

ISSN :2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

[www.ijlra.com](http://www.ijlra.com)

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# The Need For Prison Reforms In India

Authored By- Chirag H. B

## Abstract

The purpose of punishment in the modern world has evolved from crime deterrence to reforming criminals. The evolution has occurred mainly due to the rise of democracies where the civilized people have come to a common consensus that - no person is a born criminal. In India, before the British Era, the kings used inhuman and torture techniques like whipping, flogging, hanging and starving to death on criminals to deter crimes. Prison reforms began after the British Era who made efforts for the reformation of prison and prisoners. Mahatma Gandhi famously said, “ hate the crime, not the criminal” during the independence movement. The goal of modern-day prisons has been to transform the criminals and help them reintegrate into society to become an ordinary prudent citizen. Jail reforms are not only necessary for the criminals but also for the State. After Independence, the government has made efforts to reform prisons and prisoners. Many committees like the Pakawasha committee, Dr WC Reckless committee, All India Jail Manual Committee and Justice Krishna Iyer Committee were formed to look into prison administration, prisoner, juvenile delinquent and women prisoner reforms. The State aims to prevent crimes and correct criminals in society than to punish criminals repeatedly. In Ramamurthy v. State of Karnataka (1997) 2 SCC 642, a landmark case, the Supreme Court identified nine significant problems which needed to be solved with immediate attention to implementing prison reforms. Prison reforms must be constituted by individual states as prison is a state subject and is governed by the Prisoners Act, 1894. States can amend the laws relating to prisons to bring in jail reforms. Some of the techniques used for prison reforms are open prisons, probation, fast track courts, self-governance, vocational and fundamental education.

Keywords – Prison, crime/criminal, prison reforms, correction

## Introduction

India is the most populous democracy in the world with 1.3 billion population. Citizens have certain fundamental rights which is protected through the constitution and which is equal to everyone<sup>1</sup>. Prisons are captivity centres created by the State to confine the liberty of certain persons who have committed crime or in other words violated others rights. There are various methods for punishing criminals suggested through various criminal theories such as retributive theory, deterrent theory and preventive theory. India being a democracy has abolished certain harsh punishment methods such as public hanging, flogging and whipping but has preserved life imprisonment and death sentence. The most important function of prison is rehabilitation as to make the prisoner a law abiding citizen. When a person goes to jail there are long lasting effects on his/her family and society at large. There is a disturbance in the income, relationships, reputation and health of the family and prisoner. The State also incurs a huge expenditure in maintaining prisons and also incur certain indirect costs such as social welfare and health schemes that are difficult to measure. It is important for the State to introduce reforms for social transformation and reducing cost of imprisonment. There are more than 4.78 Lakh prisoners<sup>2</sup> in the country in 1350 prisons but the maximum capacity is 4 lakh which is a cause of concern as the prisons face issues such as overcrowding, unhygienic, understaffing and lack of funding. These issues need to be addressed to create a safer society and social transformation.

## Definition of Prisons

1. According to Oxford Dictionary ‘ a building in which people are legally held as a punishment for a crime they have committed or while awaiting trial.’
2. According to The Prison Act, 1894, “Prison” means any jail or place used permanently or temporarily under the general or special orders of a State

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<sup>1</sup>SAHRDC. (2011). Prison Reform in India [Review of *Everyday Life in a Prison: Confinement, Surveillance, Resistance*, by M. Bandyopadhyay]. *Economic and Political Weekly*, 46(3), 30–32. <http://www.jstor.org/stable/27918036>

<sup>2</sup><https://en.wikipedia.org/wiki/India>

3. Government for the detention of prisoners, and includes all lands and buildings appurtenant<sup>3</sup>.

### **Need For Prison Reforms**

Criminal Justice reforms basically has 3 elements in it namely prison reforms, judicial reforms and police reforms. These 3 reforms are very important to transform a society but of the three prison reforms are neglected or given the least preference not only in India but around the world. When prison reforms don't get importance then prisons tend to create more criminals and worse off society.

The National Crime Records Bureau<sup>4</sup> created a report on prisons in 2019 which states :-

- i. The prisons in the country hold more undertrials than convicts. 69.05% of the 4.7 lakh prisoners populations are undertrials. Undertrials are spending 3 months to 5 years in prisons before they get bail.
- ii. Prisons are overcrowded with an average occupation rate of 118% in all prisons.
- iii. 65.90% of the prisoners are from Scheduled Castes, Scheduled Tribes and Other Backward Castes which are socially and economically weaker sections of the Indian society<sup>5</sup>.
- iv. 27.7% prisoners were illiterate, 21.5% passed 10<sup>th</sup> class and overall 41.6% of the prisoners didn't study till 10<sup>th</sup> class.
- v. The country on a total spent 6818 crores in 2019-20 on prisons of which welfare and vocational/educational expenses share was only 2.2%.
- vi. 33% of prison officials posts are vacant. The manpower inside the prisons are 50% short of the actual requirement leading to rampant violence and other criminal activities in prisons.

The report clearly reflects the need for immediate prison reforms<sup>6</sup>. It is clear from the report that there is a direct relation between the economically weaker sections and committing crimes.

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<sup>3</sup><https://legislative.gov.in/sites/default/files/A1894-9.pdf>

<sup>4</sup>Henderson, C. R. (1913). Control of Crime in India. *Journal of the American Institute of Criminal Law and Criminology*, 4(3), 378–401. <https://doi.org/10.2307/1133355>

<sup>5</sup><https://thewire.in/rights/why-we-all-need-a-reminder-about-prisoners-rights>

The suppressed classes and the illiterates tend to commit more crimes than others and sometimes maybe falsely implied due to their inability to voice out their rights. The Budget for prisons shows that the government is not doing enough to transform the criminals and make them law abiding citizens which is the most important role of prisons. The prisons are not serving its purpose to deter crimes as understaffing of prison official has led to lack of vigilance in the prisons leading to gang rivalry, groupism, extortion, prohibited activities such as smoking, drinking and threatening. An additional need for prison reforms is that the extradition of fugitive is directly related to the condition of central prisons in the country.

### **Challenges In Prison Reforms**

When an undertrial goes to prison he/she loses out on 4 fundamental rights namely right to freedom of movement, right freedom of dignity, right to liberty and right to profess any occupation. Undertrials may or may not be guilty in the charges filed against them. Therefore the cases should be solved as soon as possible because the undertrial loses out on his rights and it can cause damage to him/her economically and socially if acquitted. Moreover long trials can weaken his financial status and relationship with his family. NHRC has reported suicides by prisoners due to isolation or severance of ties with family.

Prison is a state subject and is governed by more than a century old legislation called the Police Act, 1894 which did not evolve much as the society evolved. India became democratic after 1947 and the principles of welfare state are followed often but the importance of rehabilitation and correction of prisoners has not evolved through the act. There is a need to amend or rewrite the act as it is old and has no intention in rehabilitating and correcting criminals. The law and order situation is different for different states so is the treatment of prisoners. It is difficult for the central government to observe the activities of all the states but should build a mechanism to guide the states on prison management.

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<sup>6</sup>MUKUNDAN, K. P. A. (2015). The Real Story behind Juvenile Crime Data. *Economic and Political Weekly*, 50(25), 31–35. <http://www.jstor.org/stable/24481770>

The Supreme court in *Ramamurthyv. State of Karnataka* (1997) 2 SCC 642<sup>7</sup>, a landmark case, identified nine significant problems which needed to be solved with immediate attention to implementing prison reforms. The problems stated by the apex court are delayed trials, overcrowding of prisons, poor health and hygiene conditions, torture of prisoners, insufficient food and clothes and ill treatment of inmates. In 2013 the court in *Ramkumar's case* W.P.406/2013 expressed regret over the issue as most of the problems remained unresolved.

### **Prison Reforms In India**

In Pre-Independent India TB Macaulay introduced the modern prison system. In the year 1836<sup>8</sup> a prisons discipline committee was appointed to submit a report on the conditions of prison. The committee recommended the creation of Inspector General of Police who had the powers to inspect and maintain the discipline among prisoners and prison authorities. However the committee had rejected the need for any humanitarian reforms and concerns towards prisoners and was in favour of increasing the rigorousness of punishment. In the year 1862 the second enquiry commission had similar suggestions but was in favour of improving the accommodation of prisoners, health and hygiene, diet, clothing and bedding. Later in the year 1894 Prison Act was enacted by the Britishers. In 1888, the British administration introduced the Fourth jail commission which analysed expert views on prison administration.

The Prisons Act, 1894 was enacted to bring uniformity and reforms in prison administration and management throughout the country. This act had no intention to rehabilitate and reform criminals. The only intention was to keep the prisoners in captivity. The issues in the act were addressed in Indian Jail Reform Committee 1919-20 which recognized reformation and rehabilitation of criminals as the most important role of prisons. The committee was headed by Sir Alexander Cardew who after observing international prisons gave an inference stating that prisons should not only have deterrent effect but also should have scope for reformative approach. The committee suggested that prisoners should be used productively and emphasised

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<sup>7</sup>PACHAURI, S. K. (1994). HISTORY OF PRISON ADMINISTRATION IN INDIA IN 19TH CENTURY : HUMAN RIGHTS IN RETROSPECT. *Proceedings of the Indian History Congress*, 55, 492–498. <http://www.jstor.org/stable/44143401>

<sup>8</sup>Ballhatchet, K. (1990). The Importance of Macaulay. *The Journal of the Royal Asiatic Society of Great Britain and Ireland*, 1, 91–94. <http://www.jstor.org/stable/25212572>

on the importance of aftercare programs for rehabilitation purpose. The suggestions also included the maximum limit on the prison inmates depending on the capacity of the buildings. Later in the Government of India act, 1935<sup>9</sup> the administration shifted the Prison subject from central list to provincial governments list. This move removed the possibilities of uniform prisons at a national level and provincial governments started formulating their own rules, procedures and policies.

After Independence the government invited the United Nations to send an expert to recommend administration and policy reforms on prisons. The UN sent Dr. Reckless in 1951 who gave a report named “ Jail administration in India” which called transforming prisons from captivity centres to reformation centres. In 1957 the government of India appointed the All India Jail Manual Committee to prepare a model manual to guide future policies. The manual suggested amendments to 1894 act<sup>10</sup> and advised to adopt modern methods of prison administration such as probation, remand homes, reformatory schools, borstal schools, juvenile homes, protective homes and many other correctional works. The model manual was later adopted in 1960 which is followed till date. The Ministry of Home Affairs on the basis of model manual appointed a working group on prisons in the year 1972 which emphasized on the national policy on prisons. The committee recommendations include- i) The need for training jail officials in handling prisoners and to improve the working conditions ii) to differentiate between criminals based on their mental abilities and scientifically treat offenders iii) to use alternative methods other than imprisonment iv) to prioritise development of prison administration v) To bring prison from state list to concurrent list.

In 1980, Mulla committee<sup>11</sup> was setup by the central government. The committee was headed by Justice A N Mulla who was tasked with the job to review rules, regulations and laws in view of improving rehabilitating the offenders and protecting the criminals. The committee

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<sup>9</sup>The North American Review , Jul., 1883, Vol. 137, No. 320 (Jul., 1883), pp. 40-48

<sup>10</sup>Bawa, P. S. (2000). Towards prison reforms. *India International Centre Quarterly*, 27(2), 155–162.  
<http://www.jstor.org/stable/23005498>

<sup>11</sup>Hiremath, V. (2008). Draft Policy on Prison Reforms. *Economic and Political Weekly*, 43(26/27), 29–32.  
<http://www.jstor.org/stable/40278901>

recommended modernization and setting up a National Prison Commission. It also advised to separate hardened criminals and juvenile offenders so that the juveniles won't be influenced by the criminals. It also recommended the separation of mentally disturbed people from normal prisoners and the creation of mental asylums. The committee strongly recommended classification of prisoners on grounds of rationality and scientific reasons. Salient recommendations of the Mulla committee are<sup>12</sup> – i) Undertrials should be separated from convicts in prisons and their lodging should be reduced to bare minimum. Undertrials should undergo speedy trials as their fundamental rights are affected through arrest. ii) The living conditions in the prisons should be improved by taking care of the basic necessities like health, food, hygiene, clothes and ventilation. iii) The prisons should effectively use probation, after-care and rehabilitation of prisoners. iv) The government should allocate funds and resources sufficiently. v) Media and NGO's<sup>13</sup> related to rehabilitation and correction of criminals are to be allowed to visit prisons to make the conditions of jail transparent and help the criminals.

In 1987 the government appointed the Krishna Iyer Committee which was constituted to study the conditions of women prisoners. The committee recommended the deployment of more women in police forces tasked with the role of controlling child and women offenders. The court after Ramamurthy case directed the central government to prepare a unified prison manual for the whole country. On those directions the central government setup a Bureau of Police Research and Development (BPR&D).

### **Prisoners Rights**

Constitution of India safeguards the rights of its citizens. The court has been enabled through various legislations to punish the criminals and to protect them from harassment, torture and providing justice. Some of the rights provided through the constitution are Right to life and personal liberty, Right to health and medical treatment, Right to a speedy trial, Right to free legal aid and Right to reasonable wages for work.

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<sup>12</sup>S. R. Sankaran. (2001). Crime and Punishment: Reforming the Prison and Prisoner [Review of *Punishment and the Prison: Indian and International Perspectives*, by Rani DhavanShankardass]. *Economic and Political Weekly*, 36(25), 2251–2254. <http://www.jstor.org/stable/4410775>

<sup>13</sup>Imhabekhai, C. I. (2002). Non-Governmental Organization and Prison Support Services in Nigeria: A Case Study of the Justice, Development and Peace Commission. *Journal of Correctional Education*, 53(4), 150–153. <http://www.jstor.org/stable/41971103>

The Directive Principles of State Policy under Art. 39A states that it is the obligation of the State to provide free legal aid inside and outside the jail for the prisoners who are unable to engage their own lawyers. Some other rights of prisoners are Right to bail, Right to basic amenities, Right against arbitrary prison punishment and Right to leave and special leave.

## Alternatives To Punishment

- a) Probation – In probation the criminal is left back to the community but does not enjoy the same level of enjoyment or freedom of a normal citizen. The courts are in favour of probation for low profile criminals and first time offenders, judges have a final say in giving probation on lines of the statutes. In Probation there are set of rules which when violated leads to cancelation of probation and repudiation of the criminal<sup>14</sup>.
- b) Restitution – The 78<sup>th</sup> law commission suggested this reform where the money which is like a fine collected by the culprit goes to the victim rather than the municipality or court. Restitution is ordered in cases where victims have occurred monetary losses due to the criminals acts. The restitution reform was suggested to put the victim financially back to the place where he was prior to the criminal incident.<sup>15</sup>
- c) Parole – It is a method to maintain continuity in relationships of the criminal and is meant to humanize prisons. In Parole the convict is left with partial liberty with restrictions. The objectives are to help the inmate retain self-confidence and to reinstate active interest in life. Parole helps the prisoner to come out of the bad effects of rigorous prison life.
- d) Diversion – This method tries to give the convict a chance to prove that he has responsibility and act so. This method includes probation and counselling and mainly used for first time offenders and drug offences. The charges are rejected if the conditions of indication are completed<sup>16</sup>.

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<sup>14</sup>Miller, N., & CROMWELL, P. F. (1976). [Review of *CORRECTIONS IN THE COMMUNITY: ALTERNATIVES TO IMPRISONMENT*, by G. G. KILLINGER]. *The Justice System Journal*, 2(1), 93–98. <http://www.jstor.org/stable/20877492>

<sup>15</sup><https://www.iasbhai.com/prison-statistics-india-report-2019-2020-upsc/>

<sup>16</sup>Developments in the Law: Alternatives to Incarceration. (1998). *Harvard Law Review*, 111(7), 1863–1990. <https://doi.org/10.2307/1342485>

- e) Fine – It is a common mode of punishment for low profile and petty crimes such as traffic violation, consumption purpose drugs possession, fraud in gaming and drink and drive cases. In serious cases fine is used as additional method of conviction.
- f) Community Service – This is a method of compensation to the society as the convict has caused harm to the society. The service is unpaid and has to perform it to compensate for other types of punishment.

## Conclusion

Prisons play a very important role in maintaining law and order in the society. If prisons are limited to play the role of captivity then they might turn into “university’s for grooming criminals”. The State should encourage research and development in the field of prisons and prisoners to improve the living conditions of both the citizens and prisoners. Reformation and rehabilitation should become the most important goal of prisons and not custodial homes for torture. Correctional treatment gives the prisoner a chance to re-enter the society and most importantly get back his fundamental rights which will be suspended in prison. Enforcement of committee reforms are very important in reforming prisons. This has been an issue in India for quite a long time.

Prisons are only one method in reformation of prisoners and in the bigger picture education, economics, institutions and social reforms need to be introduced to bring transformation in the society<sup>17</sup>. It is natural for a society to have anti-social elements so the State’s effort should be continuous which will help both the State in smooth functioning and prisoners in reforming. In India the central government should always have their guidance on state government in prison governance and should try to bring in reforms. Finally, prisoners can only be reformed and rehabilitated with good conditions and love.

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<sup>17</sup>Vold, George B. “Does the Prison Reform?” *The Annals of the American Academy of Political and Social Science* 293 (1954): 42–50. <http://www.jstor.org/stable/1028395>.