

Prison Reforms in India

Abstract

Prisons are the part of correction mechanism in Indian criminal justice system. It is the place where the convicted or under-trial persons are kept. Those who are convicted for the crime committed by them are already undergoing the punishment for their guilt and those who are under trial i.e whose guilt has not been still proved, cannot be subjected to inhuman conditions in prisons. Besides this the reformatory theory of punishment and human rights activists advocated for transforming jails as a place for treatment of such persons rather than a hell. This very fact lays the basis for the reforms of prison system in India.

Keywords: Prison, Prisoners, Human Rights, Modern Prison.

Introduction

India is a well established country. It has all the features of a country as population, geographical identity, established governments, political stability, peaceful existence, etc. It has a fully developed legal system as well as a justice delivery system. Indian justice delivery system mainly aims at imparting justice in civil and criminal cases. In both the types of cases usually the guilty is punished with the imprisonment or fine. When a guilty is punished with imprisonment he/she is sent to jail.

With the help of this justice system, we are capable enough to punish guilty. There are various theories of punishment which are followed by our justice delivery system. These theories are as follows-

1. Deterrent Theory
2. Retributive Theory
3. Preventive Theory
4. Reformatory Theory

Imprisonment and fine are imposed on the guilty in the confirmation of deterrent theory of punishment.

Prisons were established in India under The Prison Act, 1894. S. 3 of The Prison Act, 1894 defines the term "prison" in an exhaustive manner. Prison is a place which is used for the detention of prisoners. According to Cambridge dictionary "a prison means a building where criminals are forced to live as a punishment."¹ Thus jails are also included in the definition of term 'prison'. More or less a similar definition for the term prison has been provided under The Prisoners Act, 1900. Mainly these enactments are responsible for the establishment, management and administration in jails.

Before the passing of The Prison Act, 1894 we were following the prison system established during the Hindu and Mughal period. The object of punishment during that time in India was to create an environment to stop the offenders from repeating the offences. During this period the offenders were badly treated and tortured. Prison authorities put strict control and supervision over the prisoners. In short it can be concluded that, at that time prisons were the places of terror and the authorities were expected to be rude and tough towards the prisoners.

The existing scenario changes after the establishment of British rule in India. Britishers focused on the penal reforms in India. They attempted for the improvement of the conditions of the prisons and prisoners. They appointed The Prison Enquiry Committee in 1836, which made certain recommendations as are-

1. The practices of prisoners working on road should be eradicated.
2. Several steps were suggested to take for curbing the corrupt practices among the prison staff.

For controlling all the discipline, administration and maintenance in prisons, an officer called The Inspector General of Prisoners were appointed in 1855. Approximately after the three decades of the appointment of the 1st Prison Enquiry Committee, a 2nd Jail Enquiry Committee was appointed in the year 1869. This committee recommended for the improvement of the sanitary conditions of Indian prisons. Committee also emphasized upon the need of proper food, clothes and medical



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facilities to the prisoners. As a result of the recommendation of these committees, The Prison Act, 1894 came into force. It brought uniformities in the working of the prisoners in India.

In 1920 again a committee named "The Indian Jails Committee" was set up. It made a declaration that the reformation and rehabilitation of the offenders was the ultimate object of the prison administrators. This goal got support from "The U.N. Standards Minimum Rules for the Treatment of Prisoners", which was passed in the year 1955. In 1977 an International Covenant on Civil and Political Rights was passed by the United Nations. It also advocated for the reformation and social rehabilitation of the prisoners. Apart from this the International Covenant on Economic, Social and Cultural Rights also stated that the prisoners too have a right to get the physical and mental health of high standard.

Before studying the required measures for the reformation of prisons, we have to find out the lacunae in the management and administration of prison system. Some of the major problems of prisons in India are as follows-

1. Excessive crowding conditions are prevalent in India jails. Jails are over crowded specially with the under-trial prisoners. This is the result of delayed and lengthy trial procedures. Speedy trial procedures are the need of the hour but they are not functioning well for the reason of heavy workload, insufficiency of judges and other staff, adjournments etc.
2. Unsatisfactory living conditions are the big problem which the Indian prisoners are facing. This is the outcome of overcrowd in jails. Many jail reform committee's have been recommended for the betterment of the issues like- fooding, clothing, cleanliness and the other conditions necessary for the human survival. Recently in the extradition petition of Vijaya Malya, pending before the British court, he raised the issue that the Indian courts are not designed to match the human conditions set up as per the guidelines of United Nations and Human Rights protection agencies.
3. Prison system in India are also facing the shortage of required number of staff. Apart from it the staff appointed for the management and control of prisons are not properly trained.
4. Despite of all the existing problems of overcrowding, shortage of staff, unsatisfactory living conditions and other administrative difficulties, governments are not interested in initiating any adequate prison programmes.
5. Instances of physical as well as sexual abuses of prisoners in prisons is a big problem in India. Specially the conditions of women prisoners are vulnerable. So many reported cases are there which shows the instances of custodial rape and death.
6. Poor health of prisoners is also a big concern. This problem is also the result of other prevailing problems as poor sanitation, overcrowding etc. And the surprising fact is that no authentic data is available about the health problems of prisoners.

According to a study made by researchers, it has been disclosed that the prisoners in India usually suffers from diseases like chronic anaemia, respiratory tract infections, T.B., diabetes, cataracts, HIV etc.

Passing of Prison Act,1894 ; various reports of Indian Jail Committee (1919-20); Government of India Act, 1935 were some initial steps taken by the Government. But in year 1951 an United Nations expert Dr. W.C. Reckless was invited in India for making a study on prison administration and suggest the policy for its reformation. He pleaded for the transformation of jails into reformation centers. Accordingly a Jail Manual Committee was set up in 1957 for the preparation of model prison manual by the Government of India. Committee recommended for the uniform policy and some latest methods for the administration of jails in India. Committee also suggested some amendments in the Prison Act,1894. It was the time when Indian Constitution was enforced. It provided various rights in the favour of prisoners. They are as follows-

1. [Right to know the grounds of arrest
2. Right to consult a lawyer of his own choice
3. Right to legal aid
4. Right to speedy trial
5. Right to communicate with friends and family members
6. Right to be produced before the Magistrate
7. Right to be released, if arresting authority fails to produce him before Magistrate
8. Right against double jeopardy
9. Right against self incrimination
10. Right to life and personal liberty
11. Right against inhuman treatment and police torture u/Art. 21]²

Creation of these rights in the favour of prisoners or arrested person paves way towards the futuristic reformative approach. The foundation stone of modern prison system was laid by T.B.Macaulay in 1835. After that, this movement was triggered by the recommendation of various committees. A famous quote by Mahatma Gandhi also supports the modern prison system as-

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

The modern and progressive approach of society treats the crime and criminals as a social disease and also pleads for the treatment of offenders. On the basis of this approach Modern Prison Manual had been passed in year 2003 and again in year 2016. Modern prison system allows non-penal methods to be used for the reformation of prisoners. These methods are-

Probation

It is a part of reformative penology. This term is derived from latin term 'probatio', which meant 'to test'. This practice is not new. It lays its origin in the old practice of 'judicial reprieve'. English courts were empowered to suspend the execution of sentence of the offender on temporary basis. It is a period during which the convicted person remains in the supervision of jail authorities but not in the prison. A trust has

been put upon the convicted person to strengthen his moral character.

Parole

This term comes from the French term, which meant for 'voice'. It is a provisional release, in which the prisoner promises to return and complete his / her rest of the sentence. It aims at providing the prisoner to be able to return to his society and to check whether they can live in society without any supervision. Person who avails the benefits of parole has to complete his punishment plus the time spent on parole.

Furlough

It is akin to the concept of parole. But it is different from parole on this point that it can be claimed as a matter of right but the parole is subject to the discretion of the court. Time spent as on furlough is not to be spent again in jail.

Open Jails

It is a concept of modern penological theory. Idea of open jail is based upon the fact that criminals responds in a positive manner when they are treated humanly. The U.N. Congress on the Prevention of Crime and Treatment of Offenders defines "open prisons "as – "an open institution which is characterised by the absence of material and physical precautions against escape of walls, locks, bars and armed guards etc....."

First open jail was built in 1933 at New Hall Camp near Wakefield. Prisoners may be permitted to take up employment while serving their sentence.³ Basically it is a system focused on the development of self discipline, self control and sense of responsibility in the prisoners.

In support of the concept of open jails Krishna, Iyer J. opined that, prisons are-

"A reformatory philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner's personality through a technology of fostering the fullness of being such a creative art of social defense and correctional process of prisoner's right is the hopeful note on national prison policy struck by the constitution and the court."

In the earlier period of time nobody talked about the human rights of prisoners. The object of punishing offenders during those days was to deter them and give a message to the rest of the society. Even the prisoners were not treated as human beings. But in the course of development many theories evolved and people started talking about the human rights of prisoners. The new dimensions of human rights jurisprudence advocated for the abolition of cruel, degrading and inhuman behaviour to prisoners. This concept was accepted by the nations worldwide. Resultantly International human rights also defined prison as a place of treatment of convicted persons.

Indian judiciary also contributed a lot in the form of directives through its various judgements regarding the fundamental rights and other rights of prisoners. As in the case of Prem Shankar vs. Delhi Administration⁴ Krishna Iyer, J. held that the hand cuffing is inhuman in nature. Likely Supreme Court declared the third degree torture as violative of Article 21 in Kishore Singh vs. State of Rajasthan⁵. It is the

directive of Supreme Court that there should be a panel of nominated lawyers for visiting jails on regular basis, for exercising judicial supervision upon prison conditions.

Recently a committee⁶ headed by Justice Amitava Roy was appointed on prison reforms in 2018. The committee will give its recommendations on following issues-

1. Review the guidelines of model prison manual, 2016
2. Review the training manuals for prison personnels prepared by BPR&D.
3. Review the implementation of the guidelines of various ministries, committees and commissions as National Commission for Women, Ministry of Home Affairs, Ministry of Women and Child Development, etc.
4. Review the problems of overcrowding in prisons, availability of legal aid and advice, grant of parole etc
5. Examine the causes of violence in prisons and correction homes.
6. Examine and recommend the measures required for the betterment of health, education, skill development, medical facilities, rehabilitation of prisoners etc.
7. Suggest any other recommendations as deems fit by the committee.

Objective of the Study

In this paper an attempt has been made to find the actual problems faced by prisoners in India. This paper also aimed at checking the status of implementation of recommendations of various committees and commissions.

Review of Literature

On reviewing the existing literature, reports of various committees and commissions, decisions of Supreme Court as well as High Courts it has come to know that so many suggestive measures have been provided for the reforms of prison conditions in Indian jails. Despite all that large number of problems are already existing.

Concept and Hypothesis

Prisons are the places where the culprits are kept and it is the third pillar of the Indian criminal justice system i.e. correctional mechanism.. Since we are focusing to design the jail environment on the basis of reformatory theory, so we have to keep an eye that prisoners should not be treated in a cruel or indignified manner. Because inhuman and cruel behaviour towards them will fail the object of reformatory theory.

The hypothesis for writing this paper is to check whether the Indian jails meets the requirement of a reformatory and rehabilitative institution.

Research Design

Author has gone through Bare Acts, and the study material available in the authentic articles, journals, and websites for writing this paper. Thus, doctrinal method has adopted for writing this article.

Findings

In the course of writing this paper I found that the theories behind the prison system had been

moved from deterrent theory of punishment towards the reformative theory of punishment.

Conclusion

On the basis of the study, author concludes that the present prison conditions are not upto date according to the recommendations of several committees and commissions constituted for studying the present prison problems.

Suggestions

On the basis of above study, author would like to suggest the following -

1. Regular health check up camps should be organised in jails.
2. Moral policing should be done for changing the criminal mind set of prisoners.
3. Religious lectures should be organised by the jail authorities for helping them to choose the right path in their life.
4. Proper arrangements should be made for the education of those prisoners who are interested in continuing their studies.
5. Such policies should be implemented which raises the income of prisoners so that they can support their families.
6. Categorisation of prisoners should be made for avoiding the situation of prison wars etc. On the basis of following categories prisoners should be kept far from each other-
 - a. Habitual and hard core criminals
 - b. First time offenders
 - c. Under trial prisoners
 - d. Prisoners suffering from contagious diseases
 - e. High profile offenders
 - f. Convicts of serious crimes
 - g. Convicts of nominal crimes

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Endnotes

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