

PRISON REFORMS IN INDIA: THE LACKING REHABILITATION PROGRAMME

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ABSTRACT

Prisons in India fall under the domain of the respective states, making it difficult to incorporate a nation-wide prison policy. Indian prisons are not the best correctional institutions due to problems like overcrowding, corruption, in prison deaths due to torture, cases of extortion, unsatisfactory sanitary, lodging conditions and unhygienic food. According to official figures, 165 un-natural deaths were reported in 2019. The basic fundamentals of rehabilitation and reform have failed miserably in Indian Prisons. Although, the apex court has established time and again that the Fundamental Rights of a prisoner are not buried at the gates of the prison, yet they are treated like animals. The research shows a dire need to bring about reforms a such as segregating the convicts, under-trial and women prisoners, civil and criminal prisoners, casual, habitual offenders and ensuring a healthy prison environment. The research study duly suggests the incorporation of psychological therapy in the rehabilitation process.

HYPOTHESIS

The idea that every individual in this country has the right to basic and decent living, forms the basis of the theme for this paper. This paper has is for purely academic purpose. It revolves around the theme: 'Prison Reforms in India'. It aims to analyse the conditions in the Indian prisons and tries to highlight the issues surrounding it. There has been an attempt to study these issues and bring about positive suggestions towards resolution of these issues. This paper basically revolves around 3 aspects:

- 1) Structural issues in the functioning of the Indian prisons.
- 2) Well-designed rehabilitation programme for the prisoners with special attention to their mental health as a solution and;
- 3) Attention to basic rights of the prisoners and redressal in case of violation.

The purpose of this study is to prove that catering to the well-being of the prisoners, both mental and physical, is the need of the hour. This proposal not only becomes necessary from the human rights perspective, but is also important from a legal aspect. A prisoner continues to remain a citizen of the country even when in his/ her movement is restricted to the prison. Thus, it becomes the duty of the government to ensure healthy environment for the prisoners. With the increasing awareness towards mental health and concepts of self-introspection, it has become a necessary step to ensure mental well-being of the prisoners as well. Thus, the idea of a well-structured rehabilitation programmes along with certain structural changes in the functioning of the prisons in India has been proposed.

INTRODUCTION

“The degree of civilisation in a society can be judged by entering its prisons”

– Fyodor Dostoevsky

‘Prisons / persons detained therein’ is a state subject under entry 4 of list II, of the Seventh Schedule of the Constitution of India. Therefore, prison administration and management is the responsibility of the respective states. However, the Ministry of Home Affairs (MHA) provides regular guidance and advice to states and UTs on various issues concerning prisons and inmates. “Apart from these four legislations - the Prison Act 1894, the Prisoners Act 1900, the Identification of Prisoners Act 1920 and the Transfer of Prisoners Act 1950, the day-to-day administration in prisons, all across India, is governed by the respective states through their state prison manuals.”ⁱ

India prisons or the so-called correctional and rehabilitation institutions, often get a bad name for their sub-human living conditions, atrocities faced by prisoners, both at the hands of prison authorities and fellow inmates. Unlike prisons in other countries, majority of the Indian prisons are a victim of overpopulation, accounting for a high population of under-trial prisoners awaiting their freedom before a backlogged judicial system. Prison reforms in India are long due, due to the laws being archaic and drafted under the British rule.

BRIEF HISTORY OF INDIAN PRISONS AND THE ATTEMPTS TO REFORM

- The study of punishment of crime and prison management has its roots in the ancient scriptures. The principle of punishment commonly known as danda-niti has been talked about in our Vedas, Dharmashastras, Kautilya's Arthashastra and others. The institution of prison has been used by rulers like Akbar, Jahangir, Shahjahan in the form of number of forts to confine prisoners. It has been observed by various historians that the convicts were segregated into two classes 'A' and 'B'. Class 'A' jails were meant for people belonging to the royal families and high rank officials whereas Class 'B' were meant to hold ordinary criminals.
- In his 'Minutes of December, 1835', Macaulay suggested the formation of a Committee on Prison Discipline. The Committee submitted its report in 1838, suggesting a detailed plan for setting up an effective 'prison-administration' in India. Although the recommendations made by this committee, were rejected by the English authorities on grounds of cost but, based on the recommendations central-prisons were built from 1846.
- 'The Indian Jail Reforms Committee 1919-1920, headed by Sir Alexander Cardew, underlined the need for reformatory approach to prison inmates and discouraged the use of corporal punishment in jails. It recommended utilization of prisoners in productive work so as to bring about their reformation.'
- 'The All-India Jail Reforms Committee (Mulla Committee) in 1980-83, suggested a total of 658 recommendations, few of which were segregation of mentally disturbed prisoners and their placement in mental asylums, adequate arrangements for food, sanitation, ventilation, etc shall be made. Media and public men shall be allowed to visit prisons periodically to have a first-hand insight to the prevalent conditions of prisons. The undertrial population should be reduced through speedy trials and liberal bail provisions.'

CRITICAL ANALYSIS OF THE PRISON ACT, 1894

- It contains provisions to ensure prison discipline and misses the welfare and rehabilitation aspect of prisoners. It talks more on the lines of offences committed by prisoners in jail and authority inflicting punishment for the same. The nature of the Act is restrictive and hindering the growth of prisoners.
- The act provides for punishments like whipping, putting iron fetters and the manner in which the same to be inflicted. But considering the advancement in society more emphasis should be given to preservation of the basic Fundamental Rights, hence such provisions as stated in the act are obsolete and redundant for a progressive society.
- The Act lacks provisions for female prisoners, which is extremely important since women cannot be dealt on the provisions set for male inmates due to the basic physiological differences.

MODEL PRISON MANUAL, 1960

- It has been the guiding set of rules and regulations for many States and UTs in formulation of their respective prison manuals. “The Model Prison Manual, recognised the importance of reasonable diversification of prison institutions like, separate institution for delinquent children, adolescent, habitual criminals and women offenders, TB unit, leprosy unit, under trial, etc.”ⁱⁱⁱ
- It suggested distinctions between minor offenders to be put in district jails and major offenders in central prisons. The prisons should be facilitated by provisions for education, skill enhancement, proper hygienic food, medical facilities to name a few.
- It aimed to preserve basic fundamental rights and incorporate rehabilitation of inmates in order to ensure social, mental and economic wellbeing. It favours the release of the prisoners on remission, leave and also emergency releases.

PROBLEMS ASSOCIATED WITH PRISONS AND PRISONERS

1. Overcrowding:

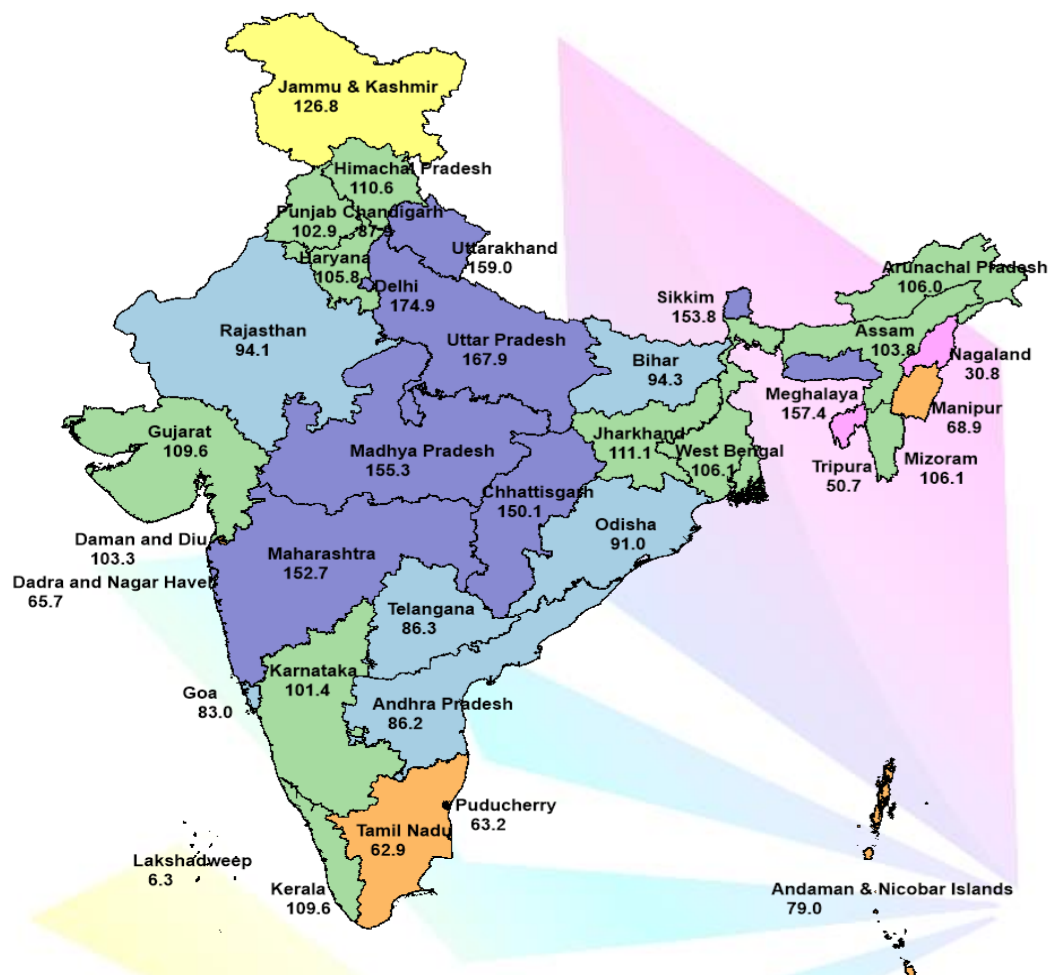


Figure 1 National Crime Records Bureau, 2020. Prison Statistics India 2019. Ministry of Home Affairs, Government of India.

Year	No. of Prisons	Actual Capacity of Prisons	No. of Prisoners at the end of the year	Occupancy rate at the end of the year
2019	1350	4,03,739	4,78,600	118.5%

Table 1 National Crime Records Bureau, 2020. Prison Statistics India 2019. Ministry of Home Affairs, Government of India.

Indian jails are overly occupied, with a total of 1350 prisons functional in India as on 31th December, 2019. The total population of prisoners was 4.78 lakh against the sanctioned strength of 4.03 lakh. The ratio of total prisoners and the sanctioned strength is increasing year after year. The situation is worse in seven states namely, Uttar Pradesh, Madhya Pradesh, Uttarakhand, Chhattisgarh, Sikkim, Meghalaya and Delhi which have an occupancy rate of 150%.

2. Huge Number of Undertrials:

Year	No. of Convicts	No. of Undertrial Prisoners	No. of Detenues	No. of Other Inmates	Total no. of Prisoners
2018	1,39,488	3,23,537	2,384	675	4,66,084
2019	1,44,125	3,30,487	3,223	765	4,78,600

Table 2 National Crime Records Bureau, 2020. Prison Statistics India 2019. Ministry of Home Affairs, Government of India.

A majority of the prisons in India are filled with undertrial prisoners, their numbers being highly disproportionate to those of convicts. Not only are the numbers alarming but, also under trial prisoners around 70% were confined for a period up to 1 year and the time period ranges from 2-5 years for about 20% of the total undertrial prisoners.

3. Torture:

Torture is a routine activity commonly reported in almost all prisons across the country.

Year	No. of Natural Deaths	No. of Un-natural Deaths	Total No. of Deaths in Prisons
2018	1639	149	1845

2019	1544	165	1775
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Table 3 National Crime Records Bureau, 2020. Prison Statistics India 2019. Ministry of Home Affairs, Government of India.

Among the 165 un-natural deaths reported in 2019, 116 were cases of suicide, 20 inmates died in accident, 10 inmates were murdered by fellow inmates. The cause of deaths of 66 inmates is yet to be known in case of the state of Rajasthan.

In the case of *Sunil Batra v. Delhi Administration AIR 1978 SC 1635*, where a letter was converted into a habeas corpus proceeding. The judges alleged that torture was inflicted upon a prisoner by the head warden of the prison. It was stated that the prisoner's private organs were allegedly pierced with a warden's baton causing him serious internal injuries. The reason for the act was stated as nonfulfillment of demand of money from the prisoners' visiting relatives.

Prisoners are not only tortured by prison authorities; they also fall prey to torture inflicted by fellow prisoners who are highly connected and powerful. New prisoners are often harassed and tortured for money, sexual favours, and acts of bullying, etc.

4. Corruption:

Corruption is a plague that is deeply imbedded in our system. Prisons are yet another platform where prisoners are extorted by the underpaid prison staff and guards. Given the substantive authority the guards and prison authorities have over the inmates puts them in a position to impose their will over the inmates. As was reported in the famous case of *Sunil Batra v. Delhi Administration AIR 1978 SC 1635*, the head warden tortured an inmate in order to extract money from his visiting relatives. Large number of inmates belong to lower economic strata of the country and hence, are unable to fulfil demands of bribes and ultimately become victims. Such prisoners fail to get bails and are also ill-treated by assigning them hard labour work and thus treating them inhumanly. One cannot shy away from the fact that there is a class of prisoners, who bribe the prison authorities and live comforting lives possessing TV, rich food, cellular phones, etc.

5. *Unsatisfactory Living Conditions:*

Overcrowding in itself is a huge problem in prisons, the level of cleanliness and the nutrient deficient diet adds on to the inhumane living conditions. Food preparation in Indian prisons is 'primitive and arduous'. The kitchens are highly unhygienic and congested, serving a diet which has remained unchanged for years and is nutrient deficient. Although, Rs. 986.18 crore were spent on food in the year 2019-20, and yet, proper nourishment still awaits to reach the prisoners.

6. *Shortage Of Prison Staff:*

Indian prisons lack adequate staff to carry out an effective administration. The prison department has a perennial average vacancy of 30-40 % hindering in the implementation of Model Prison Manual and various prison reforms. One of the important tasks of physical production of an accused in the trial court remains quite low, to the aspired 100% in a majority of states, mainly due to unavailability of sufficient prison staff to escort an accused to the court. Hence, there is a need to fill vacancies in order to smoothen the prison administration.

SUGGESTIONS**1. *Speedy Trials and Free Legal Aid:***

- Speedy trials are one of the best solutions to combat the unwarranted phenomenon of overcrowding in Indian prisons. In order to achieve the goal of speedy trials, the State needs to truly achieve its goal established under Article 39A of the Constitution of India, providing competent and free legal services to underprivileged prisoners who cannot afford a lawyer due to financial inability. The Supreme Court in *Hussainara Khatoon I v. Home Secretary, State of Bihar (1980) 1 SCC 81*, observed that speedy trial and free legal aid are constitutional mandates and the State cannot avoid its constitutional obligation by pleading financial or administrative inability.

- The lawyer to prisoner's ratio should be at least one lawyer to 30 prisoners, which will help speed up the legal process. Concepts like plea bargaining (an accused admits guilt for a lesser sentence) should be promoted.
- The courts should use their 'discretionary powers' and award sentences like 'fine and admonition', if possible instead of sending the offender to a jail. **Section 360 in The Code of Criminal Procedure, 1973** talks about order to release on probation of good conduct or after admonition, this provision can be resorted to in order to ensure speedy trials and reducing the number of under trial inmates.

2. Accommodation:

- There is an urgent need to upgrade the prison infrastructure, from building jails that can accommodate more prisoners, with separate accommodations for under trial and convicted, civil and criminal, men and women prisoners. Female prisoners are at high risk of being victims of sexual abuses and pregnancy. Thus, proper accommodation and healthy environment can turn favourable for them.
- Prisons shall be constructed on scientific lines catering to proper ventilation and hygiene. In order to maintain proper sanitary conditions in prisons, proper washroom facilities should be incorporated.
- Kitchen upgradation to modern cooking facilities is absolutely necessary as it saves time, effort and provides for better working conditions. The dietary regime shall be altered to incorporate more nutrient rich foods.
- In order to reduce prison deaths, there should be routine health camps set up by the private hospitals under their corporate social responsibility and philanthropic work category.

3. Timely Checks and Balances:

- It is extremely important to keep checks and balances especially because prison administrations are always under the radar for corruption and torture in prisons. Judicial officers like the District Magistrate, Sessions Judge shall frequently visit

prisons falling under their jurisdiction to talk to the prisoners and ensure their basic fundamental rights are not violated in any form by any authority. Efforts like these can prove beneficial for prisoners and help them seek redressal in case of violations.

- State Human Rights Commission and NGOs shall timely conduct ground level surveys to give a true voice to those prisoners who fall prey to atrocities in prisons.
- The Ministry of Home Affairs shall appoint commissions comprising of experts including women to enhance, upgrade and suggest changes in the Model Prison Manual.

4. *Rehabilitation Programme:*

- The fundamental reason of confining an accused or convicted in jail is to try and transform and rehabilitate, so that when released back into the society, he/she adds value. The purpose of punishment is to create a sense of guilt and not a sense of revenge on returning. Hence, a curriculum that helps reform a criminal need to be introduced in prisons.
- When the law itself gives absolute importance to a 'guilty mind' in order to convict an accused, the rehabilitation programme shall also focus to rehabilitate a criminal's mind and that can be achieved to a greater extent through professional psychological help. The induction of psychologists and inclusion of counselling sessions in the daily routines of the prisoners can help prepare term serving inmates to rehabilitate back into the society once the term is over. The idea not only helps in a smoother transition of individuals but also helps them fight the odds of being isolated while in the prison. It will facilitate a healthy environment in prisons and can help reduce instances of violence among the inmates. It will also help the prison officers to avert instances of suicide.
- The efforts to emphasise on prisoner's mental health can prove beneficial to prison officers. It can reduce pressure of handling notorious inmates. Further, hyperactive and nuisance causing inmates can be identified and their energies can be channelized into productive and progressive activities.

- A significant number of individuals in prisons are victims of substance abuse and hence efforts can be made to rehabilitate them through this step.
- Efforts should be made to incorporate healthy recreational activities for inmates. Meditation has proven to calm an individual and help self-reflect on his actions. Regular sessions like meditation and other progressive engagements can help in improving the prison environment.
- A prisoner's life comes to a standstill in jail. At the end of the day we want them to come out as better individuals and that can be achieved by providing them with opportunities to reading material (books, journals, newspaper), learning different skills (cooking, carpentry, tailoring for women prisoners, etc) and legal awareness through prisoner's handbook. There have been several efforts towards self-sufficiency of the individuals serving a term. For instance, Tihar Jail Factory, in Delhi, is a positive step towards the idea. This move should be carried forward to other prisons as well.
- Female inmates should also be trained in programmes that can help them become self-sufficient once they move out.
- As it was stated in the case of "*Mohammad Giasuddin vs State of Andhra Pradesh, 1977* Progressive criminologists in the world agree that the Gandhian diagnosis of offenders as patients and his conception of prisons as hospitals-mental and moral-is the key to the pathology of delinquency and the therapeutic role of punishment. The whole man is a healthy man and every man is born good. Criminality is a curable deviance. If every saint has a past every sinner has a future and it is the role of law to remind both of this."ⁱⁱⁱ

CONCLUSION

The prisons in Indian history for long have been about cramped up lock-ups, centres of torture, unhygienic living conditions, dreaded upon by mankind. The idea of prisons in history was to create a vision of a place of sufferings and one that should be avoided at all costs. The prisoner

itself was looked upon as an outcaste from the society for having committed sins. The prisoner on return has been always treated as a prisoner. A prisoner once a prisoner, always a prisoner, fits well into the description. However, with the changing times, the ideas have changed and the society has turned into a progressive one. There has been an upsurge in more liberal ideas and individualism. These ideas have been well accepted into our day to day lifestyle and it is time that these ideas and rights should be extended to prisoners. It is true that the prisoners are prisoners for having committed crimes, however, they are humans first and should be treated as that first.

The ideas proposed through this paper are all progressive steps towards this very theme. Although, from time to time various expert committees have been set up to draft a new set of laws and suggest reforms catering to the diminishing status of prisons all across India.

The Supreme Court in 2018, yet again, appointed Justice Amitava Roy (retd.) Committee, to examine the various problems plaguing the Indian prisons. What actually is actually needed is proper implementation of reforms proposed over time. A major constraint in giving basic facilities to prisoners is the lack of financial capital, hence emphasis should be to allocate more funds for the prison upgradation programme in the Annual Budget. To uphold the Fundamental Rights of prisoners, torture and corruption needs to stop and rehabilitation should be the core fundamental of the correctional institutions.

The suggestions for prison reforms do not aim at making a prisoner's life easy and luxurious, it just aims to ensure humane conditions and a sensible prison programme. Looking at the current state of prisons it would not be wrong to suggest a Constitutional Amendment transferring the 'Prison' into the Concurrent list, because the need of the hour is to formulate a nation-wide prison policy. The idea is to decriminalise a criminal mind and make them fit for the society and mankind. Thus, a proper rehabilitation plan with timely psychologist and counselling sessions along with other structural and infrastructural reforms can prove to be beneficial in reforming the prison conditions.

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ENDNOTES

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ⁱⁱ 2010. *Criminal Justice Administration (Prison)*. New Delhi: Indira Gandhi National Open University School of Law.

ⁱⁱⁱ *Mohammad Giasuddin vs State Of Andhra Pradesh*, 1977

