

## **PRISON REFORMS AND SOCIO LEGAL CHANGES IN INDIA**

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### **Introduction**

Punishing the offenders is the primary function of all civil societies<sup>1</sup>. Prisons are known to have existed throughout history. The existence of prisons can be traced back to the ancient period. It was believed that rigorous isolation and custodial measures would reform the offenders. Experience, however, belied this expectation and often imprisonment had the opposite effect. With the development of behavioral sciences, it began to federalize that the reformation of offenders was not possible by detention alone.

Prisons are not normal places. The prisoners are deprived of freedom and personal contacts with family and friends. Prison reform is the attempt to improve conditions inside prisons, improve the effectiveness of a penal system, or implement alternatives to incarceration. It also focuses on ensuring the reinstatement of those whose lives are impacted by crimes.

In modern times the idea of making living spaces safe and clean has spread from the civilian population to include prisons, on ethical grounds which honor that unsafe and unsanitary prisons violate constitutional (law) prohibitions against cruel and unusual punishment. In recent times prison reform ideas include greater access to legal counsel and family, conjugal visits, proactive security against violence, and implementing house arrest with assistive technology.

The real purpose of sending criminals to prison is to transform them into honest and law-abiding citizens by inculcating in them distaste for crime and criminality. But in actual practice, the prison authorities try to bring out the 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 and as soon as they are released, they again get attracted towards criminality.

It is for this 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 probation and parole. They repeatedly launched protests with the prison authorities and made all possible efforts to see that the rigors of prison life are mitigated, and prisoners are humanely treated.<sup>3</sup>

### **What prison means?**

Donald Taft commented that prisons are deliberately so planned as to provide unpleasant compulsory isolation from society. A prison according to him characterizes 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.

### **History of Indian prisons**

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<sup>3</sup> Prison reforms in India by Harpreet Kaur.

The British colonial rule in India marked the beginning of penal reforms in this country. The British prison authorities made strenuous efforts to improve the condition of Indian prisons and prisoners. The second Jail Enquiry Committee in 1862 expressed concern for the unsanitary conditions of Indian Prisoners which resulted in the 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.

### **Need for Prison Reforms?**

A sentence of life imprisonment deprives a person of his right to liberty. Imprisonment affects the prisoner and his family living in poverty. When an income-generating member of the family is imprisoned the whole family has to suffer and adjust to the loss of income. The family has to suffer financial loss because they have to engage a lawyer, arrange food for the prisoner, transport them to prison to visit the prison, etc.

Prisons have very serious health implications. There are some prisoners who are suffering from various diseases before entering the prison or they get affected after coming in the prison. Hence there is no healthy atmosphere in the prison. It is overcrowded; there is no fresh air, absence of proper and nutritious food, etc.

### **Overcrowding in Prisons**

It is a known fact that prisons in India are overcrowded. As a result of this, there is no separation of offenders of serious offenses and minor offenses. Hence hardened criminals may spread their influence over minor criminals. Persons who have committed offenses for the first time meet hardened criminals and hence are likely to become professional criminals. The methods to reduce the burden of overcrowding of jail are release on bail, impose fines, and release on probation or parole. The system of remission, leaves and premature release may also be useful in tackling the problem of overcrowding in the prison.

### **Development of thought**

Custody, Care, and Treatment are the three main functions of a modern prison organization<sup>4</sup>. The notion of prison discipline was to make imprisonment a deterrent. Gradually, the objective of imprisonment changed from mere deterrence to deterrence and reformation. This led to the abandonment of some of the barbaric punishments and the introduction of the system of awards for good work and conduct in the form of remission, review of sentences, wages for prison labour, treatment in open conditions, parole, furlough, canteen facilities etc. Revision has now been made to meet adequately the basic needs of food, clothing, medical care etc. Educational and vocational training programs along with training in scouting etc, have been introduced in jails.

### **Prison reforms before the independence of India**

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 in 1838. 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, and improvement in diet, clothing, bedding and medical care. 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 Indian Jail Reforms Committee 1919-20 which was appointed to suggest measures for prison reforms was headed by Sir Alexander Cardio. It visited many prisons and concluded that prisons should have not only deterring influence but should have a reforming effect on inmates. As a measure of prison reform, the Jail Committee further recommended that the maximum intake capacity of each jail should be fixed, depending on its shape and size.<sup>5</sup>

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<sup>2</sup> Prison reforms in India by Harpreet Kaur.

<sup>5</sup> Criminology and Penology book of Dr. N. V. Paranjape. P-281

A Jail Reform Committee, 1946 was constituted in the year 1946 for the formation of the jails.

This committee gave the suggestions as:

- a) The child offenders should be treated differently
- b) Modern jails should be constructed
- c) The classification of offenders should be scientific such as Women offenders, Habitual offenders, Handicapped offenders.

#### **Prison reforms after independence of India**

After the independence of India, the work on the reformation of jails sped up. It was accepted that prisoners are also human beings and have the right to humanitarian. So in 1956, the punishment of transportation (Kala-Pani) was substituted by imprisonment for life. In 1949 Pakawasha Committee gave permission to take work from the prisoners in making the roads and for that wages shall be paid.

The All-India Jails Manual Committee 1957-59 was appointed by the government to prepare a model prison manual. The committee was asked to examine the problems of prison administration and to make suggestions for improvements to be adopted uniformly throughout India. The report was presented in 1960. They not only enunciated principles for an efficient management of prisons, but also lay down scientific guidelines for corrective treatment of prisoners.

#### **Recommendations of Mulla Committee**

All India Committee on Jail Reforms 1980-83 was constituted by the government of India under the chairmanship of Justice Anand Narain Mulla. The committee suggested setting up of a National Prison Commission as a continuing body to bring about the modernisation of prisons in India. The Mulla Committee submitted its report in 1983. Some other recommendations of the Mulla Jail Committee were as follows:

1. The conditions of prison should be improved by making adequate arrangements for food, clothing, sanitation and ventilation etc.
2. The prison staff should be properly trained and organized into different cadres.
3. The media and public men should be allowed to visit prison so that they may have firsthand information about the conditions inside prison and be willing to co-operate with prison officials in rehabilitation work.
4. Lodging of under trial in jails should be reduced to bare minimum and they should be kept separate from the convicted prisoners.
5. The Government should make an endeavour to provide adequate resources and funds for prison reforms.

#### **Role of Juvenile Justice Act, 1986 in prison reforms**

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 delinquents can be admitted and the juvenile delinquent cannot be tried with the nonjuvenile delinquent offenders and cannot be kept within the prison. Many provisions were made regarding the orders that could be passed against juvenile offenders and what cannot be passed against the juvenile offenders. Under this Act juvenile means a boy below the age of 16 years and a girl below the age of 18 years.

#### **Modern aspects of Prison Reforms**

Nowadays imprisonment does not mean breaking the stones or grind the takkies, but the sense has changed. Undoubtedly, the condition of modern prison system is far better than that in the past but still much remains to be done in the direction of prison reforms for the humane treatment of prisoners. The following modification in prison administration can be suggested for improving the efficiency of these institutions:

- 1) The maintenance of prison establishment is an expensive affair. It is in fact a burden on the public. Therefore, the offender should be confined to the prison for only a minimum period which is absolutely necessary for their custody. The elimination of long-term sentences would reduce undue burden on prison expenditure
- 2) The women prisoners should be treated more generously and allowed to meet their children frequently. This will keep them mentally fit and respond favourably to the treatment methods. The woman who fall prey to sex offence should be treated with sympathy and their illegitimate children should be assured an upright life in the society. Women prisoners should also be allowed to meet their sons and daughters more frequently, particularly the attitude in this regard should be more liberal in case of under-trial prisoners<sup>6</sup>.
- 3) Though the prisoners are allowed to meet their close relatives at a fixed time yet there is further need to allow them certain privacy during such meeting. The meeting under supervision of prison guards is really embarrassing for inmates as well as the visitors and many thoughts on the both sides remain unexpressed for want of privacy.
- 4) The present system of limiting the scope of festivals and other ceremonial occasions merely to delicious dishes for inmates need to be changed. These 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.
- 5) The existing rules to the restrictions and scrutiny of postal mail of inmates should be liberalized. This shall infuse trust and faith among inmates for the prison officials.
- 6) The prison legislation should make provision for remedy of compensation to prisoner who are wrongfully detained or suffer injuries to callous or negligent acts of the prison personnel. It is gratifying to note that 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 right are not violated and they are not subjected to harassment and inhuman conditions of living<sup>7</sup>.
- 7) The education in prisons should be beyond three R's and there should be greater emphasis on vocational training of inmates. This will provide them honourable means to earn their livelihood after release from jail. The prisoners who are well educated should not be subjected to rigorous imprisonment, instead they should be engaged in some mental cum manual work<sup>8</sup>.
- 8) There is dire need to bring about a change in the public attitude towards the prison institutions and their management. This is possible through an intensive publicity programme using the media of press, platform and propaganda will. In **Prabhu Dutta v. Union of India**<sup>9</sup>, the petitioner a newspaper correspondent filed a petition to interview two condemned prisoners Ranga and Billa for which permission was refused to her by Tihar Jail authorities. The Supreme Court allowed the interview upholding right of the press to have access to prison inmates.
- 9) On completion of term of sentence, the inmates should be placed under an intensive 'After Care'. The process of After Care will offer them adequate opportunities to overcome their inferior complex and save them from being ridiculed as convicts. Many non penal institutions such as Seva Sadans, Nari Niketans

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<sup>6</sup> Francis Coralie Mullin V. Union Territory Delhi, AIR 2981 SC 746.

<sup>7</sup>Sanjay Suri V. Delhi Administration, (1988) Cr. LJ 705.

<sup>8</sup> Mohd. Gaisuddin V. State of Andhra Pradesh, AIR 1977 SC 1925.

<sup>9</sup> AIR 1982

and Reformation Houses are at work in different places in India to take up the arduous task of After Care and rehabilitation of criminals.

10) There is dire need to bring about a change in the public attitude towards the prison institutions and their management. This is possible through an intensive publicity programmes using the media of press, platform and propaganda will. It will certainly create a right climate in society to accept the released prisoners with sympathy and benevolence without any hatred or distrust for them. The media men should be allowed to enter into prison so that their misunderstanding about prison administration may be cleared. In *Prabhu Dutta v. Union of India*, the petitioner a newspaper correspondent filed a petition to interview two condemned prisoners Ranga and Billa for which permission was refused to herby Tihar Jail authorities. The Supreme Court allowed the interview upholding right of the press to have access to prison inmates.

Last but not the least, the existing Prison Act, 1894 which is more than a century old, needs to be thoroughly revised and even re-stated in view of the changed socio-economic and political conditions of India over the years. Many of the provisions of this Act have become obsolete and redundant. The Supreme Court, in its landmark decision in **Ramamurthy v. State of Karnataka**<sup>10</sup>, has identified nine major problems which need immediate attention for implementing prison reforms.

The court observed that the present prison system is affected with major problems of;

- a) Overcrowding
- b) Delay in trial
- c) Torture and ill treatment
- d) Neglect of health and hygiene
- e) Insufficient food and inadequate clothing
- f) Prison vices
- g) Deficiency in communication
- h) Streamlining of jail visits and
- i) Management of open-air prisons.

### **Reform in Prison Labour Scheme**

The objectives of 'prison labour' have varied from time to time. **The Indian Jail Reforms Committee of 1919-20** recommended that the main objective of prison labour should be the prevention of further crime by the reformation of criminals, for which they were to be given instruction in up-to-date methods of work enabling them to earn a living wage on release. The Apex Court in *State of Gujarat & another. Hon'ble High Court of Gujarat*<sup>11</sup> observed, "Reformation and rehabilitation is basic policy of criminal law hence compulsory manual labour from the prisoner is protected under Article 23 of the Constitution. Minimum wages must be paid to prisoners for their labour after deducting the expenses incurred on them".

### **Reformation of Women Prisoners**

The women prisoners should be treated more generously and allowed to meet their children frequently. This will keep them mentally fit and respond favourably to the treatment methods. A liberal correctional and educational programme seems necessary in case of women delinquents. Particularly, the women, who fall prey to sex offences, should be treated with sympathy and their illegitimate children should be assured an upright life in the society. The idea of setting up separate jails for women provides a

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<sup>10</sup>(1997) 2 SCC 642

<sup>11</sup>(AIR 1998SC 3164)

free environment for providing special treatment to them. The first women's jail was established in Maharashtra at Yarwada. Conformity with strict prison discipline is no guarantee that the prisoner has really transformed into a law-abiding citizen<sup>12</sup>.

### **Probation as a tool of prison reform**

The term "Probation" is derived from the latin word 'probare' which means 'to test' or 'to prove'. Probation offers an opportunity for the probationer to adjust himself to normal society thus avoiding an isolation and dull life in prison. Probation is a conditional release of an offender under supervision. The system of probation involves conditional suspension of punishment. Probation of Offenders Act, 1958 contains elaborate provisions relating to probation of offenders which are made applicable throughout the country. The Act provides four different modes of dealing with youthful and other offenders in lieu of sentence subject to certain conditions. This includes;

1. Release after admonition<sup>13</sup>.
2. Release on entering a bond on probation of good conduct<sup>14</sup> with or without supervision, and on payment by the offender the compensation and costs to the victim if so ordered, the courts being empowered to vary the conditions of the bond and to sentence and impose a fine if he failed to observe the conditions of the bond.
3. Persons under 21 years of age are not to be sentenced imprisonment unless the court calls for a report from the probation officer or records reasons to the contrary in writing<sup>15</sup>.
4. The person released on probation does not suffer a disqualification attached to a conviction under any other law.<sup>16</sup>

### **Parole an aspect of prison reform**

One of the most important but controversial devices for reducing pressure on prison institutions is the selective release of prisoners on parole. Parole has a dual purpose, namely protecting society and at the same time bringing about the rehabilitation of the offenders. The parole system is an excellent way to allow prisoners to rehabilitate and get in touch with the outside world. Parole is a legal sanction that lets a prisoner leave the prison for a short duration, on the condition that she/he behaves appropriately after release and reports back to the prison on termination of the parole period. The main object of the parole as stated in the Model Prison Manual are:

- a) To enable the inmate to maintain continuity with his family life and deal with family matters
- b) To save the inmate from the evil effects of continuous prison life.
- c) To enable the inmate to retain self-confidence and active interest in life<sup>17</sup>.

### **Open Prisons-A modern way of prison reform**

Taking inspiration from Anglo-American developments in the correctional field of penology, the Indian penologists were convinced that India also cannot tackle its crime problem by putting criminals in prison cells. The institution of open prisons seems to be a viable alternative to harsh imprisonment system. The whole thrust in these open-prison institutions is to make sure that after release the prisoners may not relapse into crimes and for this purpose they are given incentives to live a normal life, work on

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<sup>12</sup>Jyotsna Shah: Studies in Criminology & Probation Services in India.

<sup>13</sup>Section 3 of Probation of Offender Act, 1958

<sup>14</sup>Section 4 of The Probation of Offenders Act,

<sup>15</sup>Section 6 of The Probation of Offenders Act,

<sup>16</sup>Section 12 of The Probation of Offenders Act, 1958

<sup>17</sup>Bhikhabhai Devshi V. State of Gujarat, AIR 1987 Guj. 136.

fields or carry on occupation of their choice and participate in games, sports or other recreational facilities. These are the minimum-security prisons. In this liberal remissions are given to extent of 15 days in a month. The State of Uttar Pradesh was first to set up an open air camp attached to Model Prison at Lucknow in 1949. Other States, like Andhra Pradesh, Assam, Gujarat, Punjab, Kerala etc. are also set up open-air camps.

### **Overcrowding of Prisons- a big problem**

There has been a continuous record of overcrowding in jails. The position is further complicated by frequent agitations resulting in the confinement of many political prisoners, who claim special treatment. Overcrowding results in restlessness, tension, inefficiency and general breakdown in the normal administration. Recently, the Supreme Court of India took exception to the unduly long detention of a large number of under trial prisoners and the Central and State governments have now started taking vigorous steps to remedy this situation

### **Rehabilitation as a weapon of prison reform**

The assumption of rehabilitation is that people are not permanently criminals and that it is possible to restore a criminal to a useful life, to a life in which they contribute to themselves and to society. A goal of rehabilitation is to prevent habitual offending, also known as criminal recidivism. Rather than punishing the harm of a criminal, rehabilitation would seek, by means of education or therapy, to bring a criminal into a more peaceful state of mind, or into an attitude that would be helpful to society, rather than harmful to society. The assumption of rehabilitation is that people are not permanent criminals that it is possible to restore a criminal to a useful life, to a life in which they contribute to themselves and to society. A goal of rehabilitation is to prevent habitual offending, also known as criminal recidivism. Rather than punishing the harm out of a criminal, rehabilitation would seek, by means of education or therapy, to bring a criminal into a more peaceful state of mind, or into an attitude that would be helpful to society, rather than be harmful to society.

### **Conclusion**

To ensure good discipline and administration, an initial classification must be made to separate male from females, the young from the adults, the convicted from the unconvinced prisoners, civil from criminal prisoners and from casual from habitual prisoners. The main object of prison labour is the prevention of crime and the reformation of the offenders. And the other main object was to engage them so as to prevent mental damage and to enable them to contribute to the cost of their maintenance. The under-trial prisoners constitute a majority of the population in prison than convicted prisoners. Under-trial prisoners are presumed to be innocent and most of them are discharged or acquitted after immeasurable physical and mental loss caused to them by detention due to delay in investigation and trial. The courts have in recent years been giving serious thought to the of human rights of prisoners and have, on that ground, interfered with the exercise of powers of superintendents of jails in respect of measures for safe custody, good order and discipline. Research into crime and the criminal is still in its infancy. The immediate need of research is to evaluate the existing methods of treatment and to suggest new approaches to the prevention of crime. The value of probation, open prisons, parole and home leave as reformatory measures need to be established.

Prisoners constitute important institutions that protects society from criminals. The obstacles in prison reforms are resource allocation, the deterrent functions of punishment, the notion of rehabilitation, and internal control.

### **Suggestions**

The researcher would like to suggest certain measures to improve life of jail inmates:-

1) Many inmates usually complain about inadequate quality and quantity of food, which is required to be improved. The food is required to be prepared in better hygienic conditions.

- 2) Rehabilitation of inmates will be meaningful only if they are employed after release and for that purpose educational facilities should be introduced or upgraded.
- 3) Central Government along with NGO's and prison administration should take adequate steps for effective centralization of prisons and a uniform jail manual should be drafted throughout the country.
- 4) There should be a minimum fixed tenure for the investigating officers to ensure timely completion of investigation and trial.
- 5) As per the existing provision, the duties, rights and privileges of Prisoners should be printed in bold letters in vernacular language and pasted at several prominent places inside the Prison to make the prisoner aware of the same.
- 6) Allowing NGOs and Philanthropists who are really interested in the welfare of Prisoners liberally in all the treatment programs in Prisons like Classification, Education, Vocational training, Medical and Health care, Sanitation and Hygiene, Recreation Activities etc.
- 7) Amending the existing Section 53 of the Indian Penal Code to include the Community services as one of the punishments prescribed under this Section.
- 8) The prison administration should be brought under the ambit of the Right to Information, Act 2005.
- 9) Inspection shall be carried by the advisory body at regular intervals without interference from the prison authorities.
- 10) Prisoners Welfare Fund with Government contribution shall be created in all the States to undertake various welfare measures for Discharged Prisoners and their families.
- 11) A mobile complaint box should be installed outside the prisoner's cell to ensure the problems of the prisoners are taken into consideration.
- 12) The transparency in the judicial system should be increased to understand the actual scenario in the prisons.