

Prison system in India-reforms and challenges

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Prisons existed in India from the ancient times. During the Hindu and the Mughal period fortresses and places faraway from human dwelling were used as prisons. Emphasis was laid on the spiritual aspect and prisons were modeled to give an opportunity to the prisoner for repentance. The main object of punishment was to deter the offender from repeating the crime. Prisoners were subjected to inhuman treatment and punishment was in the form of solitary confinement, mutilation, branding, whipping, starving etc. Prisons were considered as a place of terror. Stress was laid on the punitive aspect. Instead of reforming the offenders they were only punished.

Prison reforms started in India during the British rule. An effort was made to improve the conditions of the prisons and the prisoners. In 1836, the First Prison Enquiry Committee was appointed by the government. Some of the remarkable features were the appointment of the Inspector General of Prisons and abolition of work by the prisoners on the road. In 1862, the Second Jail Enquiry Committee was appointed. It highlighted the insanitary conditions inside the prisons which led to sickness and even death of the prisoners. Other measures such as proper food, clothing and medical facilities were also taken into consideration. The Third Jail Enquiry Committee was formed in 1877, which suggested for improvement of the living conditions of the prisoners and the prisons.

The appointment of the various Jail Enquiry Committees paved the way for the enactment of the Prisons Act, 1894. The main objective of this Act was to have a uniform law throughout the country pertaining to the functioning of prisons and the welfare of the prisoners. The provinces were allowed to have their own prison rules. Some of the main provisions of this Act were classification of prisoners based on their gender, gravity of offence and age, abolishment of whipping, improvement in medical facilities and special amenities to women prisoners. Reformatories and Borstals came into existence during this period.

During the Indian Independence struggle, the prisons were overcrowded with imprisonment of political offenders in addition to nonpolitical offenders. Indian Jail Reforms Committee was appointed in 1919-20. After a thorough study of prisons, it was concluded that prisons

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should have reformatory and rehabilitative effect on the prisoner in addition to deterrent effect. It also suggested for maximum intake capacity of prisoners in the prisons, solitary confinement was abolished; services of the prisoners were utilized for productive work for which they were paid.

Post-independence, prison reforms continued, wherein 'prisons' were mentioned in the State list of the seventh schedule of the Constitution of India. But the first five-year plan offered less priority to prisons. The conditions of the prisons and the prisoners did not improve as required. Therefore, a need was felt to reform rather than punish the offender. Emphasis was laid on the psychological and psychiatric treatment of prisoners. They were also imparted vocational and educational training. A model jail was established in Lucknow in 1949 wherein the prisoners were made to work in various home based industries. Also the first Women jail was established in Yerwada Maharashtra. A committee was appointed to prepare the All India Jail manual in 1959. The prisoners could avail of parole and furlough. Open air prisons also came into existence.²

All India Jail Reforms Committee was appointed in 1980. It suggested for setting up of a National Prison Commission to modernize the prisons in India. It also suggested measures for improvement of juvenile delinquents and mentally disturbed persons, improvement of food, clothing, sanitation and ventilation in prison cells, training of prison staff, rehabilitation, probation, speedy trials etc. A notable development in this respect is Sec 436-A of CrPC³ (Amendment) Act, 2005, wherein any under trial, who has undergone detention up to one half of maximum period of imprisonment shall be released by the court on a personal bond with or without sureties. The government was also urged to make provision for funds for prison reforms. A National Committee on Women prisoners was appointed, wherein a report was submitted in 1988 suggesting for more women in the police force to tackle women and child offenders.⁴

Since the inception of prison system in our country, there has been a shift from punitive to reformatory and rehabilitative measures in respect of the prisoners. To some extent there was an improvement in the prison system and the prisoners' behavior, but the general conditions of the prisons and the prisoners remained far from satisfactory. In spite of improving the

² Kapoor S.K. (2014). Human Rights under International Law and Indian Law, Sixth Edition, Central Law Agency.

³ Section 436A, THE CODE OF CRIMINAL PROCEDURE, 1973, No. 2, Acts of Parliament, 1973.

⁴ Paranjape N.V. (2017). Criminology, Penology, Victimology, Seventeenth Edition, Central Law Publications.

conditions of the prisons and the prisoners, still there are problems faced by the prisoners like overcrowding in jails, poor medical treatment, poor ventilation and nutrition, criminality due to absence of conjugal visits and quarrels, custodial deaths, corrupt practices etc. Most of the jails in India are overcrowded due to delay in trials. Due to this, segregation of offenders into different categories is not possible. As a result, the hardened criminals try to influence the first time offenders or juvenile offenders in a negative manner. According to the data provided by the National Crime Record Bureau as on 31stDecember 2013, the number of under trial prisoners was 67.6% of the entire prison population. In order to ease congestion in the jails various steps are undertaken by the prison authorities such as parole and furlough, remission, premature release, extensive use of fine instead of imprisonment etc. Plea bargaining under Section 265 A of Cr.P.C.⁵ tries to reduce the pendency of cases in trial courts and reduces overcrowding in prisons.

The Ministry of Home Affairs, Government of India set up a Undertrial Review Committee in every district in 2013 to consider the cases of undertrial prisoners who are entitled to the benefit of Section 436 CrPC⁶. This committee was required to meet every three months in a year.

The state of Andhra Pradesh tops the prison population by recording the highest number of inmates in the prison, throughout the country. There are nearly 454368 prisoners lodged in the jails throughout the country.⁷

There is still a need to improve the prisons and also to treat the prisoners in a humane manner. They are to be given their rights be it their human rights or their constitutional rights. The prison authorities should change their attitude towards the prisoners. To streamline the functioning of the prisons and to keep a check on the various atrocities committed towards the prisoners, the Supreme Court has stepped in and laid down various guidelines in different areas. Article 21⁸ of the constitution includes the right of the prisoner to be treated with humanity. In *Sunil Batra v Delhi Administration*⁹ it was observed that solitary confinement of the prisoners has a degrading and dehumanizing effect on the prisoners. In *Charles*

⁵Section 265A, THE CODE OF CRIMINAL PROCEDURE, 1973, No. 2, Acts of Parliament, 1973.

⁶ Section 436, THE CODE OF CRIMINAL PROCEDURE, 1973, No. 2, Acts of Parliament, 1973.

⁷ Commonwealth Human Rights Initiative, PRISON REFORMS: INDIA, <http://www.humanrightsinitiative.org/content/prison-reforms-india>.

⁸ INDIA CONST. art. 21.

⁹ *Sunil Batra v. Delhi Administration*, (1978) 4 S.C.C. 494, 569. (India)

Gurumukh Sobhraj v Delhi Administration¹⁰; it was observed that Art 21¹¹ forbids deprivation of personal liberty except in accordance with the procedure established by law. The necessity of putting the prisoner in bar fetters would have to be examined in the context of the character of the prisoner and the safe custody of the prisoner. In Prem Shankar Shukla v Delhi Administration¹², it was held that handcuffing is prima facie, unreasonable and is ever harsh and at first flush an arbitrary. In Aeltemesh Rein v Union of India¹³, the Supreme Court directed the Union of India to frame rules or guidelines as regards the circumstances in which handcuffing of the accused should be resorted to. Right against delayed execution was recognized in the case of T.V. Vaatheeswaran v State of Tamil Nadu¹⁴ and Sher Singh v State of Punjab.¹⁵ In Sheela Barse v State of Maharashtra¹⁶ the Supreme Court recognized the Right to legal assistance to women prisoners. In Attorney General of India v Lachma Devi¹⁷ right against public hanging was recognized. In Rudul Shah v State of Bihar¹⁸ the Supreme Court granted compensation for unlawful arrest and detention for over fourteen years.

Article 22¹⁹ of the Constitution provides for rights of the accused persons such as right to be informed of the grounds of arrest, right to be consulted by a lawyer of their choice, a close family member or friend is to be informed about the arrest, to be informed about the right to bail.²⁰

It is gratifying to note that the Supreme Court of India has shown concern for the prisoners in order to give them justice and fair treatment. There is a need to bring a change in the attitude of the general public towards the prisoners. This can be done by the government through the press, media, NGOS, law colleges etc. Research can also be undertaken by on various issues pertaining to the prisoners, setting up of legal aid clinics in the prisons in collaboration with the law colleges. The existing Prison Act of 1894 needs to be revised as some of the provisions have become redundant.

¹⁰ Charles Gurumukh Sobhraj v. Delhi Administration, (1978) 4 S.C.C 494.

¹¹ INDIA CONST. art. 21.

¹² Prem Shankar Shukla v. Delhi Administration, (1980) 3 S.C.C. 526.

¹³ Aeltemesh Rein v. Union of India, A.I.R. 1988 S.C. 176.

¹⁴ T.V. Vaatheeswaran v. State of Tamil Nadu, A.I.R. 1983 S.C. 381.

¹⁵ Sher Singh v. State of Punjab, (1983) 2 S.C.C. 344.

¹⁶ Sheela Barse v. State of Maharashtra, (1983) 2 S.C.C. 96.

¹⁷ Attorney General of India v. Lachma Devi, A.I.R. 1986 S.C. 467.

¹⁸ Rudul Shah v. State of Bihar, (1983) S.C.C. 141.

¹⁹ INDIA CONST. art. 22.

²⁰ M.H. Hoskot v. State of Maharashtra, (1978) 3 S.C.C. 544.