIVE STUDY OF THE PRISON SYSTEM:**

Upon a comparative study, when looking up to developed countries like USA, UK, Norway and France<sup>28</sup>, it is very clear that unlike India, they spend more on Prison Management. i.e., the per capita cost incurred per prisoner is very high. This includes the cost for prisoner's diet, cost of personnel required to manage the prisons effectively, cost of the hygienic factors that are involved and other maintenance costs such as clothing, medical facilities within prisons, sanitary conditions, etc.

Also, countries like Norway and France follow the "Open Prison" system even for harsh offenders. In this system, the prisoners are not locked within cells; instead they are managed in a secluded resort-type setup, where they are required to do farming, cattle-rearing, and involved in skillful handworks. They are free to move around anywhere at any time around the open prison. The only restraint is that they cannot be with their families or in a normal society. Norway Government has backed such treatment of prisoners, as they believe that open prison reformation reduces the number of re-offenders.

The sophistication of Prisons is also a major breakthrough that the developed countries have successfully managed to achieve. The cells are equipped with all basic necessities like fans, air conditioners, bath tubs, etc. Even the architecture of the Prisons are designed in such a way that makes the cells evenly ventilated and airy.

The abovementioned facilities in Prisons are far-fetched for the Indian Prisons, yet based on humane perspectives; there could be certain allowances like a moderately functioning Open Prisons, where not-so-threatening inmates are allowed to work outside the prisons in the day time and return back to their cells at night.

#### **5.0. CONCLUSION**

The paper has aimed to explore the areas of evolution of Prison Management and the Problems that are faced by the Personnel as well as the Prison inmates. The study has precisely shown the light upon where the Indian Prisons stand from human rights prospective.

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<sup>28</sup> Jon vagg, Prison System - A Comparative Study of Accountability on England, France , Germany and the Netherlands

It may be noted that by following simple solutions such as bringing about changes in the procedures of imprisonment, by reducing investigation time, or by relaxing the conditions with regard to pre-trial/under trial detentions a lot of positive changes may happen. Secondly, studying on alternatives to imprisonment and making confinement exclusive for hardened offenders is also a capable solution to overcrowding of Prisons.

Apart from this, there is a need for quick awakening of the Governmental and Administrative bodies to fill in the huge gaps and lacunae that are obstructing the effective functioning of Prisons. Specialized trainings from expert organs are required for our local Prison Personnel, so that they are well-equipped to face the on-site problems and to overcome them.

Reduction of sentences and other legislative amendments such as shifting the subject of Prison from State list to Concurrent list, and, bringing about legislations to set up permanent bodies to manage the Prisons and its Personnel are some of the suggestions that does not seem far-fetched. Thus, it is up to the State and Central machineries to bring about the rightful changes, so that the concept of imprisonment does not become inhuman by itself. After all, even prisoners are human beings and they too have the right to live with dignity, though their freedom of liberty is confined within the high walls of the Prisons<sup>29</sup>.

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<sup>29</sup> Universal Declaration of Human Rights art. 5 & 10

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