

A STUDY ON PRISONS AND PRISONERS OF INDIA

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Abstract: Why are certain people detained, denied of few liberties? This question is indeed very basic and hence the simple answer is that they have committed either crime or delinquent. They are hence kept in jails. They are confined so that it protects the society from the crime they have committed and so these prisoner's retrospect their action. But this very purpose is not mostly fulfilled. The prison system in India tends to have an arrangement which regards punishment as the sole objective of prisons. India has laws such as the Prisons Act, 1894 that has rules and regulations regarding prison administration. It is an age-old Act which was developed during reign of Britishers'. The world now has prison systems are evolved and developed, similarly India needs to catch up as well. The United Nations favour various other alternatives to imprisonment. India is far from alternatives because of various hindrances faced by prisoners in the faulty prison system.

The paper discusses in detail about the prisoners, prison administration. Besides these prisoners, although denied liberties, do not cease to be human beings therefore the paper discusses about their rights. There have been many disturbances in the way of reformation of prison system, the research paper contemplates about these hindrances in detail as well. Among all of these, let's not forget that it is still developing prison administration. There have been annual reports and evolving various reforms for its prisoners.

Keywords: liberties, delinquent, system, imprisonment, crime, disturbances, hindrances.

1.0 Introduction

Prisons and prisoners, although sound alike, are very much intertwined with each other. One cannot separate prisoners from prison. the Black's Law Dictionary defines prison "A state or federal facility of confinement for convicted criminals, esp. felons."ⁱ On the other hand, a prisoner is one who is kept in confinement for a crime committed. the Black's Law Dictionary defines prisoner as, "A person who is serving time in prison, A person who has been apprehended by a law-enforcement officer and is in custody, regardless of whether the person has yet been put in prison."ⁱⁱ

The purpose of prisons, jails is in fact much more than just deterring people from committing the crime. It is now also known as correctional institution. This is mainly because of other major dimensions of prisons such as reformation, rehabilitation, retribution etc. the first and foremost function of this institute is to punish the offenders in direction to maintain order and peace in the society, moreover this is beneficial for securing a safe neighbourhood for the public. Prisons enable to control the crime. However, this may have not been completely efficient way of controlling the crime rate. The prisons ought to have reformative programmes and schemes.

The UN bodies promote prison reforms. The reformation programmes may include academic education, vocational training, health education, culture education etc. other concepts like open prisons and prison labour helps the prison authorities, along with this it also helps in procuring monetary returns. The Supreme Court of India even valued the notion of open prisons in the case of Ramamurthy v. State of Karnatakaⁱⁱⁱ held that- "though open-air prisons, create their own problems which are basically of management, we are sure that these problems are not such which cannot be sorted out. For the greater good of the society, which consists in seeing that the inmates of a jail come out, not as a hardened criminal but as a reformed person, no managerial problem is insurmountable. So, let more and more open-air prisons be opened. To start with, this may be done at all the District Headquarters of the country".

Prisoners are every often loathed, despised for the crimes they've committed but a hand few of people know their rights and sufferings in the prisons. The biggest of all problems is that the prisoners themselves do not have any knowledge about their rights, granted to them by the law of the land.

2.0 Background

History of Indian prisons date way back to the ancient times. It is not a new concept. It has been evolving ever since. There were different rulers across the country. No such concept of unified law existed. The prison system was highly arbitrary. The jails mostly served only as confinement and punishment centres. "There is no systematic description about the construction of prisons. Many critics have suggested that abandoned and small fortresses served the purpose of prison."^{iv} The condition of prisoners was nothing different. In fact, it was difficult time with even worse conditions for them.

The term justice wasn't known and spoken of. "In the Medieval period, the administration of criminal justice deteriorates, "where the offender is deprived of his liberty, and is physically forced on the point of pain and torture to show obedience to the dictates of the state. Trust in the person of the offender disappears. Hardly any faith is left in the offenders to social ways of life".^v Then comes the British rule, which was no different but very much identical with the medieval system of prisons. During the colonial period, Britishers' had thrown people into jails without considering their crimes.

There was no classification of prisoners, no rights were granted to them either. Even innocent ones were barred. Many revolutionaries were put behind the bar and thus years of struggles of these fighters led to independence. The Britishers' left the country with The Prison Act, 1894.

3.0 Rights of prisoners

The post independent India continued to follow many of the British made laws one of which is The Prisons Act, 1894. Prison institutions in India occur at three different stages, the jails in these stages are termed as Sub Jails, District Jails, and Central Jails respectively. Although prisoners are deprived of certain liberties and are kept in captivity, they do not cease to be a human. They still are human beings and have certain rights besides basics of life and necessity. This was held in the case of State of A.P. v. Challa Ramkrishna Reddy^{vi}. Accordingly, the prisoners are guaranteed of certain rights under the part III of the Constitution as well as the Prisons Act, 1894.

Constitution of India does not specifically grant the provisions linked to the prisoners' rights but the articles 14,19 along with 21^{vii} are equally applicable to prisoners as much as to the civilians. Article 14 states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."^{viii}

This article provides the source for prison authorities to govern several sorts of prisoners and their arrangement with the motive of reformation. Article 19 states "Protection of certain rights regarding freedom of speech etc

1) All citizens shall have the right

- a) to freedom of speech and expression;
- b) to assemble peaceably and without arms;
- c) to form associations or unions;
- d) to move freely throughout the territory of India;
- e) to reside and settle in any part of the territory of India; and
- f) omitted
- g) to practise any profession, or to carry on any occupation, trade or business."^{ix}

Amongst these freedoms certain freedoms cannot be benefitted from by the prisoners except the "freedom of speech and expression" and "freedom to become member of an association".

Article 21 states "Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law."^x Number of cases, through the years had eventually proved that article 21 constitutes many other rights implicit in it. Some of which are right to legal aid, right of expression, right to speedy trial, right to meet friends, relatives and consult lawyers, right to reasonable wages in prison^{xi} etc.

One of the most important and landmark cases of all time which stood for the rights of prisoners was DK Basu v. State of West Bengal.^{xii} The court addressed the growing incidents of custodial violence, torture and deaths in prisons. The court described it as naked violation of human rights. Besides above-mentioned rights, the Prisoners Act, 1894 also mentions and ascertains rights for the prisoners. It is the legislation which regulates the administration of prison and the prisoners. The Act defines prison, criminal prisoner, convicted criminal prisoner,

civil prisoner, remission system, history ticket, inspector general, medical subordinate, prohibited article. Some of the rights comprised in the Act, are discussed as follows:

Section 4 states, "Accommodation for prisoners.—The State Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners."^{xiii} This act basically provides for Accommodation and hygienic environments for prisoners.

Similarly, section 7^{xiv}, ensures accommodation and safe custody of the surplus number of prisoners who cannot be securely retained in any prison. Section 7 affirms, "Temporary accommodation for prisoners.—Whenever it appears to the Inspector General that the number of prisoners in any prison is greater than can conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other prison, or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners, provision shall be made, by such officer and in such manner as the State Government may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison."^{xv}

Section 27 requires, "Separation of prisoners.—The requisitions of this Act with respect to the separation of prisoners are as follows :— (1) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners ; 9 (2) in a prison where male prisoners under the age of 21 [twenty-one] are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not; (3) un-convicted criminal prisoners shall be kept apart from convicted criminal prisoners ; and (4) civil prisoners shall be kept apart from criminal prisoners"^{xvi}

This section basically ensures that the prisoners are categorised, provides provision for separate cell buildings for male and female prisoners, separating juveniles, un-convicted and civil prisoners etc. this categorization helps in efficient administration of prisons. The Prisons Act of 1894 further contains similar provisions and section which talk about the administration system and handling of prisoners such as food, clothing, employment of prisoners along with the duties of the officers. The rights of prisoners have been discussed, analysed and sorted to provide them with their inherent rights. But what has not been brought under light are the problems with currently prevailing system of prisons and complications faced by prisoners in those prisons.

4.0 Problems in the prison system

Although the parliament has tried to provide better facilities along with numerous rights for prisoners to provide them with Justice but the system on the ground reality may have failed to actually practice the provisions. Over the years, the country witnessed many evolutions and growth in multiple sectors but the prevailing prison system never really witnessed much of a progress. Many of the reports state that not only prisoners but the prison officials face difficulties in the current prison management system.

4.1 Categorization of Prisoners

First of all prisoners are to be categorized into convicts, undertrials, detenus, mentally ill, civil prisoners, convicted civil prisoners, undertrial civil prisoners etc. a report from Human Rights Watch states that, "The terms "prison" and "jail" are used interchangeably in India, perhaps reflecting the fact that no significant effort is made to separate "undertrials," as those awaiting trial are known, from convicts. Separation of undertrials from convicts is required by a decision of India's Supreme Court, but this decision is widely ignored in practice. A substantial majority of all prisoners are "undertrials."^{xvii}

4.2 Overcrowding

Other than lack of organisation of prisoners, there is another major setback of overcrowding. This problem is reflected in the statistics report from the ministry of human resources. This report highlights the very fact that undertrials are for sure more in number than the convicts and take up large part of the prison. according to prison statistics report the percentage share allotted to undertrials all over India is 71.2% . but in ground reality, percentage

of undertrials to total jail inmates ranges from 12.1% to 98.7%^{xviii}. “The more prosperous states have better facilities and attempt rehabilitation programs; the poorer ones can afford only the most bare and primitive accommodations. Women prisoners are mostly incarcerated in segregated areas of men's prisons.”^{xix} This clearly indicates one of the many problems of prison system - Inadequate number of cells. Another term which is suitable in this situation is overcrowding. Overcrowding is holding inmates in a cell more than its actual capacity.

Overcrowding is not something new to prisons in India. In the prison statistics held in 2000, the data regarding the population of inmates is recorded^{xx}. The data indicates population of inmates in most of the states is higher than the available capacity. The table therefore discloses the occupancy rate. In 17 states, out of 25 states, the occupancy rate was more than 100%. In another statistics report of 2014^{xxi} the central jail has the occupancy rate of 121% and district jail has the rate of 132.7%.

In other statistics report of 2018^{xxii} the problem of overcrowding still prevailed. Out of total 29 states, 17 states had inmates more than its capacity. Overcrowding is a serious problem. It not only affects gravely towards the administration of prisons but also not a suitable environment for prisoners to live in. according to a report of Mulla Committee, “Overcrowded prisons tend to be unmanageable on correctional lines. In some of the state’s prison barracks are so overcrowded that inmates have to sleep in shifts. Under such conditions, custody of inmates becomes the primary, and probably the only, concern of staff and even the care and welfare of inmates is neglected.”^{xxiii}

Overcrowding can cause some serious problems in the situations like COVID-19 pandemic. The novel coronavirus, being a highly contagious disease, can further travel to a large group of people, if found among any one of the prisoners.

4.3 Unsatisfactory Living Conditions

Moreover, overcrowding leads to living conditions which are not considered to be safe and sound. In addition to this the prisons do not tend to have hygienic clothing and food facilities. “A special commission of inquiry appointed after the 1995 death of a prominent businessman in India’s high-security Tihar Central Jail, reported in 1997 that 10, 000 inmates held in that institution endured serious health hazards, including overcrowding, “appalling” sanitary facilities and a shortage of medical staff.”^{xxiv}

4.4 Unawareness

Likewise, illiteracy or lack of knowledge among prisoners about their rights and freedoms makes their life difficult. Unawareness of prisoners about their rights is harmful to them, it may lead to extrajudicial activities by authorities or even worse denying of their inherent freedoms. “Illiteracy, youth and socio-economic backwardness are thus the defining characteristics of an average Indian prisoner.”^{xxv}

4.5 Administration

This throws light on much bigger problem – trainings of staffs. Prisons are to be managed by officials but the problem arises when there is shortage of staff, underpaid staff, custodial deaths, custodial rapes, corruption, inadequate security measures and management system. “The ratio between the prison staffs and the prisoners in Indian prison is approximately 1:7. It means only one prison officer is available for 7 prisoners in India, while in the UK, 2 prison officers are available for every 3 prisoners.”^{xxvi} According to another statistics^{xxvii}, out of 32 states/ union territories only 22 states had provided training to their personnel.

In the case of Rama Murthy v State of Karnataka^{xxviii} the Supreme Court of India identified various issues concerning the prisons of India, few of which were overcrowding, delayed trials, torment and ill-treatment of inmates, disregard of health and hygiene, insubstantial food and insufficient clothing. The cruelty by police is also addressed in the landmark case of DK Basu v. State of West Bengal^{xxix}.

Despite the corruption and cruelty of police, being addressed in various cases across India, the drawback still ceases to exist and even at much larger scale. The reports of such cruelty rarely get highlighted. The law enforcers easily get through without any actual accountability because of the powers granted onto them. This negative aspect may have been caused due to lack of proper situational and vocational trainings.

Besides these, India continues to follow age old prison system which is tilted more towards plenary prisons and institutions rather than correctional or reformatory institution. "reformation is still part of the present approach in corrections, although it does not constitute the ultimate goal."^{xxx} The prison saw setback right here when reformation was not considered as the ultimate goal of the prison institution.

4.6 Inadequate Legal Aid

The article 39(a) of the Indian Constitution provides for a provision of legal aid to every citizen of its country. It states that (a) that the citizens, men and women equally, have the right to an adequate means to livelihood^{xxxii}. This article clearly provides for legal aid for each and every one in the country this includes prisoners as well. However, this has not been fulfilled due to various reasons. One of those reasons are lack of availability of legal aid to prisoners. Although the prisoners are denied of the physical liberty, but are still granted right to a counsel. It is always found that there is shortage of counsels in legal aid panels. Then there are delayed and lengthy trials. The prisons comprise undertrials more than convicted prisoners.

Legal aid forms a way towards prison reforms, but lack in such facility hinders reformation programs. A case namely, *Sheela Barse v. Union of India*^{xxxiii}, brought before Supreme Court of India the truth of treatment of prisoners and lack of adequate legal assistance for them. The Supreme Court thus issued six directions, few of which were:

1. "The police must inform the nearest Legal Aid Committee as soon as an arrest is made and the person is taken to the lock-up.
2. The Legal Aid Committee should take immediate steps to provide legal assistance to the arrested person at State cost, provided such person is willing to accept legal assistance.
3. The magistrate before whom an arrested person is produced shall inquire from the arrested person whether she has any complaints against torture and maltreatment in police custody. The magistrate shall also inform such person of her/his right to be medically examined."^{xxxiii}

The problems and hindrances towards the effective correctional institution continues to be that of a long list. Also, India needs to go through a lot of evolution to have achieved prison system which is more of a correctional institute. With the current situation of COVID-19 these progresses have come to halt. With the police officers being employed at work outside of prisons, the administration has become much difficult than what it already was. The police officers now have a much wider duties to enforce lockdown, regulate cities etc. although one could put forward an argument that the police brutality has increased over the past months of lockdown. The brutality was witnessed by many innocent workers who were just doing their jobs, the police brutality cases rose.

On the other hand, the bright side should not be ignored wherein the force have given their day and night to enforce countrywide lockdown, while endangering and risking their own lives while the whole nation was at home. Furthermore, the police had rarely any special training regarding handling of health emergencies. In addition to this, the police had to face criticism, violent acts like stone pelting on various parts of the country by the civilians etc.

Besides this, the prisoners had faced difficulties during this pandemic. Since there were already overcrowded prisons, the prisoners had high risk of coming in contact with the highly contagion disease. To overcome these problems the courts had ordered for prisoners to set free, allowed parole or even home detentions. The apex court took decision of decongesting the jails starting from the month of march^{xxxiv}.

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5.0 Hypothesis

According to me, No matter what, the prisoners, not just in India, are the rightful owner of certain liberties. The rights of these prisoners must be respected in order to retain a healthy and proper functioning of the system. The rights guaranteed to them under the Constitution of India as well as the Prisons Act 1894 do ascertain that the prison does regard the rights of prisoners. In a country with second largest population, the administration of an age-old prisons with heavy regulations becomes a difficult task. It is no secret that the Indian prisons lack behind when

compared to prisons of developed country but it is utmost important that we acknowledge that the problems faced in Indian Prisons is far worse than actual and those faced by most developed nations.

The Reported and most commonly faced difficulties are overcrowding, custodial deaths, tortures, unhygienic conditions etc. the list may be never ending. It is further important to throw light upon these problems because they are rarely reported and hidden. In addition to the already existing difficulties, the pandemic has brought with its various other complications, for which a developing country like India was not ready. On the other hand, it is equally vital to point out that the prison staff, law enforcers face certain difficulties which is not often addressed. It is the need of the hour to bring about landmark changes in the prison systems of India which will not only be beneficial for the prisoners but also for the police staff and administrators.

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