

Prison Reforms in India: Socio- Legal Challenges

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Abstract

Prison is a place to detain the persons and it is a State subject under Entry 4 of List II of the Seventh Schedule to the Constitution of India. Administration and management of prisons is the responsibility of respective State Governments. However, the Ministry of Home Affairs provides regular guidance and advice to States and UTs on various issues concerning prisons and prison inmates. Prisons are known to have existed throughout the history. Existence of prisons can be traced back to the ancient period. Imprisonment affects the prisoner and also his family living in poverty. When an income generating member of the family is imprisoned the whole family has to suffer and adjust to the loss of income. The family has to suffer financial loss because they have to engage a lawyer, arrange food for the prisoner, transport to prison to visit the prison etc. Prisons have very serious health implications. There are some prisoners who are suffering from various diseases before entering to the prison or they get affected after coming in the prison. Hence there is no healthy atmosphere in the prison. It is overcrowded; there is no fresh air, absence of proper and nutritious food etc. Imprisonment disrupts relationships and weakens social cohesion, since the maintenance of such cohesion is based on long-term relationships. When a member of a family is imprisoned, the disruption of the family structure affects relationships between spouses, as well as between parents and children, reshaping the family and community across generations. Mass imprisonment produces a deep social transformation in families and communities. Taking into account the above considerations, it is essential to note that, when considering the cost of imprisonment, account needs to be taken not only of the actual funds spent on the upkeep of each prisoner, which is usually significantly higher than what is spent on a person sentenced to non-custodial sanctions, but also of the indirect costs, such as the social, economic and healthcare related costs, which are difficult to measure, but which are immense and long-term. In this research paper researchers would try to explain the need of prison reforms and social legal challenges in these reforms.

Keywords: Prison, Prisoners, Prison Reforms

Introduction

All men are born with basic rights and they all are equal therefore, it is their duty to follow certain norms of the society if they do not follow the norms of the society then that person deprived of such rights with proper punishment.¹ There are number of modes for punishments such as death sentences, hanging in public, whipping, flogging and imprisonment etc. all these modes are backed by certain theories e.g deterrent theory, retributive theory, preventive theory and reformatory theory.² With the passage of time in India whipping and flogging and hanging in public places abolished but death sentence and imprisonment is still existing. Researcher's will emphasis on the imprisonment which is also known as punishment to send person in prison. There has been a well organised prison system from the ancient period in India, it is found that Brihaspati laid emphasise on imprisonment of convicts in closed prison, however Manu was against this system.³ The motive of sending the criminals into jail is to transform them into honest and law binding citizens after their own introspection in the prison.⁴

Definitions of Prisons

Prison can be defined as an establishment for captivity of persons who have been remanded in custody by judicial authority or who have been destitute of their liberty following conviction for crime.⁵

Prison means any place used to detain prisoners used lastingly or momentarily by an special order of the sovereign⁶ it also includes various places a subsidiary jail and any reformatory, Borstal institution or any other establishment declared as such⁷

Reasons for Prison Reforms

1. Prison reforms are not the result of social movement. These are the result of the situation when political prisoners were kept in jails, they faced in human treatment and realised the conditions of the prisoners. After that they launched various movements against prison authorities to treat the prisoners as human being and improve the conditions of the prison.⁸
2. According to report published by the National Crime Records Bureau, 2019 high light the plight of prisoners in India, according to the report at the end of 2016 there were 4,33,033 people in prisons and among them 68% were undertrial.
3. Due to overcrowding prisoners faced problems of stress, rivalry, groupism, stress and other mental problems.
4. There is a gap between the number of prisoners eligible to be released and actually released under section 436A of the Code of Criminal Procedure.
5. Recently the cases of unnatural death in prisons has increased.⁹
6. It is found that inadequate prison infrastructure is also a one of the reasons of prison reform because jails were construct for men but with time women prisoners are also found in the jail therefore, safety of women prisoners and their young children is very important.
7. It is generally found there is shortage of staff for proper prison administration.
8. Another major reason for reformation of prisons is the issues of health and hygiene¹⁰

Prison Reforms: Social Legal Challenges

Prison Reforms before 1947¹¹

1. Before the British rule in India prison system was in the Hindu period as well as in Mughal period the modes of punishments were very hard and the conditions of the prison and prisoners were not good. They were ill treated and subjected to various inhuman treatments.¹² When the Britishers put the political leaders in prisons and they faced inhuman treatments then they launched movements against jail authorities for human treatments for prisoners and improvements in jail conditions. Therefore, prison reforms speeded up during this period. They did radical prison reforms without hurting the sentiments of indigenous peoples¹³.
2. In the year 1836-1838 first time a Maculay Committee was constituted which recommended to create the office of inspector general of police to maintain the discipline among the prisoners and prison authorities¹⁴.
3. Second Commission of Inquiry 1862, into jail Management and Discipline recommended about accommodation health and hygiene of the prisoners. In the year of 1894 Prison Act was enacted.

4. In 1919-1920 Indian Jail Reform Committee recommended the maximum intake capacity in jails should depend upon the shape and size. This committee categorically explained that motive of the prison is reformation and Rehabilitation of the offenders.
5. In 1946 Jail Reform Committee suggested that child offenders should treated differently, there should be modern jail, offenders should be classified scientifically as women offenders, Habitual offenders and handicapped offenders.

Prison Reforms After 1947¹⁵

In the Constitution of India has the certain rights which are equally available to all citizens general and particularly to prisoners such as right to equality¹⁶, they freedom of speech and expression and they can form and become a member of association¹⁷, protection Against Conviction of offence¹⁸, A convict cannot punished more than once for the same offence¹⁹, prohibition against self-incrimination²⁰, all the human rights and right to liberty²¹, women prisoners and their wards as well as other prisoners should have access to education²², certain rights are also available to convict when they are arrested or detained²³, prisoner can approach the High court and Supreme Court through certain constitutional remedies²⁴, govt provide the free legal aid to the indigent prisoners²⁵. Further in the Constitution powers are distributed between centre and State²⁶ according to it Sate has power to make laws on those matters which are given in the List II in the Seventh Scheduled. But this provision is not absolute they are subjected to the powers of parliament who can exercise powers of state legislatures under certain circumstances²⁷.

Therefore, according to Constitution of India "prison" basically is a subject matter of the State legislature and state makes the laws for it but such law shall be in conformity with laws made by parliament because the supremacy in case of ambiguity is of the latter.

1. From 1950 onwards the idea of rehabilitations of prisoners was based on their psychological treatment, educational and vocational training programmes.
2. Punishment of kala Pani was substituted with life imprisonment in 1956
3. One of the important committees All India Jail Manual Committee was constituted in 1957-59, this Committee submitted its report in 1960 in which it recommended the guide lines efficient prison management and corrective treatment of prisoners. All these guidelines were the first Jail Manual 1960.
4. Another Committee Mulla Committee (1980-83) emphasised on the modernisation of prisons. It further recommended that after care, rehabilitation, probation should be integral part of prison services. Prisoners should be kept separately according to their crime. Public should allow to visit the jails.
5. Juvenile Justice Act was passed in 1986 under it observation homes, special homes and juvenile

homes were constituted to keep juvenile delinquents and neglected children.

6. 1987 Krishna Iyer Committee observe the situation of women prisoner and also recommended that more women police force should appoint in the prisons.

International Covenant on Civil and Political Rights is the core international treaty on the protection of the rights of prisoners. India has ratified it in 1979. International Covenant on Economic, Social and Cultural Rights (ICESCR) also apply on the prisoner and emphasised that prisoners should have a right of physical and mental health they have civil and political rights.²⁸

All the above discussion reflects the efforts for the prison reforms as well as improvement in the conditions of prisoners. In spite of these efforts the prison system still facing social and legal challenges which are as follows.

Social and legal Challenges

Social challenges of the prison system include the challenges within prison climate. It could be understood as what should be the atmosphere and rule regulations within prison as well as how the prisoners would be rehabilitated and involve in the society when they release from jail. However, prison conditions vary in term of physical fabric of the institution, State Government concern towards prisons and Prisoners, and their associations, political perception of offenders and the perception of those who associated with prison. In 1996 Ramanmurthy v State of Karnataka, the SC has observed that nine major problems in jail which need to reforms in such as overcrowding, delay in trial, health and hygiene, corruption within the jail, problems in communication with family etc. Therefore, the social challenges within prison is overcrowding and no proper segregation of prisoners on the nature of their offence. According to the report of National Crime Record Bureau in 2018 the total number of prisons were 1,339 and actual capacity of prisons were 3,96,223 and the number of prisoners at the end of the year were 4, 66, 084 and the occupancy rate at the end of the year was 117.6%.²⁹ According to a report of NCRB in 2017 the most overcrowded jails in India are in Uttar Pradesh after UP the Bihar then Madhya Pradesh.³⁰ It is very clear that overcrowding is a human rights issue such as health and hygiene, if the undertrial would kept with hard criminals then such situations may cause psychological problems, stress, anxiety, rivalry, groupism, drug abuse, etc. within the prison.

According to criminal laws procedure whenever a person arrested and detained must produce before magistrate within 24 hours of his arrest and detention. For the longer detention police required the special order by the magistrate but it is generally should not more than 14 days but to prolong this period further orders are required by the magistrate and according to law it may not exceed more than 90 days. In cases where the potential punishment of ten-year detention in the police custody may not exceed 60 days. After the expiry of the said period of sixty days and ninety days, as the case may be the accused person shall be released on the bail if

he full fill the requisite of the bail³¹. However no outer limit laid down for detaining a person in custody after filing the charge sheet against the accused.

It is generally found that rule of 24 hours is not followed by police because of its failure to register an arrest right away and sometime detainee remained in police custody for far longer period than is legally prescribed. It generally happens that convicts belong to poor families could not pay the amount of the bail, therefore, they remained in jail for longer period. To meet the challenge of overcrowding govt. amended the criminal law in 2010 and amended section 41³². its application in real sense will help to reduce the overcrowding. Plea bargaining if implemented in true sense it will also help to reduce the crowd of the prison. The number of incidents of ill treatment within prisons came before the court and judiciary started to take these issues as human rights issues and which resulted in to the prison reforms up to certain limits. Poor infrastructure and inadequate staff are another social challenge within the jail.³³ There are provisions in the jail manual regarding to doctors, psychiatrist, free legal aid services as well as community services. It is a general observation that jails have shortage of these staff member.

During this pandemic situation supreme court has issued the advisory on 16 march 2020 to all states to consider release the prisoners on parole to reduce overcrowding. According to this advisory the prisoner having jail in term of seven years can be release on parole which help to reduce the overcrowding. This advisory also contain that who has not committed any heinous offence can be release on bail also. Transportation of the prisoners from one jail to another jail should be in rare to rarest cases.³⁴

Other social challenge rehabilitation of the prisoners in the society through vocational and educational training after release from the jail. The major challenge is their streamline within the society and society should accept them. Various jails have done efforts to their rehabilitation for example Taloja jail in Navi Mumbai have given chance to prisoners to spend their time with their children and other loved ones. prisoners of Pooja Pura central prison Thiruvananthapuram are drivers, beauticians, paper bag makers etc. Tihar jail started a small automotive manufacturing unit run by prisoners, prisoners also set a restaurant for public with a seating capacity of 45 where the food cooked and served by the prisoners, staff members are generally those prisoners who are charged with murder and they changed themselves, Tihar jail also have Tihar jail factory which produce bakery products, handlooms, textile, pure mustard oil herbal products etc. Balasore District jail of Odisha has organic farming with prisoners.³⁵

Jails are the subject matter of state list and its improvement depend upon the concern care and will power of the state government.

In case of legal challenges such as in Prison Act, 1894 and 1900 has the provision for welfare officer and law officer in each jail. But practically in maximum jails recruitment of these officers are still pending. In the jail manuals also has the provision for

the infrastructure but still there are lot of vacancies need to be filled. some time application for parole are not processed on time.³⁶ Provisions of the legal aid is also available but practically lawyers not prefer to assist the prisoners.³⁷ The directive laid down in the Act of 1894 are still operational. Prisoners are classified in to three categories A, B and C with the passage of time it remains only in A and B such classification caused unhealthy environment within the prison. This Act also have directives which deals with "convict- officers". Maximum corruption and favouritism prevailed in these convict officers.

There are legislations which deal with prisons and prisoners. are The Prison Act, 1894³⁸, The Prisons Act, 1900³⁹, The Identification of Prisoners Act, 1920⁴⁰, The Transfer of Prisoners Act, 1950⁴¹, The Prisoners (Attendance in Courts) Act, 1955⁴², The Probation of Offenders Act, 1958⁴³, Model Prison Manual, 1960⁴⁴, The Repatriation of Prisoners Act, 2003⁴⁵, Model Prison Manual for Superintendence and Management of Prison in India 2003⁴⁶, The Juvenile justice (care and Protection of Children) Act, 2015⁴⁷, Model Jail Manual 2016⁴⁸. Further various law commissions (1977-79, 1979-80, 1988-991, 1991-994, 2000-2001) were constituted to deliberate on the reformation of prison and conditions of prisoners but still there is a major need of prison reformation.

Prison reform generally depend upon the will power of the state government. There are various states with idea of prison reforms such as Madhya Pradesh has Village Court Act, 2000 where the powers have been given at the village level for disposal of petty offences. Gujarat state has introduced community-based sentences under the Community services of offenders Act, 1949, state of Andhra Pradesh also started the community-based services by the offenders.⁴⁹ India there are certain jails which are example of prison reforms i.e Tihar Jail which is the largest prison in South Asia. It is also known as Tihar Ashram, with maximum security. It accommodates 5200 prisoners. It has 9 different central prisons in it. It is rehabilitation centre rather than prison. It transforms the prisoners through education, business skills, prisoners run industry.

The art of living missionary has also started a programme which is known as Prison Smart program to transform the lives of people working in or incarcerated within criminal justice system. This programme is organised in 45 countries and in India over 100 prisons have implemented these programmes and 5,00,000 prison inmates have been transformed through these programmes. This programme is for improving the immunity and physically well-being, reduced the impression, more respectful relationships between prisoners and prison officials and reduce the tendency to seek revenge as well as feeling of guilt.⁵⁰ The another jail Rajamundry jail was known as killer of human rights now it is the place of recreation.⁵¹

Conclusion and Sugesstions

There are motive behind the various modes of punishments. Imprisonment has the motive to reformation and rehabilitation of the prisoners so that they can live a life like other people after their release.

It is very necessary to evaluate the existing method of imprisonment. Judiciary, prison administration, police and NGO and community synergetic interface can reform the prison system.

The researchers tried to give certain suggestions which are as follows.

1. The prison Act, 1894 should repealed with new Act to cater the need of the time
2. Prisoners received the wages for their employment it is found that they do not received wages uniformly. There should be a policy for uniformity of their wages.
3. Prison management Board received the grant which was closed in 2015 it should released.
4. Objective of the prison is reformation and rehabilitation; therefore, prisoner should be part of Sarv Sikhsha Abhiyan as well as other welfare policies by the Government.
5. State Government should full fill the vacant post in the administration as well as jail staff etc.
6. New prisons should construct keeping of mind women prisoners and their wards.
7. Open prison system can be the best alternate of imprisonment.

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