

Correctional system vis a vis prison reforms in India

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Abstract

No society can be a crime free society therefore; the institution of prison is indispensable one. In ancient and medieval times prisoners were treated as deprecated being, kept in solitary confinement and subjected to penal servitude. So, in the very beginning prisons were to deter the offender as the life in prison is isolated which acts as deterrent factor. It also fulfills the preventive purpose of punishment. Earlier prisons were mere detention houses. It keeps the criminals and offenders under custody and away from society.

Keywords: crime, prison, reforms, judicial

Introduction

“Crime is the outcome of the diseased mind and jail must have an environment of hospital for treatment and care”.
Mahatma Gandhi ^[1]

No society can be a crime free society therefore; the institution of prison is indispensable one. In ancient and medieval times prisoners were treated as depraved being, kept in solitary confinement and subjected to penal servitude. So, in the very beginning prisons were to deter the offender as the life in prison is isolated which acts as deterrent factor. It also fulfills the preventive purpose of punishment. Earlier prisons were mere detention houses. It keeps the criminals and offenders under custody and away from society. But now in modern era prison is not a place of mere custody but it is a correctional institution whose main purpose is to rehabilitate, correct and reform the criminals. In the modern progressive view crime is treated as a social disease and it favors treatment through the non penal methods like open jail, parole, probation, community service ^[2]. In this modern era of human rights, prison is not used for inhuman purpose of effecting torture. Modern prison reforms have come up to view that prisoners are also human beings. Sentence can be held Justiciable only when it would serve its ultimate purpose that is to reform the prisoner and to remove the criminal element from his personality which would in turn protect society against crime. Prisons should be such effective institutions that completely transform a criminal into a law abiding citizen who is capable enough to sustain himself after his release and start a new respectful life. However, in recent there has been a debate across various forums on the dilapidated condition of the prison in India. In this era of growing awareness of the human rights the plight of prisoners has also emerged as critical issue in the field of public policy. A prison should serve its purpose of correctional institution rather than a mere place of detain the prisoners and this can only be done by providing for the special needs of the prisoners. The amelioration of prison laws and regulation in

democratic society along with the initiation of international bodies has changed the whole climate of the prison life.

Post-Independence

After independence the prison is with the state governments as Jail and police are mentioned in State list. Since independence it was thought that that such reformatory measures like providing opportunity for rehabilitation, provision for health, recreation and education is more beneficial to the society at large than the inmates themselves. Therefore, there has been reform oriented approach adopted by the governments.

Model Prison Manual, 1960

It was formed on the basis of Dr. W.C Reckless report ‘Prison administration in India’. As mentioned above that in the Indian constitution *Jail* falls under the state list. So it is the state government prerogative to adopt the reform measures in this field. It was expected that the states would follow the broad guidelines of this model manual and would revise the state prison manual accordingly. But these rules are not incorporated in the State jail manuals citing the inadequacy of funds, shortage of prison staff and lack of infrastructure.

Jail Reforms Committee, 1983

It recommended for:

- a) The setting up of a National Prison Commission to oversee the modernization of the prisons in India.
- b) Putting ban on clubbing together juvenile offenders with the hardened criminals in prison.
- c) Enacting a comprehensive and protective legislation for the security and protective care of delinquent juveniles.
- d) Segregation of mentally ill prisoners to mental asylum.
- e) Classification of prisoners should be done on some scientific and rational basis.

The Juvenile Justice Act, 1986

With a view to protect the young offenders a comprehensive legislation was passed. This legislation laid down a uniform frame work for juvenile justice in the country, it was done to ensure that no child under any circumstance is lodged in jail or lock up and for this purpose juvenile welfare board and juvenile court was established. In this Act provision has been made for the

¹ *Model prison manual*, prepared by Bureau of Police Research and Development Ministry of Home Affairs, Government of India, 2003.

² Dr. N. V Paranjape, *Criminology and Penology* 205 (Central Law Agency, Allahabad, 7th edn., 1991).

setting up of observation homes, juvenile home, and special homes.

Problems

There have been certain problems in our correctional systems which are enumerated as follows:

1. Dilapidated condition of the prison structure.
2. Harassment, torture in jails.
3. Neglect of health and Hygiene.
4. Labor is extracted from them without paying proper wages.
5. Overcrowding of prison leading into congestion.
6. Increasing number of under trial prisoners.
7. Inadequate prison staff.
8. Lack of proper care and treatment of prisoners.
9. Insubstantial food and inadequate clothing.
10. Lack of uniformity in the law relating to the prisons across various states.

Overcrowding of Jails

Prisons are the institution designed to keep the convicts but now they are over burdened with the under trials. There has been steadily increase in the number of under trials due to the very high workloads on Indian courts and delay in criminal trials. Other reason for this is also the increasing crime rate. It leads to spreading of various kinds of communicable diseases, surveillance difficulties. It also makes the segregation among the convicts difficult and as a result of which the dangerous hardened criminals got mix with first timers. There is also no significant increase in the number of new prison post independence whereas crime has got increased many folds. The average occupancy of the prison in India was 141% in 2006 ^[3].

Lack of Financial Aid

These days government is more involved in welfare activities and these activities forms the major part of the chunk of financial budget. So, the prisons are not receiving proper funds to properly carry on the reform activities and to make addition to them. Overcrowding of jails is another big problem because it ultimately leads to financial crunch and unbalancing of the budget available with the correction services.

Under-Trials

There should be proper mechanism to ensure that no under trial prisoner is unnecessarily detained and it is state's duty to put into place such mechanism. Above mentioned statics show that the under trials are more in number in Indian jails than the convicted persons. This is very dangerous trend as it leads to overcrowding of the prison and the under trails got mix up and come under the influence of the hardened criminals in prisons. For under trials there should be separate facility. And there should be continuous monitoring of their cases along with the speedy disposal of these cases. In *Sheela Barse v. Union of India* ^[4] speedy trial was held as a right by the court and it was observed that "there is an undoubtedly right of speedy trial of under trial prisoners. This consists of ordering for the release on bail where the trial is protracted". In *Supreme Court legal Aid committee representing under trial prisoners v. Union of India* ^[5] Court directed the release of those prisoners who have been languishing in prison for a period exceeding half

of the punishment provided under NDPS Act, 1985. For this there should be increase in number of courts and Judges and also there should be change in judicial approach of our Indian judges which makes the trial protracted. There is much required need for the changes to be made in Evidence Act and other procedural rules of courts to make the judicial process speedy but just.

Only punitive but also restorative.

According to Model Prison Manual, 2003

It is mentioned in this manual that the Supreme Court of India has laid down three broad Principles

- a) A person in prison does not become a non-person.
- b) A person in prison is entitled to all human rights within the limitations of imprisonment.
- c) There is no justification in aggravating the suffering which is already inherent in the process of incarceration

Judicial Approach Reform Oriented

Mohd. Giasuddin v. State of Andhra Pradesh ^[6] in this case Supreme Court observed that an atmosphere should be created in jails which can help in changing the social behavior of the criminals. Our prisons should be correctional houses, not the iron aching the soul. In jails there should be atmosphere of self respect and fraternal touch. Talent of the inmates should not be allowed to be rusted in jails. Inmates should not be assigned monotonous or degrading work and must be paid a reasonable fraction of remuneration by way of wages for the work done. It was specifically mentioned in this case that prisoners do not lose their fundamental rights when they enter in jail.

In *Sunil Batra v. Delhi Administration* ^[7] in relation to prisoner's rights court held that prisoners are prisoners and not animals and punish the deviant guardians of the prison system where they go berserk and defile the dignity of the human inmate. It was also held that prison houses cannot be held at bay by jail officials. When a prisoner is traumatized our constitution suffers a shock.

Kishore singh and others v. State of Rajasthan ^[8] in this case it was observed by the court that it is the duty of the Session's judge to use their judicial authority and should supervise over sentences and the conditions of their incarceration so that violation of the prisoners freedom can be avoided.

D.B.M Patnaik v. State of Andhra Pradesh ^[9] In this case the inmate was a Naxalite. He was put to quarantine and was subjected to inhuman treatment. A three judge bench held that resort to oppressive measures to curb the political belief could not be permitted at any cost. It was observed by court that "the subtle form of punishment to which convicts and under trial prisoners are subjected to offends the letter and spirit of our constitution and even the convicts are entitled to precious rights guaranteed under Article 21 of the constitution".

In *Charles Sobraj v. Delhi Administration* ^[10] in this case it was observed by the court that this court would interfere even in the prison administration when constitutional rights and statutory prescription are transgressed to the injury of a prisoner.

⁶ AIR 1977 SC 1926

⁷ AIR 1978 SC 1675

⁸ (1981)1 SCC 503

⁹ AIR 1974 SC 2092

¹⁰ AIR 1978 SC 1675

³ Ibid.

⁴ (1993)4 SCC 204

⁵ (1994) 6 SCC 731

The *Report of Royal Commission, 1949-53* also mentioned that “imprisonment itself is the penalty and it is not the function of the prison authorities to add further penalties day by day by punitive condition of discipline labor and diet”.

In *Sanjay Suri and others v. Delhi Administration and others* ^[11] taking the reform oriented approach court pointed out that efforts must be made to generate a sense of humanism in the officials and those in the ranks below them. So that prisoners should have direct contact with those officials in getting round to right approach in life.

Vikram Deo Singh Tomar v. State of Bihar ^[12] in this case court directed for the renovation of the building of the care home so as to provide the provide amenities to inmates like adequate water, electricity, blanket, proper clothing and it was also directed to home superintendent to ensure doctor’s visit to these care homes daily.

In *Rakesh Kaushik v. B.I Vig Supt. Central Jail, New Delhi and Others* ^[13] it was held that “the jail administration has conscientious responsibility for the decency and dignity for the correctional obligation and social hygiene in the prison houses. If the jail administration fails in discharge of their duty then the court should act as an activist instrument of jail justice”.

In *State of Gujarat v. Hon’able Court of Gujarat* ^[14] regarding the work in prison court finally laid down position in this case that it is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not and it is imperative that the prisoners should be paid equitable wages for the work done by him, to determine the the quantum of equitable wages the state concerned shall constitute a wage fixation body for making recommendations.

Need for reform

In *Sunil Batra v. Delhi Administration and Others* ^[15] V. R. Krishna Iyer J. pronounced that “prisoners have enforceable liberties, devalued may be but not demonetized and under our basic scheme, Prison Power must bow before Judge Power, if fundamental freedoms are in jeopardy”. In this case it was further mentioned that “No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him – to read and write, exercise and recreation, meditation and chant, creative comforts like protection from extreme cold and heat, freedom from indignities like compulsory nudity, forced sodomy and other unbearable vulgarity, movement within the prison campus subject to requirements of discipline and security, the minimum joys of self-expression, to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment”.

Rights of Prisoners

All India Committee on Jail Reforms, 1980-83 has suggested that there are certain rights available to the prisoners such as:

Right to Human Dignity

a. Right to integrity of the body, immunity from use of

repression and personal abuse, whether by custodial staff or by fellow prisoners.

b. Right to non-deprivation of fundamental rights guaranteed by the Constitution of India, except in accordance with law prescribing conditions of confinement.

Right to Basic Minimum Needs

Every prisoner has right to fulfillment of minimum basic needs such as proper diet, health, proper medical care facility and treatment, access to clean and adequate drinking water, clean and hygienic conditions of living accommodation, personal hygiene and sanitation, adequate clothing, bedding and other equipment.

Right to Access the Law

Every prisoner has right to communicate with the prison administration, appropriate Government and judicial authorities, as the case may be, for redressal of violation of any of prisoner’s rights and for redressal of grievances and right to access to State Legal Aid Boards or similar organizations providing legal services.

Right to Meaningful and Gainful Employment

Every under trial prisoners volunteering to do work may be given suitable work wherever practicable. Such prisoners should be paid wages as per rules. He has right to get paid for the work done by him. It is constitutional mandate under Article 23 that no person can be forced to do work as ‘beggar’.

Prison Labour

In XII International penal and penitentiary Conference, 1950 it was regarded as best reformatory method to bring about rehabilitation of offenders. Productive work always keeps the inmates physically as well as mentally fit and brings a sense of team work in them which infuse self confidence in them. The wage which is earned by them help them in self supporting them. But it should always be kept in mind that their working condition should be at par with a free worker.

Classification of the Prisoners

In early times there was no such system of classification because prison system at that time was punishment centric. The main objective at time was to inflict torture and pain. So, no need was felt of classification. But later on with the development of society a reformatory role of prison came forth and prisoners were classified according to their age, sex, gravity of offence. In US there is a central classification centre in which classification of convicts is done according to their antecedents, past history and mental attitude by the expert psychologists and accordingly the convict is sent to proper correctional centre. It is recommended that in India also the classification should be done in the same manner as this scheme has more chances of success and it also leads to better rehabilitation.

Alternative Mechanism

There should be an alternative mechanism to work as correctional system instead of jail and some of the best examples of it are:

1. Open prisons.
2. Community service.
3. Public censure.

¹¹ AIR 1988 SC 414

¹² AIR 1988 SC 1782

¹³ AIR 1981 SC 1767

¹⁴ J.T 1998(6)SC530

¹⁵ AIR 1978 SC1675

4. Payment of compensation to the victims.
5. Releasing on the probation, under the Probation of Offenders Act, 1958.

Programmes in Prison

These programs should be such which has individual approach and which educate them in and provide them with various vocational opportunities. By these programs there is also a development of work habits and skills among the prisoners and there is change in attitude, modification of behavior. These programmes also lead to implantation of social and moral values. These programmes also work as good rehabilitation tool in the hand of authorities. However, there should be incentives attached to these like fair wages and early release on the basis of good behavior or allowing more communication with the family or release on parole or leave.

All India Prison Service

In its formulation of national policy, Bureau of Police Research and Development Ministry of Home Affairs suggested that there should be an *All India Indian Prisons and Correctional Service* constituted to induct better qualified and talented persons at higher echelons and proper training should be there for prison personnel at the national, regional and State levels.

Adequate resources

Prisons should be supplied to the adequate funds so that they can properly cater there infra structural needs, carry on various rehabilitation and correctional activities and make suitable addition to these programmes with time.

Suggestions

1. **Media's Role:** There should be regular visits by the media and press to study the condition of the inmates and these reports should be published and the plight of prisoners should be highlighted by media. The reason for this is that even there is no public opinion regarding these matters and it is the duty of media to form a public opinion in these matters.
2. **Institutional Publication:** There should be some institutional publication in every correctional system in which inmates should be allowed to express themselves freely. This would improve their ability to express themselves and the loopholes or drawback in the jail administration would also be brought forth to the light.
3. **Role of Social Worker's Visit:** A oversee visiting committee consisting personalities across various fields like social workers, media, academicians should be constituted. This committee should be empowered to visit jail and see the conditions of inmates there and oversee other reformatory activities going on in a correctional home. In England Sir Lionel Fox, Secretary of The Prison commission, 1942-1960 also laid emphasis on this aspect. He suggested that public should always be kept well informed about the working inside the prisons through intense reporting and arranging frequent visit by media person and other social workers and he initiated the Prison Service Journal in 1960^[16].
4. **Regular transfer of Jail Officials:** There should be regular transfer of the authorities of a jail. So that these official do not get involved in corrupt and torturing nefarious activities.

5. **Role of Initiative System:** There should be initiative system in the prison for the good behavior like reduction in sentence leading to early release, giving job to the prisoners in the jail staff.
6. **Strict implementation of Bail Provisions:** The provision bail no Jail should be implemented in letter and spirit.
7. **Fine Cases:** In case of default in paying fine there should be a provision that the person who is not able to pay fine should be allowed to pay it in installments.
8. **Reformatory Activities:** There should be promotion of reformatory activities like meditation, vocational trainings, exhibition of goods prepared by the prisoners. They should be provided with facilities for studying and other artistic development.
9. **Effective Legal Service:** should be provided to the prisoners which will in turn help in decongestion of the jails and for this there should be increase in remuneration of the counsel of legal aid. Also there should be appointment of duty counsel in every prison to guide the prisoners in the legal matters in the same line as medical officer in every jail. Good attractive salary should be offered to such lawyers so as to attract good legal acumen.
10. **Pregnant Woman Inmates:** There should be special care for the pregnant woman inmates in the correctional systems. Special diets should be provided to them, there should be facility of regular health check up of such inmates. Lady Doctor should be appointed by the government as permanent staff in the prisons.
11. **Departmentalization:** In every state there should be a separate department of prisons and correctional services. And this department should deal with the prisoner's institutional care, treatment, after care, probation, and other non institutional services.
12. **Judicial Surveillance:** Every District judge should be given responsibility of visiting the prison in his area of jurisdiction. This would put check on the various nefarious activities which usually go on in prisons and it will also help in curbing the menace of corruption in the prisons. It will also infuse confidence among the inmates as they would be able to compliant against the jail authorities and ventilate their grievances.
13. **Change in List:** It is important to note that prisons come under the State list. In this regard the All India Committee on Jail Reforms, 1980-83, had recommended that the subject of prisons and allied institutions should be included in the Concurrent List of the Seventh Schedule of the Constitution of India.
14. **New Prison Manual:** There is dire need for a prison manual which is applicable throughout of India and this is also stressed upon by the Supreme Court in *Ramamurthy v. State of Karnataka*^[17] where it brought to the fore an urgent need for bringing uniformity in laws relating to the prisons and has directed the Central and State Governments to formulate a new *Model Prison Manual*. Even the All India Committee on Jail Reforms^[18] had also emphasized the need for a consolidated law on prisons.

Conclusion

The surveillance of the courts in matters of treatments given to prison inmates is a necessary part of judicial activism and initiation of public interest litigation in this regard is a

¹⁶ *Supra* note 2 at 211.

¹⁷ 1996

¹⁸ 1980-83

welcome step. Ultimately we can realize that there is a gradual shift from the torturing and debilitating forms of punishment and imprisonment to more humane reform oriented custodial conditions. In this age protection of the legal and human rights should be the focus of every human activity and to this jails are no exception. In this evolving age of human rights it is the solemn and constitutional duty of the correctional systems to focus on retraining, rehabilitation and social inclusion. Prison system has granted a mission to reform the convicts and take them back to the society. An ideal prison must provide for adequate work, vocational training, and basic educational, medical and recreational facilities. In the end it is worth to mention the words of caution given by Dr. Sethna that “prisons should be moral hospitals or places of reeducation, but they should not be so comfortable as to be attractive”^[19].

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¹⁹ *Supra* note 2 at 224.