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PRISON REFORMS IN INDIA

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"Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care."

Mahatma Gandhi

PRISON REFORMS IN INDIA

INTRODUCTION

Prison is known by different names in different countries like 'Correctional Facilities', 'Detention Centres', 'Jails', 'Remand Centres' etc. Prisonization symbolizes a system of punishment and a sort of institutional placement for convicts and undertrials during the period of trial. There is no society without crime and criminals. That is why prison is indispensable for every country. Punishing the offenders is a primary function of civil society. The objective of punishment can be achieved by imprisonment.

Earlier notions of prison as a facility in which inmates were forcibly held by depriving freedom as a form of punishment changed with a change in social perception towards prison and prisoners. Custody, care and treatment are the three main functions of a modern prison organization. For over 100 years, there was emphasis on custody which, it was believed, depended on good order and discipline. The notion of prison discipline was to make imprisonment a deterrent. Consequently, hard punitive labour with no regard for the human personalities and severe punishments were the main basis of prison treatment. More than 40 prison offences have been listed in the jail manuals of many States and any infraction was visited by harsh punishments. Gradually, the objective of imprisonment changed from mere deterrence to deterrence and reformation. This led to the abandonment of some of the severe forms of punishments and introduction of a 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. Today, prison is treated more as a correctional or improvement facility which itself indicates that there is more emphasis on reformation of

prisoners in the process of punishment. To achieve this goal, a congenial atmosphere is required to be created in jails for the benefit of inmates. Apart from emphasis on social and ethical values for integration with society after release, inmates also require educational, recreational and vocational training facilities. This will help them not only overcome their hostile attitude towards society which will facilitate their integration with the mainstream, but also provide them with alternate sources of livelihood after release.

The history of the correctional movement could be traced to the developments which took place in the United Kingdom in the early twentieth century. The turning point in the humane treatment of custodial populations came with the Universal Declaration of Human Rights. These standards were further strengthened by the U.N. Standard Minimum Rules for Treatment of Prisoners, 1955. In the Indian scenario, the Indian Constitution, the Prisons Act, 1894, the rulings of the Supreme Court and High Courts and the reports of various prison reform bodies have highlighted the problems with regard to the situation of prisons and suggested roadmaps to address these concerns.

INTERNATIONAL OBLIGATIONS AND GUIDELINES

The International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate these provisions into its domestic laws and state practices. The International Covenant on Economic, Social and Cultural Rights (ICESR) states that prisoners have a right to the highest attainable standards of physical and mental health. Apart from civil and political rights, the so called second generation economic, social and human rights as set down in the ICESR also apply to the prisoners.

The UN Standard Minimum Rule also made it mandatory to provide a separate residence for young and juvenile delinquents away from adult prisoners. Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners (United Nations

1990) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations 1988).

PRISONS AND PRISON LAWS IN INDIA

Prison is a State subject under List-II of the Seventh Schedule in the Constitution. The management and administration of Prisons falls exclusively in the domain of the State Governments, and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, States have the primary role, responsibility and power to change the current prison laws, rules and regulations. Important statutes which have a bearing on the regulation and management of prisons in the country are:

- (i) The Indian Penal Code, 1860.
- (ii) The Prisons Act, 1894.
- (iii) The Prisoners Act, 1900.
- (iv) The Identification of Prisoners Act, 1920.
- (v) Constitution of India, 1950
- (vi) The Transfer of Prisoners Act, 1950.
- (vii) The Representation of People Act, 1951.
- (viii) The Prisoners (Attendance in Courts) Act, 1955.
- (ix) The Probation of Offenders Act, 1958.
- (x) The Code of Criminal Procedure, 1973.
- (xi) The Mental Health Act, 1987.
- (xii) The Juvenile Justice (Care & Protection) Act, 2000.
- (xiii) The Repatriation of Prisoners Act, 2003.
- (xiv) Model Prison Manual (2016).

PROBLEMS RELATED TO INDIAN PRISONS

Despite the relatively low number of persons in prisons as compared to many other countries in the world, there are some very serious problems in prisons across India. These are: overcrowding, prolonged detention of undertrials, unsatisfactory living conditions, staff shortage and poor training, corruption and extortion, inadequate social reintegration programmes, poor spending on healthcare and welfare, lack of legal aid and

allegations of indifferent and even inhuman approach of prison staff among others. On some occasions, such as the blinding of prisoners in Bhagalpur, the stark human rights situation also attracted great attention. The murder of a woman life convict in the Byculla women's prison in Mumbai in June 2017 has brought the focus back on custodial violence, especially the vulnerability of inmates to authoritarian behaviour.

PRISON REFORMS IN INDIA

The concept of modern prison in India originated with the Minute by TB Macaulay in 1835. A Prison Discipline Committee was appointed which submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reform of prisoners. Following the recommendations of the Committee, Central Prisons were constructed from 1846. The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishment. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1838 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care.

In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendations, a consolidated prison bill was formulated. Provisions regarding jail offences and punishment were specially examined by a committee of experts on Jail Management. In 1894, the draft bill became law with the assent of the Viceroy. It is this Act which forms the basis for the present day jail management and administration in India. This Act has hardly undergone any substantial changes since its inception. However, the process of review of prison problems in India continued. In the report of the Indian Jail Committee 1919-20, for the first time in the history of prisons, 'reformation and rehabilitation' of offenders were identified as the objectives of prison.

The Government of India Act 1935 resulted in the transfer of the subject of jails from the Central List to the control of Provincial Governments and henceforth reduced the possibility of uniform implementation of a prison policy at the national level. Thus, State Governments have their own rules and regulations for the day to day administration of prisons, maintenance of prisoners, and prescribing procedures.

THE PAKWASA COMMITTEE

After independence, various Committees were appointed to improve the condition of prisons in India. The Pakwasa Committee in 1949 suggested the system of utilizing prisoners as labour for road work without any intensive supervision over them. It was from this time onwards that a system of wages for prisoners for their labour was introduced. Subsequently, certain liberal provisions were also introduced in jails manuals by which well-behaved inmates were rewarded with remission in their sentence.

In 1951, the Government of India invited the United Nations expert on correctional work, Dr. W.C. Reckless, to undertake a study on prison administration and to suggest policy reforms. His report titled 'Jail Administration in India' made a plea for transforming jails into reformation centers. He also recommended the revision of outdated jail manuals. In 1952, the Eighth Conference of the Inspectors General of Prisons also supported the recommendations of Dr. Reckless regarding prison reform. 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.

MODEL PRISON MANUAL

The Model Prison Manual 1960 is the guiding principle for prison management in India. On the lines of the Model Prison Manual 1960, the Union Ministry of Home Affairs, in 1972, appointed a working group on prisons. It brought out in its report the need for a national policy on prisons. It also made an important recommendation with regard to the classification and treatment of offenders and laid down certain principles.

THE MULLA COMMITTEE

In 1980 the Government of India set-up a Committee on Jail Reforms under the Chairmanship of Justice A. N. Mulla. The Mulla Committee submitted its report in 1983.

Some of the prominent recommendations of the Mulla committee are:

- Improving prison condition by making available proper food, clothing, sanitation,
- The prison staff to be properly trained and organized into different cadres. Setting up an All India Service called the Indian Prisons & Correctional Service.
- After-care, rehabilitation and probation to be an integral part of prison service.
- The press and public to be allowed inside prisons and allied correctional institutions periodically, so that the public may have first-hand information about the conditions of prisons and be willing to co-operate in rehabilitation work.
- Undertrials in jails to be reduced to bare minimum and they be kept away from convicts. Undertrials constitute a sizable portion of prison population. Their number to be reduced by speedy trial and liberalization of bail provisions.
- The Government may make an effort to provide adequate financial resources.

THE KRISHNA IYER COMMITTEE

In 1987, the Justice Krishna Iyer Committee was appointed to study the situation of women prisoners in India. It recommended the induction of more women into the police force in view of their special role in tackling women and child offenders.

SUBSEQUENT DEVELOPMENTS

Following the Supreme Court direction (1996) in Ramamurthy vs State of Karnataka to bring about uniformity of prison laws and prepare a draft model prison manual, a committee was set up in the Bureau of Police Research and Development (BPR&D). In 1999, a draft Model Prison Management Bill (The Prison Administration

and Treatment of Prisoners Bill, 1998) was circulated to replace the Prisons Act 1894 by the Government of India to the States but this Bill is yet to be finalized.

Meanwhile, a Model Prison Manual was prepared in 2003 by evolving national consensus on relevant issues relating to prison reforms in India and circulated to all State Governments for guidance. With the passage of time and after having gained a better understanding of ground realities, a need was felt to revise and update the Manual to reflect the developments of the past decade. In the meantime, the Supreme Court had also issued several directions. An expert committee was constituted in 2014 to revamp the Model Prison Manual prepared in 2003. The expert committee extensively reviewed the model prison manual and came up with a draft Model Prison Manual in 2016. The Model Prison Manual 2016 was finalized with the approval of the Home Ministry and circulated to all States and Union Territories for their guidance. The new manual aims at bringing uniformity in laws, rules and regulations governing prison administration and management of prisoners all over the country. Its key features include an emphasis on prison computerization, special provisions for women prisoners, focus on after care services, prison inspections, rights of prisoners sentenced to death, repatriation of foreign prisoners, enhanced focus on prison correctional staff, to name a few.

The Supreme Court, in the matter of *Suo Moto Writ Petition (Civil) No. 406/2013* titled *Re: Inhuman Condition Prevailing in 1382 prisons in India*, asked the Centre and all States to implement its directions on prison reforms including filling up of vacancies of jail staff across the country and devise a scheme to audit their accounts. Besides, an assessment was made by the Bureau of Police Research and Development (BPR&D) on the financial requirements of the States depending on their prison population and available capacity etc. and a non-plan scheme involving a total outlay of Rs 1800 crore to be implemented over a period of five years from 2002-03 to 2006-07 was launched with the approval of Cabinet which was later extended upto 31.3.2009.

OPEN PRISONS

Many developed countries, like Finland which is a pioneer in the open jail concept, have introduced open prisons. There are no bars or no uniforms. Instead of old style cells, there are rooms with bed, neat toilets, kitchen, televisions, etc. Prisoners go for long walks, tend the garden, and more importantly they are paid reasonably for their work. The advantage is that it makes detainees better prepared to return to society. The management cost of such prisons is 33 per cent lower than the traditional prisons.

Hoshangabad, in Madhya Pradesh has an open prison built on 17 acres of land, where convicts during the last two years of their sentence are transferred from other prisons in the State to make them familiar with reformed environs. Prisoners go out for work daily like normal people do from their homes and return at the end of the day.

RECENT MEASURES BY THE CENTRAL GOVERNMENT: The Union Home Ministry, issued an advisory on prison reforms adopted at the 5th National Conference of heads of prisons of States and Union Territories, 2016.

CONCLUSION

Though various bodies have studied the problems of prisons in India and laws are made for improving jail conditions, it is a fact that many problems plague our prisons. In many cases, prisoners come out of jails as hardened criminals more than as reformed wrong doers willing to join the mainstream social processes. The emphasis on correctional aspect needs to be strengthened through counselling programmes by experts. The mindset of the prison staff must change. The management of prisons must be marked by discipline and due regard to the human rights of prisoners. Prison reform is not just about prison buildings, but what goes on inside them that needs to be changed. The focus must be on the human rights of prisoners besides improving their amenities.

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The 5th National Conference on Prison Reforms suggested the following measures:

The States/Union Territories are advised to consider implementation of the following suggestions which are aimed at having an effective prison administration system:

- i. The nomenclature of Prisons Department may be changed to "Prisons and Correctional Administration", which should have integrated prison, correctional and probation services.
- ii. Every State should establish a Welfare Wing under Prison Department comprising Welfare Officers, Law Officers, Counsellors and Probation Officers.
- iii. In order to ensure basic uniformity in prison rules and regulations, all States and Union Territories should revise their existing Prison Manuals by adopting the provisions of Model Prison Manual, 2016 prepared by the Ministry of Home Affairs and circulated to all States and Union Territories in May 2016.
- iv. Prisons should be linked with Courts through video conferencing for expeditious trial and to save costs in escorting undertrials to Courts.
- v. The existing vacancies in all ranks of Prison Departments to be filled up expeditiously.
- vi. Prison e-system should be integrated with Crime and Criminal Tracking Network and Systems (CCTNS) as well as e-Courts on priority basis.
- vii. Combined training of Prison, Police, Health Department and Judiciary on undertrials Management to be conducted periodically. Separate training course on de-radicalization of prisoners should also be conducted.